



*Journal of Supreme Court History* (ISSN 1059-4329 [print], ISSN 1540-5818 [online]) is published three times a year in March, July, and November by the Supreme Court Historical Society through Blackwell Publishing, Inc., with offices at 350 Main St, Malden, MA 02148 USA and PO Box 1354, Garsington Rd, Oxford, OX4 2DQ, UK and PO Box 378 Carlton South, 3053 Victoria, Australia.

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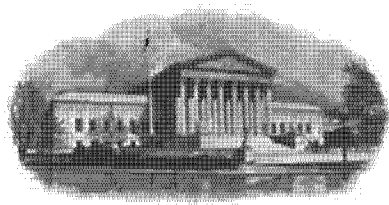
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**Abstracting and Indexing** The contents of this journal are indexed or abstracted in the following: *ABC-Clio*; *Academic Search Premier*; *America: History and Life*; *Cambridge Scientific Abstracts* *Worldwide Political Science Abstracts*; *CatchWord*; *EBSCO Academic Search Premier*; *EBSCO Legal Collection*; *Historical Abstracts*; *Index to Legal Periodicals and Books*; *InfoTrac Custom*; *InfoTrac OneFile*; *Ingenta*; *International Political Science Abstracts*; *JSTOR*; *LegalTrac*; *Online Computer Library Center ArticleFirst*; *Online Computer Library Center Index to Legal Periodicals & Books*; and *Sociological Abstracts*.



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2005 vol. 30 no. 2

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The Society, a private non-profit organization, is dedicated to the collection and preservation of the history of the Supreme Court of the United States. Incorporated in the District of Columbia in 1974, it was founded by Chief Justice Warren E. Burger, who served as its first honorary chairman.

The Society accomplishes its mission by conducting educational programs, supporting historical research, publishing books, journals, and electronic materials, and by collecting antiques and artifacts related to the Court's history. These activities and others increase the public's awareness of the Court's contributions to our nation's rich constitutional heritage.

The Society maintains an ongoing educational outreach program designed to expand Americans' understanding of the Supreme Court, the Constitution and the judicial branch. The Society cosponsors Street Law Inc.'s summer institute, which trains secondary school teachers to educate their students about the Court and the Constitution. It also sponsors an annual lecture series at the Supreme Court as well as occasional public lectures around the country. The Society maintains its own educational website and cosponsors Landmarkcases.org, a website that provides curriculum support to teachers about important Supreme Court cases.

In terms of publications, the Society distributes a *Quarterly* newsletter to its members containing short historical pieces on the Court and articles describing the Society's programs and activities. It also publishes the *Journal of Supreme Court History*, a scholarly collection of articles and book reviews, which appears in March, July and November. The Society awards cash prizes to students and established scholars to promote scholarship.

The Society initiated the *Documentary History of the Supreme Court of the United States, 1789-1800* in 1977 with a matching grant from the National Historical Publications and Records Commission (NHPRC). The project seeks to reconstruct an accurate record of the development of the federal judiciary in the formative decade between 1789 and 1800 because records from this period are often fragmentary, incomplete, or missing. The Supreme Court became a cosponsor in 1979; since then the project has completed seven out of the eight volumes. An oral history program in which former Solicitors General, former Attorneys General, and retired Justices are interviewed is another research project sponsored by the Society.

The Society maintains a publications program that has developed several general interest books: *The Supreme Court Justices: Illustrated Biographies 1789-1995* (1995), short illustrated biographies of the 108 Justices; *Supreme Court Decisions and Women's Rights: Milestones to Equality* (2000), a guide to gender law cases; *We the Students: Supreme Court Cases for and About High School Students* (2000), a high school textbook written by Jamin B. Raskin; and *Black White and Brown: The Landmark School Desegregation Case in Retrospect* (2004), a collection of essays to mark the 50th anniversary of the *Brown* case.

The Society is also conducting an active acquisitions program, which has substantially contributed to the completion of the Court's permanent collection of busts and portraits, as well as period furnishings, private papers, and other artifacts and memorabilia relating to the Court's history. These materials are incorporated into exhibitions prepared by the Court Curator's Office for the benefit of the Court's one million annual visitors.

The Society has approximately 5,700 members whose financial support and volunteer participation in the Society's standing and ad hoc committees enables the organization to function. These committees report to an elected Board of Trustees and an Executive Committee, the latter of which is principally responsible for policy decisions and for supervising the Society's permanent staff.

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JOURNAL OF

# SUPREME COURT HISTORY

2005, vol. 30, no. 2

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224 East Capitol Street, N.E.

Washington, D.C. 20003

ISBN 0-914-785-37-0

ISSN 1059-4329

# Introduction: The Incident at Lathrop Station

PAUL KENS

Last year the *Journal of Supreme Court History* published the first part of Justice Stephen J. Field's memoir, **Personal Reminiscences of Early Days in California**, with a promise to reprint the second half at a later time.<sup>1</sup> This is the second installment. It is not technically part of the memoir at all. Rather, it is the story of one particular incident: the events that led to the shooting and death of Field's former colleague on the Supreme Court of California, David S. Terry. As you will soon see, the story involves powerful personalities, incredible wealth, sex, violence, and greed. These themes are not unusual in legal history. What is unusual in the story that follows, however, is that judges are the principal players.

Field dictated **Personal Reminiscences** in 1877 and distributed copies as part of his run for the Democratic presidential nomination. When the memoir was first published as a book in 1893, it included a second half titled **The Story of the Attempted Assassination of Justice Field by a Former Associate on the Supreme Bench of California**. Although Field's longtime friend, George C. Gorham, writes the story, there is little doubt that it is written as though Field told it himself. It is an exceedingly biased version of a highly controversial incident. Even Gorham's title "The Story of the Attempted Assassination of Justice Field" is controversial.<sup>2</sup>

Although Gorham's account of the incident is undoubtedly biased, I am not going to

use this introduction to write an alternative version of the same story. Rather I hope to set the story in context and alert you to some of the sources of controversy. Since the first installment of Field's memoirs gave us a sense of his experiences in early California, it may be fruitful to set the scene for **The Story of the Attempted Assassination** by focusing on David Terry.<sup>3</sup> I will then use footnotes within the text itself to point out some disputed facts and arguments that may be of interest to the reader.

David Terry died on August 14, 1889 when David Neagle, Field's bodyguard, shot him in the Lathrop, California train station.<sup>4</sup> The immediate series of events that led to the shooting had begun about five years earlier

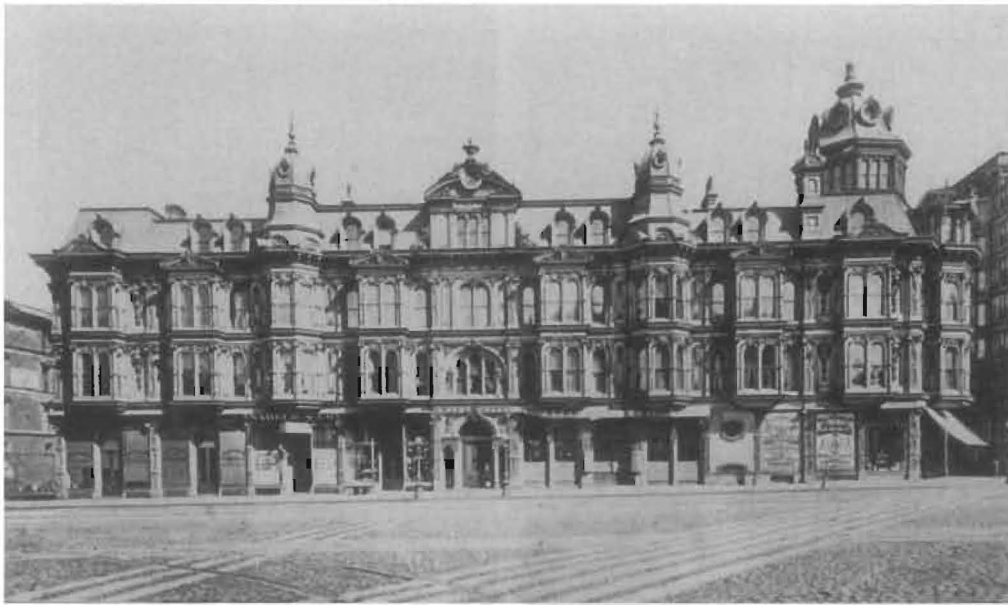


William Sharon (left), a wealthy Nevada mine owner, was elected senator from that state in 1875. He preferred, however, to live in San Francisco. Below, mules hauled ore by wagons from a mine near Las Vegas.



when Terry joined the legal team representing Sarah Althea Hill. As you will soon read, Sarah Althea was an energetic and vivacious woman with a tendency to flaunt convention. She claimed to be the wife of William Sharon, a former United States senator for Nevada and one of the wealthiest men in the West. Sharon

had made his fortune in the silver mines of Nevada but, for years, had made his home in California. Sharon, who owned the luxurious Palace Hotel where Field stayed in California, was a well-connected pillar of San Francisco society. Even friends agreed, however, that he had the "reputation of a libertine."<sup>5</sup>



Sharon arranged for Sarah Althea to live in the Grand Hotel (above) and to pay her \$400 per month plus her expenses in return for being his mistress. But Sarah Althea insisted that she had resisted the Senator's advances until after he proposed marriage in 1879, a contract that she had agreed to keep secret for two years. Pictured is the Grand Hotel in San Francisco, where the couple resided before their break-up in 1881.

Sarah Althea, who claimed to be from an important Missouri family, came to California in 1871 with little money. Some writers claim she was a prostitute; others disagree. It is certain, however, that she had some kind of a relationship with a woman called Mammy Pleasant, the proprietress of a high-class bordello.

Soon after he met Sarah Althea, Sharon arranged for her to live in the Grand Hotel. Sharon maintained that she had agreed to become his mistress and that he, in turn, agreed to pay her \$400 per month plus her expenses at the Grand. Sarah Althea offered a different version of their agreement. She claimed that she had resisted the Senator's advances until after he proposed marriage. The two had entered into a contract of marriage on August 25, 1879, she said, a contract that she agreed to keep secret for two years.

In November 1881, Sharon decided to end the relationship. He offered Sarah Althea a severance package worth \$7,500. When she refused, he kicked her out of the Grand Hotel.

Sarah Althea then set into motion a plan to get a greater share of Sharon's fortune. It began in September 1883 with the publication of "Dear Wife letters" from Sharon to Sarah Althea that supposedly revealed the existence of the marriage contract. Sharon responded by filing a suit in the U.S. Circuit Court asking that the marriage contract be declared forgery and a fraud and that Sarah Althea be enjoined from using it. Shortly after Sharon filed in the federal court, Sarah Althea filed a suit for divorce in the state court.

George C. Gorham's **Story of the Attempted Assassination of Justice Field** will describe the details of these dueling lawsuits. There were, however, two other developments that play an important part in the story. The first was that William Sharon died in November 1885. His son, Frederick Sharon, and son-in-law, Francis G. Newlands, carried on the effort to preserve the Senator's estate from Sarah Althea's grasp. The other development was that on January 7, 1887, Sarah Althea and her lawyer, David Terry, were married.<sup>6</sup>



After Sharon died in 1885, his son, Frederick Sharon, and son-in-law, Francis G. Newlands (above), carried on the effort to preserve the Senator's estate from Sarah Althea's grasp. Newlands would go on to be elected senator from Nevada in 1903, serving until his death in 1917.



When Sarah Althea realized that Associate Justice Stephen Field (above), who was presiding over her divorce case while riding circuit in California, would rule against her, she flew into a rage and slapped him. Luckily, she and her knife-wielding husband were quickly restrained before their violent outbursts caused Field any harm. Sarah Althea was carrying a loaded pistol in her purse.



Sarah Althea married her defense lawyer David Terry, a widow, during her divorce trial.

Although Sarah Althea won her case in the state court, the federal district court determined that the marriage contract was a fraud and issued an injunction prohibiting her from using it. As the cases continued to move through the courts, Sarah Althea and her new husband became increasingly convinced that Stephen Field and his fellow federal judges were out to get them. Sarah Althea's vivaciousness acquired a bitter edge, and her tendency to flaunt convention turned violent.

The worst of her personality burst forth during an important hearing on September 3, 1888. At one point, realizing that Field was going to rule against her, Sarah Althea jumped up and screamed that Field had been bribed. When the Justice told her to take her seat, she became even more incensed. Field then ordered her removed from the courtroom, but, when a marshal approached her, she slapped him in the face. Her husband now joined the fray. Yelling "Don't touch my wife," he punched a marshal.



Other deputies came to the marshal's aid and subdued Terry. They released him when he had calmed down, but another fight soon erupted in the anteroom, where the marshals had taken Sarah Althea. This time Terry drew a knife, and it took several marshals to hold him down while a bystander pried the weapon from his hands. Interestingly, that bystander was David Neagle, the man who would later shoot Terry in Lathrop station. When the melee ended, officials discovered a loaded revolver in Sarah Althea's purse.

As a result of the courtroom antics, Justice Field sentenced Sarah Althea to thirty days and Terry to six months for contempt. While in jail, both wrote bitter diatribes attacking Field. Sarah Althea's threats were the more vitriolic. "I could have killed Field from the spot where I stood in the courtroom," she boasted, "but I was not yet ready to kill the old villain."

In the meantime, Field had gone to Washington to participate in the Supreme Court's Term. Concerned for the Justice's safety, Attorney General William H. Miller ordered the U.S. Marshals to provide Field with a bodyguard when he returned to California

to ride circuit. David Neagle was subsequently appointed a deputy U.S. marshal and assigned to protect Justice Field.

Such were the circumstances when destiny brought Field and Terry together one last time in Lathrop, California. Accounts of what happened there vary. But we know that Field was traveling in the same train as David and Sarah Althea Terry and that Neagle was aware of the couple's presence. We know that Field disembarked at the station to eat breakfast and that Terry and his wife followed. We know that upon seeing Field, Sarah Althea abruptly left the station and returned to the train. We also know that David Terry approached Field in a threatening manner and assaulted him and that, in an instant, Neagle then shot Terry dead.

One might wonder why the incident stirred controversy at all. On the surface, and certainly in Gorham's account, Terry's death appears tragic, but justified. Gorham leaves little doubt that he believed it was.

Every man who knows anything of the mode of life among the men of Terry's class knows full well that when they strike a blow they mean to follow it up to the death, and they mean to take no chances. The only way to prevent the execution of Terry's revengeful and openly avowed purpose was by killing him on the spot. Only a lunatic or an imbecile or an accomplice would have pursued any other course in Neagle's place than the one he pursued, always supposing he had Neagle's nerve and cool self-possession to guide him in such a crisis.<sup>7</sup>

Gorham's defense of Neagle's action is somewhat misleading, however. The chain of events leading up to the shooting, and Terry's intentions, were a matter of dispute. Neagle claimed that Terry walked over to Field's table and "struck Judge Field a violent blow to the face, followed instantaneously by another



Concerned for Justice Field's safety, Attorney General William H. Miller (pictured) ordered the U.S. Marshals to provide Field with a bodyguard when he returned to California to ride circuit.



Field was traveling in the same train as David and Sarah Althea Terry on his return to California and was accompanied by David Neagle, the U.S. marshal assigned to protect him. They all disembarked at the station in Lathrop (pictured) to eat breakfast. When Terry threatened Field and then assaulted him, Neagle shot him dead.

blow." Other witnesses said that Terry merely brushed Field with an open hand as if to insult him. The testimony of these witnesses, and perhaps the fact that Terry was seventy-seven years old at the time, open the door for questioning whether Neagle indeed acted with "cool self-possession" or whether he panicked and acted rashly. Whatever his state of mind, Neagle quickly drew his gun and shot Terry twice.<sup>8</sup> Terry died almost instantly.

Questions about a deputy marshal's state of mind when he pulled the trigger, however, probably would not have been enough by themselves to cause the uproar that occurred in the wake of Terry's death. Almost as soon as Terry hit the floor, Neagle ushered Field to the train car and locked the door. The county sheriff joined the pair as the train moved out, demanding that Neagle submit to detention. That evening, Sarah Althea—who, as will be seen, plays a major role in this drama—swore out a complaint charging Field and Neagle with her husband's death. Charges against Justice Field were dropped, but Neagle faced a murder charge in Stockton. Although Neagle's situation was precarious at the time, he would eventually be exonerated as well. He petitioned a writ of habeas corpus to move the case to the federal court. After granting the petition, the federal court concluded that Neagle had acted justifiably in pursuing his duties as a servant of the federal government.<sup>9</sup>

Newspapers in California and throughout the country carried stories of the incident and the events that followed. Although many defended Neagle's action, others were critical. In Sacramento, particularly, feelings against Neagle and Field ran high. Public officials worried that the combustible atmosphere in Sacramento would turn Terry's funeral into a riot. There were also rumors that Terry's supporters had considered storming the jail and carrying Neagle to a lynching.<sup>10</sup> Neither the riot nor the lynching occurred, but the tension clearly existed. Terry's biographer provides some hint of the source.

The excitement in Stockton, where Judge Terry had lived so long, was intense, and while the most prominent men of that city made no particular demonstrations or exhibited no evidences of a spirit of revenge, the country people, who loved him as a friend, and whom he had always befriended, were loud in their denunciation of the authorities and of the man who had committed the deed.<sup>11</sup>

David Terry was a prominent citizen and distinguished lawyer. Over the years, he had become popular among miners, settlers, and Californians of antimonopolist sentiment and a thorn in Field's side. At the news of his death, some of these people believed that Field and



others had conspired to put an end to their old adversary. In their minds, Terry had become a "victim to Field's cowardly hate and contemptible malice."<sup>12</sup> To these Californians, the incident at Lathrop station was not an attempt on Field's life, but rather the murder of David Terry.

The dispute that led to Terry's death began as a divorce suit and, subsequently, a battle for the estate of a wealthy man, but the story of his death had deeper roots. It was, in many ways, a metaphor for early California history. Field and Terry were both California pioneers; they were both usually Democrats; and they were both lawyers and judges. Beyond that, they were opposite in almost every respect. And, in almost every major conflict or issue facing California from the Gold Rush to the 1880s, they were to be found on opposite sides. Field sailed to California via the Panama route, arriving in December 1849. Terry, who led a group overland to California, arrived

roughly three months earlier. Field was the son of an established New England preacher. He remained loyal to the Union and during the Civil War was appointed to the U.S. Supreme Court by Abraham Lincoln. Terry had deep Southern roots. He was born in Kentucky and lived in Mississippi until his parents separated and his mother took him to Texas in 1883 or 1884. During the Civil War, he left California to fight for the Confederacy. In early battles over California's resources, Field tended to side with a powerful elite that some Californians called the Pacific Club Set. Terry usually found himself aligned with settlers, prospectors, and farmers. Both men were strong-willed to an extreme. Where Field tended to achieve his ends through guile and intrigue, however, Terry's tendency was toward force, physical confrontation, and even violence.

Terry was ten years old when his mother moved to a large plantation in Texas. She died three years later, leaving Terry and the



Family lore claimed that David Terry fought in the Battle of San Jacinto (pictured) and killed a Mexican officer with a bowie knife. It is unlikely, however, that Terry fought in the battle, given that he would have been only thirteen during the Texas War of Independence.

plantation in the care of his older brother. Terry soon left the plantation and joined Sam Houston in the fight for Texas independence. Family lore has it that Terry fought in the Battle of San Jacinto and that a Mexican officer who "Struck [Terry] on the head with a saber . . . was rewarded with a bowie knife which pierced [the Mexican officer's] heart."<sup>13</sup> Although Terry later said he "played a man's part in the Texan War for Independence," he was just thirteen years old at the time. One biographer thus concludes that it is unlikely that Terry actually fought in the battle.<sup>14</sup> After the war, Terry studied law in his uncle's Houston office and became a member of the bar. At the start of the war between Mexico and the United States, he joined the Texas Rangers and, in 1846, fought in the battle of Monterrey.

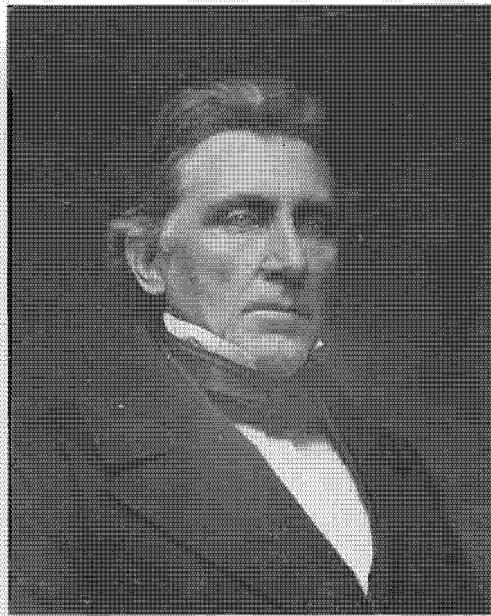
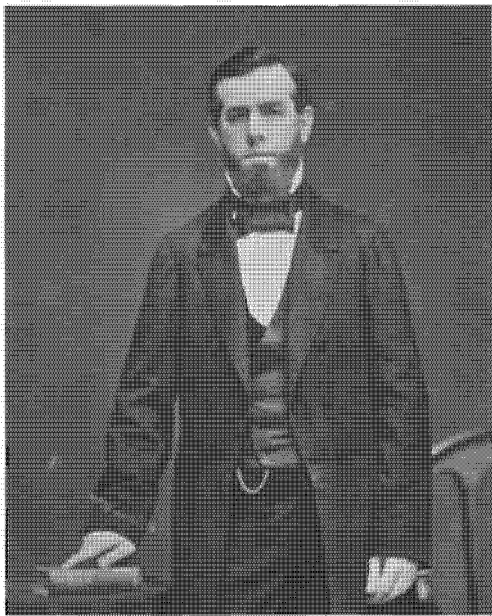
Although stories about Terry's exploits in the Texas War for Independence are likely exaggerated, and little is known about his experiences in the war with Mexico, these events undoubtedly had an important impact on his character. Terry had seen two wars before he was twenty-six years old. He had lived most of his life in a frontier society and, as one historian observes, "[h]e became accustomed to the companionship of vigorous and at times rough men."<sup>15</sup> These early experiences built on his upbringing as a Southern gentleman. Terry was an imposing (by nineteenth-century standards) 6 feet and 3 inches tall, and he had a reputation for being quick with a bowie knife. Enemies described him as a violent man. Perhaps he was. He admitted to having a temper and was likely to strike out if he was threatened or insulted. But nothing in his history indicates that he was given to fits of rage. Violence in Terry's life tended to be a calculated violence based on an outdated and peculiar sense of honor founded on dueling and a code of chivalry.

Soon after arriving in California, Terry set up a law practice in Stockton. Tales of his early practice in this frontier town are similar to those that Field recalls in *Reminiscences of Early Days in California*. Terry was said to have stabbed a man who threatened him in

the course of a trial and to have pummeled a newspaper editor who challenged his character. When questioned in later years, he admitted that he carried weapons to court and added that he often had a friend watch his back during trial.

The tale that presents the image of Terry that friends preferred to portray involved a confrontation with a prominent merchant, George S. Belt. When Belt said that one of Terry's friends had been a horse thief and highway robber in Mexico, Terry denounced the accusation. Belt took this as an insult and challenged Terry to a duel. Terry—who, in accordance with the dueling code, had the right to determine the conditions—chose pistols at ten paces. Belt objected that the short distance of ten paces was unprecedented, barbarous, and murderous. Terry would not change, however. He claimed it was because he was a poor shot, while Belt was an expert with a pistol. He explained to a friend that "if Belt lacks nerve he is less likely to hit me at ten paces than at thirty, and I know I can hit him at ten paces." On the day of the duel, Belt's second offered to withdraw the challenge and Terry accepted. When it was later proven that Terry's friend was a horse thief and a highwayman, "Terry went to Belt, shook hands, and was ever after his firm friend."<sup>16</sup>

Like Field, Terry was involved in building a new community. When Stockton became a city in 1850, Terry was nominated to run for mayor in the first election. Although he lost, the election established his political prominence. For most of his career, Terry was connected to the Democratic party. By the mid-1850s, however, that party was fracturing over the issue of slavery. The Democrats were so factious that their 1854 convention disintegrated and the rival factions met separately. One, sometimes called the Tammany Wing, followed former New Yorker David Broderick. Terry, who was an ardent advocate of slavery, aligned with the Chivalry wing of the party, which was led by U.S. Senator William Gwin.<sup>17</sup>



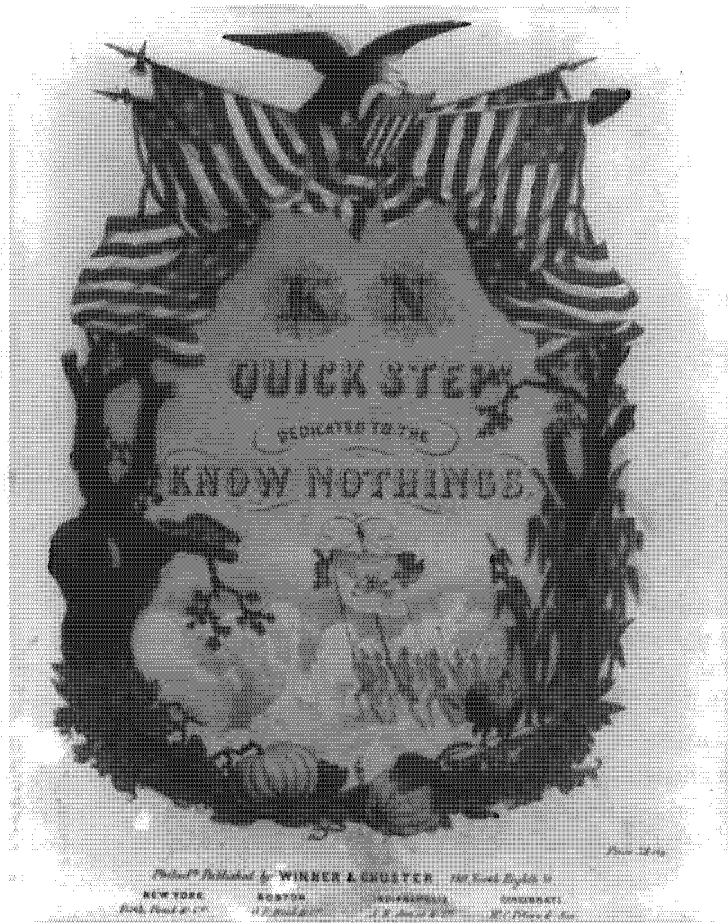
The Democrats were so factious that their 1854 convention disintegrated into rival factions. One followed former New Yorker David Broderick (left); the other was led by U.S. Senator William Gwin (right). Terry, who was an ardent advocate of slavery, aligned himself with the Chivalry wing under Gwin.

With the Democrats in chaos, the 1855 elections provided a short-lived opportunity for the Know-Nothing party. This party was the outgrowth of a secret society that opposed immigration and the election or appointment of Roman Catholics and foreigners to political office. Until a split in 1856, it was also popular among state's rights and pro-slavery advocates. Terry joined the Know-Nothings in 1855. The party then nominated him as its candidate for justice of the California supreme court. And when Know-Nothings swept the elections, Terry became a member of that court.

Justice Terry was soon to become famous—not for his work on the California supreme court, but rather as a prisoner of the San Francisco Vigilance Committee of 1856. The Vigilance Committee formed in May 1856 after an angry politician named James Patrick Casey shot a flamboyant, muckraking newspaper editor who called himself James King of William. King's death provided the catalyst for the Committee's formation. The Committee held itself out as a spontaneous popular response to rampant crime and political corrup-

tion, yet there was an organized and political aspect to it. Its leaders tended to be merchants, importers, and bankers. Frustrated in politics, they were said to be "well-connected men who were on the losing side more often than they wished to be."<sup>18</sup>

Whatever the underlying causes, the Vigilance Committee divided San Francisco into two armed camps. When a force of 1,500 men marched on city hall and took Casey and another accused murderer named Charles Cora to be lynched at Committee headquarters, it was clear that, of the two camps, the formal government led by Mayor James Van Ness was by far the weaker. Like Terry, Governor J. Neely Johnson had recently been elected under the Know-Nothing banner. Seeing that the city government was unable to cope with the situation, Johnson issued a proclamation declaring San Francisco to be in a state of insurrection and ordered General William Tecumseh Sherman, leader of the state militia, to prepare to enforce the law. Sherman's task was impossible, however: the militia was loosely organized and, worse, had few weapons.



After joining the Know-Nothing party in 1855, Terry became his party's candidate for the California supreme court. When the Know-Nothings, an anti-Catholic nativist party, swept the elections, Terry got his judicial appointment. The raccoons, pumpkins, and cornstalks on this Know-Nothing sheet music allude to its xenophobic platform and preference for indigenous symbols.

Terry's role in the saga was set into motion when Governor Johnson prevailed on the federal government to provide a small number of weapons. The vigilantes learned of the transfer and sent a force to intercept the weapons. They seized the weapons but allowed one of the militiamen, J. R. (Rube) Maloney, to escape to the office of his company commander, Dr. R. P. Ashe. The vigilantes later decided to arrest Maloney and sent Sterling A. Hopkins, a member of the vigilante police, to capture him.

Meanwhile, a group of the governor's friends, including Terry, were meeting in Dr. Ashe's office. Hopkins followed Maloney to the office, but, seeing he was outnumbered, left without his man. Terry, Ashe, and Maloney figured that Hopkins was likely to return with

reinforcements, so they joined several other men and tried to make their way to a militia armory. Hopkins and his reinforcements caught the group along the way. At first, the two groups appeared to be at a tense standoff. Then Hopkins tried to seize Terry's pistol. As the men struggled for control of the gun, a shot went off elsewhere. Terry, now feeling that his life was in danger, drew his bowie knife and stabbed Hopkins. When the vigilante fell back bleeding and screaming that he had been stabbed, Terry, Ashe, and the others escaped to the Armory.

Terry's safety was not as secure as it might have first appeared. Only sixteen militiamen guarded the armory and soon there was a mob of over one thousand vigilantes outside. Terry and Maloney eventually gave themselves up





Formed in 1856, the Vigilance Committee of San Francisco billed itself as a spontaneous popular response to rampant crime and political corruption. It challenged the city government, causing Governor J. Neely Johnson to issue a proclamation declaring San Francisco to be in a state of insurrection. Pictured is a certificate of membership in the committee.

to representatives of the Committee and were moved, under guard, to a Vigilante stronghold nicknamed Fort Gunnybags.

Now that the Vigilantes had Terry, they did not quite know what to do with him. It was one thing to lynch unsavory characters such as Casey and Cora, but quite another to threaten a justice of the state supreme court. Terry was imprisoned in Fort Gunnybags from June 21 to August 7, 1856. During that time Hopkins recovered from the wounds Terry had inflicted on him. Perhaps more importantly to Terry's fate, the federal military and the federal courts were threatening to become involved in the situation in San Francisco. After putting Terry on trial, the Executive Committee of the Vigilance Committee convicted Terry of the assault, but it was not very comfortable about the prospect of hanging a supreme court justice. It thus concluded that, "the usual punishment in

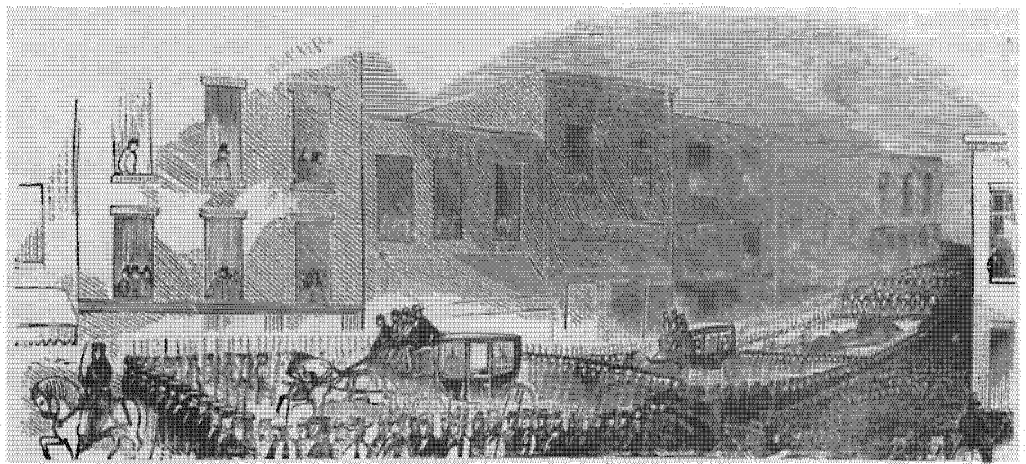
their power to inflict not being applicable in the present instance, that the said David S. Terry be discharged from custody."<sup>19</sup>

Following his release, Terry returned to his duties on the California supreme court. Field joined the court a little more than a year later, in October 1857. The two served together until Terry resigned in September 1859 after his famous and illegal duel with David Broderick, discussed below. They disagreed on many issues, if not most, including the status and rights of Chinese, Sunday closing laws, and railroad liability.<sup>20</sup> The *Biddle Boggs Case*, which I described in the first installment of Field's memoirs, demonstrated that Terry tended to be more sympathetic to miners and settlers than did Field.<sup>21</sup>

Despite their philosophical differences, however, there is nothing to indicate that the personal relationship between Justices Terry



Judge Terry was arrested in 1856 for stabbing Sterling A. Hopkins (above), a Vigilance Committee member whom the Committee had sent to arrest an escaped militiaman. Terry and other prisoners are pictured below being escorted to the Vigilance Room for trial.



and Field was strained. When he dictated his memoirs in 1877, Field described Terry as a gentleman of vigorous mind, generous nature, and positive will. But Field also gently pointed out what he thought to be a flaw in Terry's character and his choices.

Mr. Terry has the virtues and prejudices of men of the extreme South

in those days. His contact and larger experience since with men of the North have no doubt modified many of those prejudices, and his own good sense must have led him to alter some of his previous judgments. Probably his greatest regret is his duel with Mr. Broderick, as such encounters, when they terminate fatally to one of



the parties, never fail to bring lifelong bitterness to the survivor.<sup>22</sup>

By "virtues and prejudices of men of the extreme South" Field may have meant that Terry subscribed to a dueling code, or "code of honor," that was generally thought to be a trait of Southern gentlemen. Although California had made dueling illegal, some prominent men continued to observe the custom. Terry certainly did, at least prior to the Civil War. The immediate cause of his infamous duel with David Broderick was a comment by Broderick that Terry perceived as an insult. But Field may also have been referring to Terry's advocacy of slavery. The slavery debate was a less direct cause of the duel and partially explains why it became a famous episode in California history. To understand how, and why, it is necessary to go back a few years, to 1857.

Broderick was undoubtedly a political power in 1857, but his base was confined to San Francisco. As leader of the Tammany wing of the Democratic party, he had enough power to control patronage in the city and even some statewide control. However, William Gwin, a Southerner and the head of the Chivalry wing of the Democratic party, controlled the substantial federal patronage. In 1857, Broderick launched a plan to get elected to the U.S. Senate and to wrest control of the federal patronage from Gwin. Gwin's term had expired in 1855, but a deadlocked state legislature had failed to select a successor. As a result, there were two Senate seats to fill in 1857. Broderick ran for the long term and won. In a backroom deal, he agreed to support Gwin for the short term if Gwin would agree to cede control of federal patronage to him. The two arrived in Washington just when the struggle over whether Kansas should be a free or slave state was tearing apart the national Democratic party. Broderick immediately became an outspoken opponent of slavery.

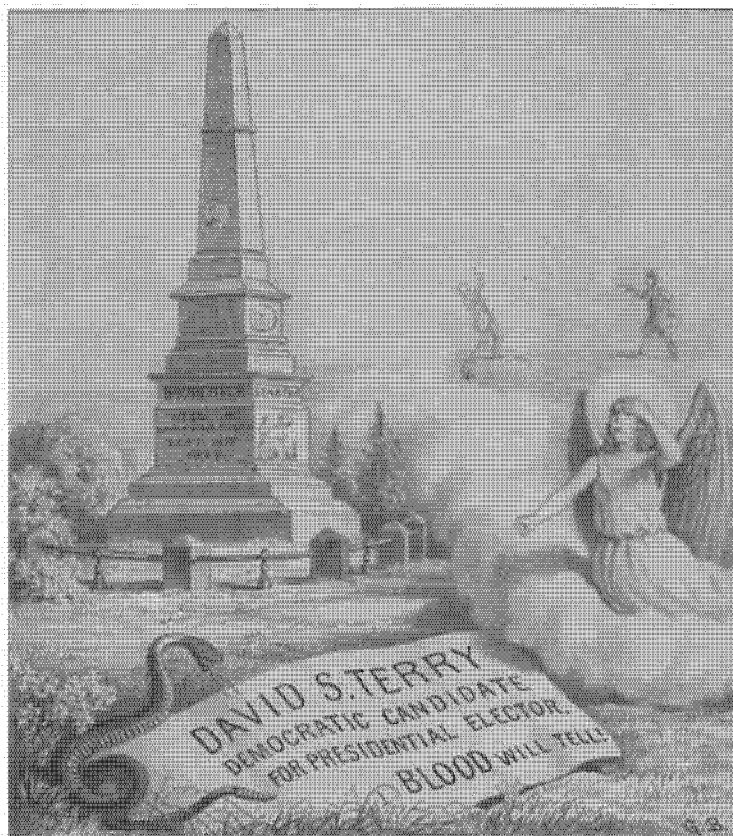
The slavery debate intensified the already existing tension within the California Democratic party and the rivalry between the state's

two senators. By the time Broderick and Gwin returned to California to participate in the state convention of 1859, the state party had split in two. The antislavery faction, called Anti-Lecompton Democrats, met in one convention, while supporters of slavery, the Lecompton Democrats, met in another. In a speech to the Lecompton convention, Terry railed against the Anti-Lecompton faction, saying that "they belonged, heart and soul, body and breeches to David C. Broderick." "If they sail under the flag of Douglas," he continued, "it was not that of Stephen A. Douglas, but the banner of the black Douglass, whose name was Fredrick, not Stephen."<sup>23</sup>

A few days later, upon reading an account of Terry's speech in the newspaper, Broderick made a fateful remark to Terry's former law partner Duncan W. Perley. After complaining about Terry's words, Broderick said, "I have hitherto spoken of him [Terry] as an honest man—as the only honest man on the bench of a miserable, corrupt Supreme Court—but now I find I was mistaken. I take it all back. He is just as bad as the others."<sup>24</sup> Hearing this insult of his friend, Perley immediately challenged Broderick to a duel. Broderick declined Perley's challenge. When Terry sent a challenge, however, Broderick accepted.<sup>25</sup>

After considerable wrangling, the two men agreed to meet outside San Francisco on Monday, September 12, 1859. The duel was delayed when the chief of police of San Francisco arrested the two for breach of the peace. Their arrest only delayed the event, however: they met the next morning at the same location. On the order to fire, Broderick shot first but missed. Terry's shot, which immediately followed, hit Broderick in the right lapel. Physicians at first thought Broderick's wound was not life threatening, but he soon turned for the worse. Three days later, he died.

The timing and circumstances of Broderick's death transformed him from politician into martyr. With the Civil War just a little more than a year away, Broderick's death acquired symbolic meaning for the



When David Broderick told Terry's former law partner that Broderick had come to consider Terry to be just as corrupt as the other judges on the California supreme court, an insulted Terry challenged Broderick to a duel. Terry fatally shot Broderick, who became a martyr for the anti-slavery cause, while Terry, who was allied with Governor Gwin's pro-slavery party, became a public pariah. Pictured is a monument to Broderick.

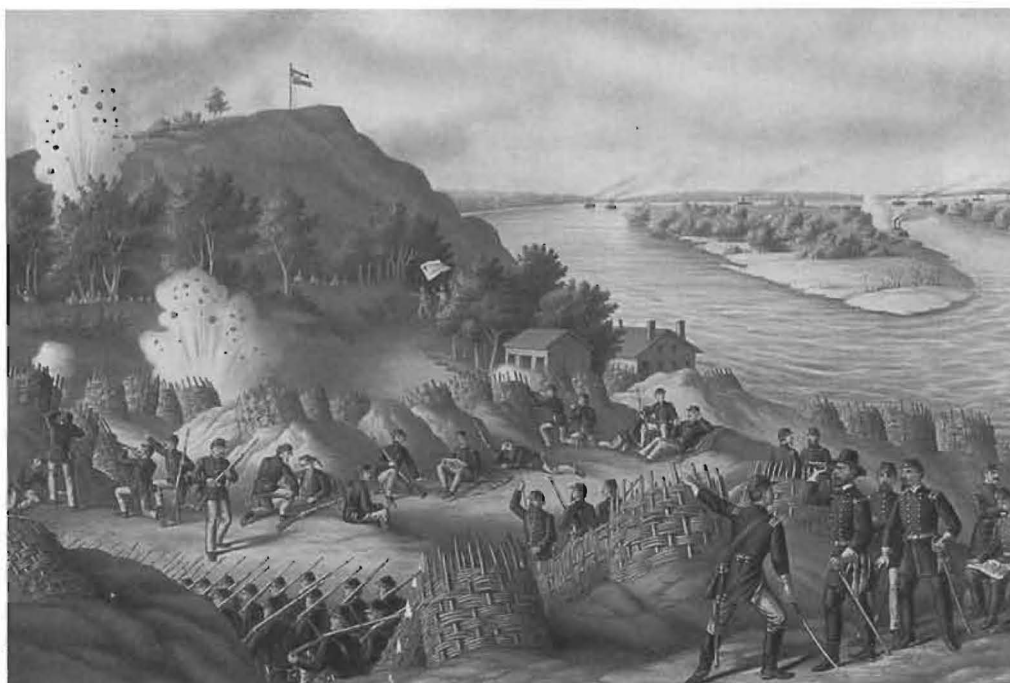
antislavery movement. The opponents of slavery charged that Broderick had been the victim of a political plot instigated by Senator Gwin and the Lecompton Democrats. One antislavery politician, for example, fumed that the duel was "a shield blazoned with the name of chivalry to cover the malignity of murder."<sup>26</sup> It is highly unlikely that any such conspiracy existed. Nevertheless, Northern sentiment was strong in California, and because the issue of slavery had begun to overshadow local issues and rivalries, Broderick became much more popular in death than he had ever been in life.

Terry, meanwhile, became a political pariah. He resigned his position on the Supreme Court and, since dueling was illegal, he faced possible criminal charges. Finding little success when he returned to Sacramento to resume his law practice, he became a pioneer again and joined the miners' rush for gold and silver in Nevada. Even before the onset of the

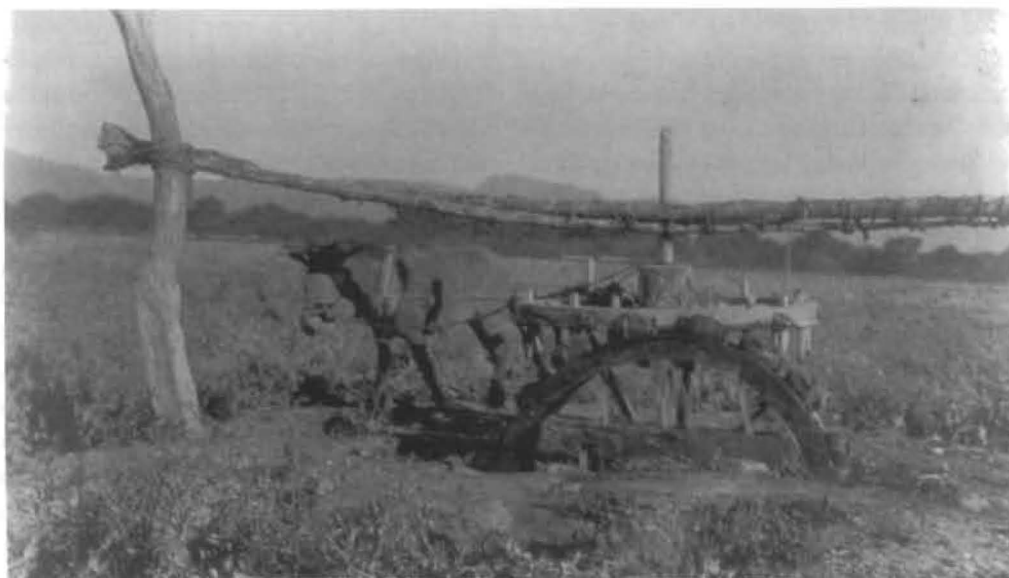
Civil War, Terry was rumored to be a leader of a Confederate insurgency in Nevada and California. There is no proof that he was, but early in 1861 he left the West to serve in the Confederacy. Commissioned a colonel, Terry saw battle at Vicksburg and in Tennessee and was wounded while fighting with his brothers' regiment. Terry's older brother, Frank, who had founded Terry's Texas Rangers, died in the regiment's first battle. Another brother, Clinton, also died fighting with the unit. Terry's primary responsibility during the war, however, was to raise another regiment in Texas. He was in Texas when the war ended and, along with other Confederate officers, decided to escape to Mexico. Terry brought his family to Jalisco, where he tried cotton farming.

Unhappy in Mexico, the family returned to California in 1868. Although Terry initially found it difficult to start a legal practice, by 1871 he was comfortably settled in Stockton

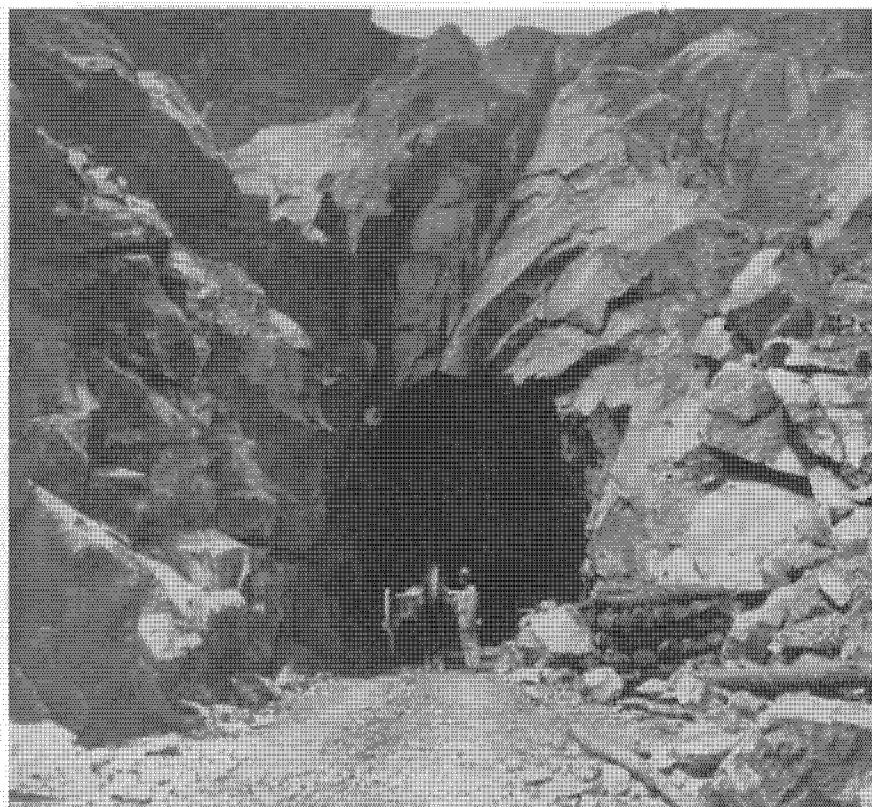




Commissioned a colonel in the Confederate army, Terry fought at the Battle of Vicksburg (pictured) and in Tennessee. He was later wounded while fighting with his brothers' regiment in Texas.



In Texas when the war ended, Terry decided to escape to Mexico, along with other Confederate officers. He brought his family to Jalisco (above), where he tried cotton farming. Unhappy in Mexico, the family returned to California in 1868. Although Terry initially found it difficult to start a legal practice, by 1871 he was comfortably settled again in Stockton.



With slavery no longer an issue, economic dissatisfaction dominated California politics during the 1870s. Much of that dissatisfaction—labeled “antimonopoly”—was aimed at the power of the Central Pacific Railroad (pictured) being built. Field was consistently sympathetic to the interests of railroad companies, while Terry was a reliable antimonopolist.

and, in 1875, once again became active in the Democratic party. In 1879, the citizens of Stockton elected Terry as a “non-partisan” delegate to the convention to rewrite the state constitution.

At the California Constitutional Convention of 1878–1879, Terry stepped into a political scene quite different from that which he had traversed in the 1850s. Laborers and farmers had replaced explorers and prospectors. Completion of the Transatlantic Railroad had linked California to the national market, but had failed to bring the prosperity for which Californians had hoped. Nationwide depression, local drought, and unemployed workers greatly affected the politics of the late 1870s. With slavery no longer an issue, economic dissatisfaction dominated the politics of the decade. Much of that dissatisfaction, labeled

“antimonopoly,” was aimed at the power of the Central Pacific Railroad. It also spilled over into hatred of the Chinese. The antimonopoly movement was usually lodged in the Democratic party, splitting the party into two factions. In 1877, however, the movement was strong enough to form its own political party—the Workingmen’s party. In 1878, the Workingmen’s party elected one-third of the delegates to the constitutional convention. A year later, it won a significant number of statewide offices and control of the city of San Francisco.

Readers might recall from the first installment that the antimonopolists counted Stephen Field among their worst enemies. Field’s detractors considered him to be in the pocket of the railroad and corporate elite. From the antimonopolist point of view, his record on the Chinese question was also suspect.<sup>27</sup> At

the Constitutional Convention, David Terry, by contrast, proved to be all that the antimonopolists could hope for. Terry was sent to the convention as a non-partisan delegate and, somewhat surprisingly, the Workingmen's party disputed his right to have a seat. During the debate over seating, A. C. Peachy took offense at something Terry said and challenged him to a duel. Terry refused, saying that he had had "sufficient experience of that character before."<sup>28</sup>

Although Terry was not associated with the Workingmen's party, once he secured his seat at the convention it quickly became clear that his views reflected the antimonopolist sentiment. Demonstrating distrust of corporations and the corporate elite, he proposed a provision to the constitution that would make directors and trustees liable to creditors and stockholders for embezzlement or misappropriation of funds.<sup>29</sup> He then suggested another provision that would prohibit any state agency from investing funds in a private corporation.<sup>30</sup> At first, Terry opposed establishment of a railroad commission. Once it became obvious that the commission would become part of the constitution, however, he worked to make it stronger by giving it the power to punish contempt of its orders.<sup>31</sup>

Terry's record on two other topics is especially relevant here. First, he supported a proposal to change the state's tax laws so that "bonds, notes, mortgages, solvent debt, franchises, evidences of debt, and everything of value capable of transfer or ownership" would be considered property. This proposed change in the assessment of property was, of course, aimed at railroads. Antimonopolists viewed railroad mortgages not only as evidences of debt but also as a way of raising capital. They believed that railroads avoided paying their fair share of taxes by mortgaging the companies to the hilt. Farmers, who believed that a tax on mortgages would affect them as well as the railroads, opposed Terry's proposal.<sup>32</sup> Terry's idea did have an impact, however. The convention eventually compromised with a tax provi-

sion that assessed most kinds of property at its actual value less the amount of any mortgage held against the property. Railroads and other quasi-public corporations were an exception. Their property taxes would be based upon the actual value of the property without a deduction for the amount of mortgages held against the property. Predictably dissatisfied with a tax scheme that treated them differently, the railroads withheld their taxes in 1880-1881 and sued to test the validity of the law. The lawsuits that grew out of this dispute eventually came to the Ninth Circuit as *San Mateo v. Southern Pacific Railroad Company* (1882) and *Santa Clara v. Southern Pacific Railroad Company* (1883) cases. Field, who heard the case while riding circuit, described the tax scheme as discriminatory class legislation that violated the companies' right to equal protection of the laws.<sup>33</sup> In 1886, the U.S. Supreme Court confirmed Field's decision to invalidate the scheme.<sup>34</sup>

Second, Terry sponsored a proposal that prohibited corporations from employing Chinese in any capacity.<sup>35</sup> This eventually became one of several anti-Chinese provisions found in Article 19 of the new constitution. Given the power to enforce the provision, the legislature made any corporate officers subject to criminal penalties and imprisonment for the offense of hiring Chinese. When Tiburcio Parrot, president of Sulfur Springs Quick Silver Mining Company, was jailed for violating the act, he petitioned the U.S. Circuit Court for a writ of habeas corpus. Parrott claimed that the constitutional provision and the enforcement statute were unconstitutional. The circuit court agreed.<sup>36</sup> Field, who was in Washington, D.C., did not participate in the decision. However, as the circuit judge for the Ninth Circuit, Field had the power to overturn the decisions of his subordinate judges. There is little doubt that he at least acquiesced to the decision.

Field and Terry did not have any significant personal contact during the later 1870s and early 1880s, but Terry's record at the Constitutional Convention highlighted their

philosophical differences. When Field made a run for the Democratic presidential nomination in 1880, one of his claims was that his popularity in the West would draw votes from any Republican candidate and carry the election for the Democrats. It was unfortunate for him that, by that time, although the Workingmen's party had virtually disappeared, the antimonopoly feelings in California had not. Most antimonopolists returned to the Democratic party, where they formed a strong faction in opposition to Field's Pacific Club Set. When the Democratic national convention met in Cincinnati, the antimonopolist strength and Field's weakness quickly showed itself. In a non-binding preference poll on the second day of the convention, Field received only two out of 330 possible votes! He did better, winning sixty-five of the 738 votes, on the first formal ballot. Still, the fact that he won only six of California's twelve votes took much of the steam out of his campaign.

Field must have been bitter about the treatment he received from his home state. Claiming that he held no animosity toward "those who have acted ungenerously toward me," he expressed relief that the campaign was over and that he would cease to be blamed "for all the crimes on earth."<sup>37</sup> Although he claimed to be done with politics, friends floated Field's name for the presidential nomination again in 1884. This time, with antimonopolists securely in control of the party, Field's campaign was crushed before it even left the state. At their state convention in Stockton, California Democrats added as the final plank of their platform a resolution stating

[t]hat the democracy of California unanimously repudiates the presidential aspirations of Stephen J. Field, and that we hereby pledge ourselves to vote for no man as delegate to the national convention of July 8, 1884, who will not before this convention pledge himself to use his earnest endeavors to defeat these aspirations.<sup>38</sup>

As the convention adjourned, each delegate pledged himself for "Tilden first, Thurman second and for Field never."<sup>39</sup> The 1884 state convention was in Terry's hometown. Although he was not a delegate, Terry was said to be a power behind the convention and to have worked against Field.<sup>40</sup>

It was just before the Stockton convention got under way that David Terry became involved in the divorce suit that would set the stage for his death. Interestingly, William Sharon's son-in-law, Francis G. Newlands, also played a role in the 1884 Stockton convention. Newlands, who would also become a U.S. Senator for Nevada, offered a motion to delete the attack on Field. His motion was greeted by resounding hisses from the floor. After one speaker stated that he hoped never to see California "licking the hand that smites her and accepting from the railroad corporations their chosen candidate, Stephen J. Field," the convention voted down Newland's motion by a vote of 453 to 19.<sup>41</sup>

These political rivalries and the bitterness—even hatred—they produced certainly do not prove that there was a conspiracy on the part of Field's friends to put an end to Terry. They do, however, help explain why some Californians believed that such a conspiracy existed. Moreover, they also reveal that Terry's death at Lathrop station was more than a personal dispute between two old enemies and more than the tragic consequence of a contentious legal battle. Its roots tapped deep into the tensions that had characterized California politics for almost four decades.

## ENDNOTES

<sup>1</sup>Stephen J. Field, "Personal Reminiscences of Early Days in California," rpt 1893, *Journal of Supreme Court History* 29 (2004) 23–119.

<sup>2</sup>A version of the incident that is more favorable to Terry is found in A. G. Wagstaff, *The Life of David Terry* rpt. 1892 (South Hackensack, N.J.: Rothman Reprints, Inc., 1971). Robert H. Kroninger, *Sarah & the Senator* (Berkeley, Ca.: Howell-North, 1964) provides the most detailed account of the incident. Although Kroninger



seems to have worked from court documents and newspaper accounts, his work lacks footnotes. Other less biased accounts of the incident can be found in Carl Brent Swisher, **Stephen J. Field: Craftsman of the Law** rpt 1930 (Hamden, Conn: Archon Books, 1963), pp. 321–61; and Paul Kens, **Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age** (Lawrence: University Press of Kansas, 1997), pp. 275–83.

<sup>3</sup>I have relied heavily on A. Russell Buchanan, **David S. Terry of California; Dueling Judge** (San Marino, Ca.: Huntington Library, 1956), and Wagstaff, **Life of David Terry** to tell the story of Terry's career.

<sup>4</sup>Much of this description of the events is borrowed from my earlier work, Kens, **Justice Stephen Field**, pp. 275–83.

<sup>5</sup>This description of Sharon is found in the opinion in *Sharon v. Hill*, 26 F. 337, 348 (C.C.D. Cal. 1885).

<sup>6</sup>Terry's first wife Cornelia, to whom he had been married for thirty-one years, had died in 1883.

<sup>7</sup>George C. Gorham, "The Story of the Attempted Assassination of Justice Field by a Former Associate on the Supreme Bench of California," *Journal of Supreme Court History*, this issue p. 143.

<sup>8</sup>Buchanan, **David S. Terry**, pp. 219, 223–24, citing the transcript of the record in *In re Neagle*, 135 U.S. 1 (1890). Buchanan also notes that the local sheriff swore he had examined Field's face and found no marks that indicate he had been struck.

<sup>9</sup>*In re Neagle*, 39 F. 833 (C.C. Cal. 1889). The lower court's opinion was appealed to the U.S. Supreme Court. *In re Neagle*, 135 U.S. 1 (1890) stands for the doctrine that federal officials, when acting within the scope of their duty, are immune from prosecution in state court for violation of state law.

<sup>10</sup>Wagstaff, **The Life of David S. Terry**, pp. 417–18.

<sup>11</sup>*Id.*, p. 416.

<sup>12</sup>**Stephen J. Field: His Character and Career as It Is Known in California** [1889?], pamphlet, Huntington Library, p. 1.

<sup>13</sup>Wagstaff, **The Life of David S. Terry**, p. 40.

<sup>14</sup>Buchanan, **David S. Terry**, pp. 5–6.

<sup>15</sup>Buchanan, **David S. Terry**, p. 5.

<sup>16</sup>Wagstaff, **The Life of David S. Terry**, pp. 53–55.

<sup>17</sup>Buchanan, **David S. Terry**, pp. 14–16. In 1853, he was chosen as a delegate to a convention that hoped to split California in half and establish slavery in the southern region. He did not attend the convention.

<sup>18</sup>Robert M. Senkewicz, S.J., **Vigilantes in Gold Rush San Francisco** (Stanford: Stanford University Press, 1985), p. 105.

<sup>19</sup>Wagstaff, **The Life of David S. Terry**, p. 132.

<sup>20</sup>See Wagstaff, **The Life of David S. Terry**, pp. 140–44 (noting that Field and Terry did agree on the issue of states'

rights). For an account of other issues, see Buchanan, **David S. Terry**, pp. 77–82.

<sup>21</sup>*Biddle Boggs v. Merced Mining Company* 14 Cal. 279 (1859). See Paul Kens, "Introduction," *Journal of Supreme Court History* 29 (2004): 1–21, pp. 7–9.

<sup>22</sup>Field, "Personal Reminiscences of Early Days in California," p. 72.

<sup>23</sup>Buchanan, **David S. Terry**, p. 94 (quoting James O'Meara, **Broderick and Gwin** (San Francisco: Bacon, 1881), pp. 218–19).

<sup>24</sup>Buchanan, **David S. Terry**, p. 95 (quoting O'Meara, **Broderick and Gwin**, p. 220).

<sup>25</sup>Dueling was practice by both Northerners and Southerners in California. Broderick had fought a duel in 1852. A watch Broderick carried in his coat pocket saved him from being killed in that duel. Theodore H. Hittell, **History of California**, 4 vols. (San Francisco: N. J. Stone and Company, 1898) IV, p. 220. Broderick declined to duel Perley in part because of a concern that accepting a challenge from a man of "lower station" would make him a target for anyone with a political grudge. He also said that he would not be involved in a duel during the elections. Terry therefore waited until after the elections to make his challenge.

<sup>26</sup>The speaker was Edward D. Baker, who was the Senator-elect from Oregon at the time. Buchanan, **David S. Terry**, p. 109 (citing Jeremiah Lynch, **A Senator for the Fifties** (San Francisco: 1911), pp. 229–38).

<sup>27</sup>See Kens, "Introduction," pp. 15–18.

<sup>28</sup>Buchanan, **David S. Terry**, p. 175.

<sup>29</sup>Buchanan, **David S. Terry**, p. 180 (citing **Debates and Proceedings of the Constitutional Convention of the State of California**, E.B. Willis and P.K. Stockton, official stenographers. 3 vols. (Sacramento, 1880) I, p. 396).

<sup>30</sup>Buchanan, **David S. Terry**, p. 181 (citing **Debates and Proceedings**, I, p. 418).

<sup>31</sup>Buchanan, **David S. Terry**, p. 182. Terry sponsored an amendment to give commissioners the power to punish contempt of their orders. **Debates and Proceedings**, I, p. 609.

<sup>32</sup>I have covered this issue in more detail in Kens, **Justice Stephen Field**, pp. 237–46. See also Carl Brent Swisher, **Motivation and Political Technique in the California Constitutional Convention, 1878–1879** (New York: Da Capo Press, 1969), pp. 66–84; R. Hal Williams, **The Democratic Party and California Politics 1880–1896** (Stanford, Ca.: Stanford University Press, 1973), pp. 33–34.

<sup>33</sup>*San Mateo v. Southern Pacific Railroad Co.*, 13 Fed. 722 (1882); *Santa Clara County v. Southern Pacific Railroad Co.*, 18 Fed. 385 (1883).

<sup>34</sup>*Santa Clara v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886). This case is known for establishing the proposition that corporations are persons for purposes of the Fourteenth Amendment. The Court did not adopt

Field's theories; rather, it overruled the tax scheme on a technicality.

<sup>35</sup>Buchanan, **David S. Terry**, 185–86 (citing **Debates and Proceedings**, I, p. 699).

<sup>36</sup>*In re Tiburcio Parrott*, 1 Fed. 481 (C.C.D. Cal. 1880).

<sup>37</sup>Kens, **Justice Stephen Field**, pp. 233–35.

<sup>38</sup>Williams, **The Democratic Party and California Politics 1880–1896**, p. 49 (citing Winfield J. Davis, **History of Political Conventions in California, 1849–1892**

(Sacramento, 1893), pp. 456–60).

<sup>39</sup>Williams, **The Democratic Party and California Politics 1880–1896**, p. 49 (citing *San Francisco Examiner*, June 12–13, 1884).

<sup>40</sup>Buchanan, **David S. Terry**, p. 200 (citing the *Morning Call*, June 12, 1884).

<sup>41</sup>Williams, **The Democratic Party and California Politics 1880–1896**, p. 49 (citing *San Francisco Examiner*, June 12–13, 1884).

# **The Story of the Attempted Assassination of Justice Field by a Former Associate on the Supreme Bench of California**

**HON. GEORGE C. GORHAM**

## **NOTE BY THE PUBLISHERS**

Mr. Gorham is a life-long friend of Justice Field. He was his clerk when the latter held the Alcalde's Court in Marysville, in 1850; and was Clerk of the U.S. Circuit Court of the District of California when it was organized, after Judge Field's appointment to the U.S. Supreme Bench. Subsequently, and for several years, he was Secretary of the U.S. Senate. Since his retirement from office he has resided in Washington. For a part of the time he edited a Republican paper in that city, but of late years he has been chiefly engaged in literary works, of which the principal one is the life and history of the late Secretary of War, Edwin M. Stanton.

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### **Attempted Assassination of Justice Field by a Former Associate on the State Supreme Bench.**

The most thrilling episode in the eventful life of Justice Field was his attempted assassination at Lathrop, California, on the 14th day of August, 1889, by David S. Terry, who had been Chief Justice of the State during a portion of Justice Field's service on that bench. Terry lost his own life in his desperate attempt, by the alertness and courage of David S. Neagle, a Deputy United States Marshal, who had been deputed by his principal, under an order from the Attorney-General of the United States, to protect Justice Field from the assassin, who had, for nearly a year, boldly and without concealment, proclaimed his murderous purpose. The motive of Terry was not in any manner connected with their association on the State supreme bench, for there had never been any but pleasant relations between them.

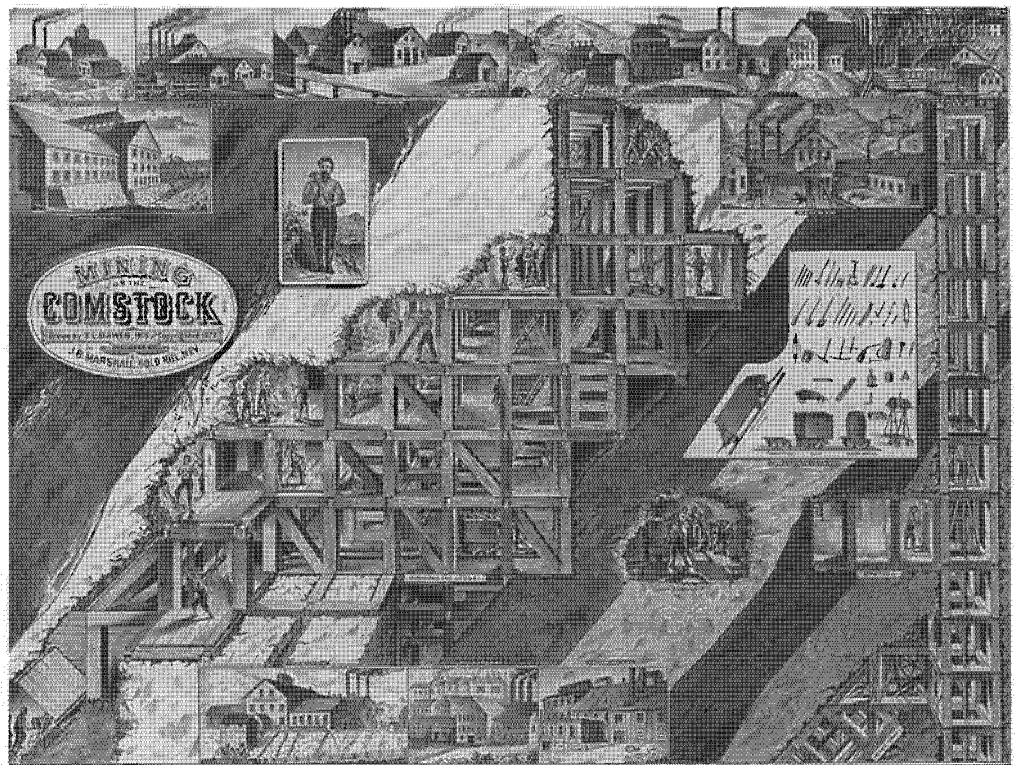
Terry resigned from the bench in 1859 to challenge Senator Broderick of California to the duel in which the latter was killed. He entered the Confederate service during the war, and some time after its close he returned to California, and entered upon the practice of the law. In 1880 he was a candidate for Presidential elector on the Democratic ticket. His associates on that ticket were all elected, while he was defeated by the refusal of a number of the old friends of Broderick to give him their votes. It is probable that his life was much embittered by the intense hatred he had engendered among the friends of Broderick, and the severe censure of a large body of the people of the State, not especially attached to the political fortunes of the dead Senator. These facts are mentioned as furnishing a possible explanation of Judge Terry's marked descent in character and standing from the Chief-Justiceship of the State to being the counsel, partner, and finally the husband of the discarded companion of a millionaire in a raid upon the latter's property in the courts. It was during the latter stages of this litigation that Judge Terry became enraged

against Justice Field, because the latter, in the discharge of his judicial duties, had been compelled to order the revival of a decree of the United States Circuit Court, in the rendering of which he had taken no part.

A proper understanding of this exciting chapter in the life of Justice Field renders necessary a narrative of the litigation referred to. It is doubtful if the annals of the courts or the pages of romance can parallel this conspiracy to compel a man of wealth to divide his estate with adventurers. Whether it is measured by the value of the prize reached for, by the character of the conspirators, or by the desperate means to which they resorted to accomplish their object, it stands in the forefront of the list of such operations.

### **Chapter I. The Sharon-Hill-Terry Litigation.**

The victim, upon a share of whose enormous estate, commonly estimated at \$15,000,000, these conspirators had set their covetous eyes, was William Sharon, then a Senator from the State of Nevada.<sup>1</sup> The woman with whom he had terminated his relations, because he believed her to be dangerous to his business interests, was Sarah Althea Hill.<sup>2</sup> Desirous of turning to the best advantage her previous connection with him, she sought advice from an old negress of bad repute,<sup>3</sup> and the result was a determination to claim that she had a secret contract of marriage with him. This negress, who during the trial gave unwilling testimony to having furnished the sinews of war in the litigation to the extent of at least five thousand dollars, then consulted G. W. Tyler, a lawyer noted for his violent manner and reckless practices, who explained to her what kind of a paper would constitute a legal marriage contract under the laws of California.<sup>4</sup> No existing contract was submitted to him, but he gave his written opinion as to what kind of a contract it would be good to have for the purpose. The pretended contract was then manufactured by



Mining tycoon William Sharon became known as the "King of the Comstock" for his co-ownership with William Allston of the lucrative Comstock Lode.

Sarah Althea in accordance with this opinion, and Tyler subsequently made a written agreement with her by which he was to act as her attorney, employ all necessary assistance, and pay all expenses, and was to have one-half of all they could get out of Sharon by their joint efforts as counsel and client. This contract was negotiated by an Australian named Neilson, who was to have one-half of the lawyer's share.<sup>5</sup>

On the 7th of September, 1883, a demand was made upon Mr. Sharon for money for Miss Hill. He drove her emissary, Neilson, out of the hotel where he had called upon him, and the latter appeared the next day in the police court of San Francisco and made an affidavit charging Mr. Sharon with the crime of adultery. A warrant was issued for the latter's arrest, and he was held to bail in the sum of \$5,000. This charge was made for the avowed purpose of establishing the manufactured contract of mar-

riage already referred to, which bore date three years before. A copy of this alleged contract was furnished to the newspapers together with a letter having Sharon's name appended to it, addressed at the top to "My Dear Wife," and at the bottom to "Miss Hill." This pretended contract and letter Mr. Sharon denounced as forgeries.

On the 3d of October, 1883, Mr. Sharon commenced suit in the United States Circuit Court at San Francisco against Sarah Althea Hill, setting forth in his complaint that he was a citizen of the State of Nevada, and she a citizen of California;<sup>6</sup> "that he was, and had been for years, an unmarried man; that formerly he was the husband of Maria Ann Sharon, who died in May, 1875, and that he had never been the husband of any other person; that there were two children living, the issue of that marriage, and also grandchildren, the children of a deceased daughter of the marriage; that he



Among Sharon's California business holdings was the prestigious Palace Hotel (pictured) in San Francisco. Justice Field resided at the hotel while serving as circuit judge.

was possessed of a large fortune in real and personal property; was extensively engaged in business enterprises and ventures, and had a wide business and social connection; that, as he was informed, the defendant was an unmarried woman of about thirty years of age, for some time a resident of San Francisco; that within two months then past she had repeatedly and publicly claimed and represented that she was his lawful wife; that she falsely and fraudulently pretended that she was duly married to him on the twenty-fifth day of August, 1880, at the city and county of San Francisco; that on that day they had jointly made a declaration of marriage showing the names, ages, and residences of the parties, jointly doing the acts required by the Civil Code of California to constitute a marriage between them, and that thereby they became and were husband and wife according to the law of that State.

"The complainant further alleged that these several claims, representations, and pretensions were wholly and maliciously false, and were made by her for the purpose of injuring him in his property, business, and social relations; for the purpose of obtaining credit by the use of his name with merchants and others, and thereby compelling him to maintain her; and for the purpose of harassing him, and in case of his death, his heirs and next of kin and legatees, into payment of large sums of money to quiet her false and fraudulent claims and pretensions. He also set forth what he was informed was a copy of the declaration of marriage, and alleged that if she had any such instrument, it was 'false, forged, and counterfeited'; that he never, on the day of its date, or at any other time, made or executed any such document or declaration, and never knew or heard of the same until within a month previous to that time, and that the same was null

and void as against him, and ought, in equity and good conscience, to be so declared, and ordered to be delivered up, to be annulled and cancelled."

The complaint concluded with a prayer that it be adjudged and decreed that the said Sarah Althea Hill was not and never had been his wife; that he did not make the said joint declaration of marriage with her, or any marriage between them; that said contract or joint declaration of marriage be decreed and adjudged false, fraudulent, forged, and counterfeited, and ordered to be delivered up and cancelled and annulled, and that she be enjoined from setting up any claims or pretensions of marriage thereby. Sharon was a citizen of Nevada, while Miss Hill was a citizen of California.\*

Before the time expired in which Miss Hill was required to answer the complaint of Mr. Sharon in the United States Circuit Court, but not until after the federal jurisdiction had attached in that court, she brought suit against him, November 1st, in a state Superior Court, in the city and county of San Francisco, to establish their alleged marriage and then obtain a decree, and a division of the property stated to have been acquired since such marriage. In her complaint she alleged that on the 25th day of August, 1880, they became, by mutual

agreement, husband and wife, and thereafter commenced living together as husband and wife; that on that day they had jointly made a declaration of marriage in writing, signed by each, substantially in form as required by the Civil Code of California, and until the month of November, 1881, had lived together as husband and wife; that since then the defendant had been guilty of sundry violations of the marriage contract. The complaint also alleged that when the parties intermarried the defendant did not have in money or property more than five millions of dollars, with an income not exceeding thirty thousand dollars a month, but that since their intermarriage they had by their prudent management of mines, fortunate speculations, manipulations of the stock market, and other business enterprises, accumulated in money and property more than ten millions of dollars, and that now he had in his possession money and property of the value at least of fifteen millions of dollars, from which he received an income of over one hundred thousand dollars a month. The complaint concluded with a prayer that the alleged marriage with the defendant might be declared legal and valid, and that she might be divorced from him, and that an account be taken of the common property, and that the same be equally divided between them.

The campaign was thus fully inaugurated, which for more than six years disgraced the State with its violence and uncleanness, and finally ended in bloodshed. The leading combatants were equally resolute and determined. Mr. Sharon, who was a man of remarkable will and energy, would have expended his entire fortune in litigation before he would have paid tribute to those who thus attempted to plunder him. Sarah Althea Hill was respectably connected, but had drifted away from her relations, and pursued, without restraint, her disreputable course. She affected a reckless and daredevil character, carrying a pistol, and exhibiting it on occasions in cow-boy fashion, to convey the impression that those who antagonized her had

\*Note.—A court of equity having jurisdiction to lay its hands upon and control forged and fraudulent instruments, it matters not with what pretensions and claims their validity may be asserted by their possessor; whether they establish a marriage relation with another, or render him an heir to an estate, or confer a title to designated pieces of property, or create a pecuniary obligation. It is enough that, unless set aside or their use restrained, they may impose burdens upon the complaining party, or create claims upon his property by which its possession and enjoyment may be destroyed or impaired. (*Sharon vs. Terry*, 13 Sawyer's Rep., 406.) The Civil Code of California also declares that "a written instrument in respect to which there is a reasonable apprehension that, if left outstanding, it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or cancelled" (Sec. 3412).



a dangerous character with whom to deal. She was ignorant, illiterate, and superstitious. The forged document which she thought to make a passport to the enjoyment of a share of Sharon's millions was a clumsy piece of work. It was dated August 25, 1880, and contained a clause pledging secrecy for two years thereafter. But she never made it public until September, 1883, although she had, nearly two years before that, been turned out of her hotel by Sharon's orders. At this treatment she only whimpered and wrote begging letters to him, not once claiming, even in these private letters to him, to be his wife. She could then have published the alleged contract without any violation of its terms, and claimed any rights it conferred, and it is obvious to any sane man that she would have done so had any such document then been in existence.

Although Sharon's case against Sarah Althea Hill was commenced in the federal court before the commencement of Miss Hill's case against Sharon in the state court, the latter case was first brought to trial, on the 10th of March, 1884.

## Chapter II. Proceedings in the Superior Court of the State.

Mr. Sharon defended in the state court, and prosecuted in the federal court with equal energy. In the former he made an affidavit that the pretended marriage contract was a forgery and applied to the court for the right to inspect it, and to have photographic copies of it made. Sarah Althea resisted the judge's order to produce the document in question, until he informed her that, if she did not obey, the paper would not be admitted as evidence on the trial of the action.

On the second day of the trial in the state court Miss Hill reinforced her cause by the employment of Judge David S. Terry as associate counsel. He brought to the case a large experience in the use of deadly weapons, and gave the proceedings something of the character of the ancient "wager of battle." Numerous

auxiliaries and supernumeraries in the shape of lesser lawyers, fighters, and suborned witnesses were employed in the proceedings as from time to time occasion required. The woman testified in her own behalf that upon a visit to Mr. Sharon's office he had offered to pay her \$1,000 per month if she would become his mistress; that she declined his offer in a business-like manner, without anger, and entered upon a conversation about getting married; she swore at a subsequent interview she drafted a marriage contract at Sharon's dictation. This document, to which she testified as having been thus drawn up, is as follows:<sup>7</sup>

"In the city and county of San Francisco, State of California, on the 25th day of August, A. D. 1880, I, Sarah Althea Hill, of the city and county of San Francisco, State of California, aged twenty-seven years, do here, in the presence of almighty God, take Senator William Sharon, of the State of Nevada, to be my lawful and wedded husband, and do here acknowledge and declare myself to be the wife of Senator William Sharon, of the State of Nevada.

"SARAH ALTHEA HILL.

"August 25, 1880, San Francisco, Cal.

"I agree not to make known the contents of this paper or its existence for two years unless Mr. Sharon, himself, sees fit to make it known.

"SARAH ALTHEA HILL.

"In the city and county of San Francisco, State of California, on the 25th day of August, A. D. 1880, I, Senator William Sharon, of the State of Nevada, aged sixty years, do here, in the presence of Almighty God, take Sarah Althea Hill, of the city and county of San Francisco, California, to be my lawful and wedded wife, and

do here acknowledge myself to be the husband of Sarah Althea Hill.

"WILLIAM SHARON,

"Nevada.

"AUGUST 25, 1880."

In his testimony Mr. Sharon contradicted every material statement made by Sarah Althea Hill. He denied every circumstance connected with the alleged drawing up of the marriage contract.

He testified that on the 7th day of November, 1881, he terminated his relations with and dismissed her, and made a full settlement with her by the payment of \$3,000 in cash, and notes amounting to \$4,500. For these she gave him a receipt in full.<sup>8</sup> He charged her with subsequently stealing that receipt at one of two or three visits made by her after her discharge.

It is unnecessary to review the voluminous testimony introduced by the parties in support of their respective contentions. The alleged contract was clearly proven to be a forgery.<sup>9</sup> A number of witnesses testified to conversations had with Miss Hill long after the date of the pretended marriage contract, in which she made statements entirely inconsistent with the existence of such a document. She employed fortune-tellers to give her charms with which she could compel Mr. Sharon to marry her, and this, too, when she pretended to have in her possession the evidence that she was already his wife. Not an appearance of probability attended the claim of this bold adventuress. Every statement she made concerning the marriage contract, and every step she took in her endeavor to enforce it, betrayed its false origin.

The trial of the case in the state court continued from March 10th until May 28th, when the summer recess intervened. It was resumed July 15th, and occupied the court until September 17th, on which day the argument of counsel was concluded and the case submitted. No decision was rendered until more than three months afterwards, namely, December 24th. Nearly two months were then allowed to pass

before the decree was entered, February 19, 1885. The case was tried before Judge Sullivan without a jury, by consent of the parties.<sup>10</sup> He decided for the plaintiff, holding the marriage contract to be genuine, and to constitute a valid marriage. It was manifest that he made his decision solely upon the evidence given by Sarah Althea herself, whom he nevertheless branded in his opinion as a perjurer, suborner of perjury, and forger. Lest this should seem an exaggeration his own words are here quoted. She stated that she was introduced by Sharon to certain parties as his wife. Of her statements to this effect the Judge said:

"Plaintiff's testimony as to these occasions is directly contradicted, and in my judgment her testimony as to these matters is willfully false."

Concerning \$7,500 paid her by Sharon, which she alleged she had placed in his hands in the early part of her acquaintance with him, the Judge said:

"This claim, in my judgment, is utterly unfounded. No such advance was ever made."

At another place in his opinion the Judge said:

"Plaintiff claims that defendant wrote her notes at different times after her expulsion from the Grand Hotel. If such notes were written, it seems strange that they have not been preserved and produced in evidence. I do not believe she received any such notes."

With respect to another document which purported to have been signed by Mr. Sharon, and which Sarah Althea produced under compulsion, then withdrew it, and failed to produce it afterwards, when called for, saying she had lost it, Judge Sullivan said:

"Among the objections suggested to this paper as appearing on its face, was one made by counsel that the signature was evidently a forgery. The matters recited in the paper are, in my

judgment, at variance with the facts it purports to recite. Considering the stubborn manner in which the production of this paper was at first resisted and the mysterious manner of its disappearance, I am inclined to regard it in the light of one of the fabrications for the purpose of bolstering up plaintiff's case. I can view the paper in no other light than as a fabrication."

In another part of his opinion Judge Sullivan made a sort of a general charge of perjury against her in the following language:

"I am of the opinion that to some extent plaintiff has availed herself of the aid of false testimony for the purpose of giving her case a better appearance in the eyes of the court, but sometimes parties have been known to resort to false testimony, where in their judgment it would assist them in prosecuting a lawful claim. As I understand the facts of this case, that was done in this instance."

In another place Judge Sullivan said:

"I have discussed fully, in plain language, the numerous fake devices resorted to by the plaintiff for the purpose of strengthening her case."

Miss Sarah and her attorneys had now come in sight of the promised land of Sharon's ample estate. Regular proceedings, however, under the law, seemed to them too slow; and besides there was the peril of an adverse decision of the Supreme Court on appeal. They then decided upon a novel course. Section 137 of the Civil Code of California provides that while an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself and to prosecute or defeat the action. The enterprising attorneys, sharing the bold spirit of their client, and presuming upon the compliance of a judge who had already

done so well by them, went into the court on the 8th of January, 1885, and modestly demanded for Sarah Althea, upon the sole authority of the provision of law above quoted, \$10,000 per month, as the money necessary to enable her to support herself, and \$150,000 for attorneys' fees to prosecute the action. This was to include back pay for thirty-eight months, making a sum of \$380,000, which added to the \$150,000, attorneys' fees, would have made a grand total of \$530,000. This was an attempt, under the color of a beneficent law, applicable only to actions for divorce, in which the marriage was not denied, to extort from a man more than one-half million dollars, for the benefit of a woman, seeking first to establish a marriage, and then to secure a divorce, in a case in which no decree had as yet been entered, declaring her to be a wife. It was not merely seeking the money necessary to support the plaintiff and prosecute the case; it was a request that the inferior court should confiscate more than half a million dollars, in anticipation of a decision of the Supreme Court on appeal. It was as bold an attempt at spoliation as the commencement of the suit itself. The Supreme Court of the State had decided that the order of a Superior Court allowing alimony during the pendency of any action for divorce is not appealable, but it had not decided that, under the pretence of granting alimony, an inferior judge could apportion a rich man's estate among champerty lawyers, and their adventurous client, by an order from which there could be no appeal, made prior to any decree that there had ever been a marriage between the parties, when the fact of the marriage was the main issue in the case. The counsel for Sharon insisted upon his right to have a decree entered from which he could appeal, before being thus made to stand and deliver, and the court entertained the motion.

Upon this motion, among other affidavits read in opposition, was one by Mr. Sharon himself, in which he recited the agreement between Miss Hill and her principal attorney, George W. Tyler, in which she was to pay him for his services, one-half of all she might receive in any

judgment obtained against Sharon, he, Tyler, advancing all the costs of the litigation. The original of this agreement had been filed by Tyler with the county clerk immediately after the announcement of the opinion in the case as an evidence of his right to half of the proceeds of the judgment. It was conclusive evidence that Sarah Althea required no money for the payment of counsel fees.

After the filing of a mass of affidavits, and an exhaustive argument of the motion, Judge Sullivan rendered his decision, February 16, 1885, granting to Sarah Althea Hill an allowance of \$2,500 per month, to take effect as of the date of the motion, January 8, 1885, and further sums of \$2,500 each to be paid on the 8<sup>th</sup> day of April, and of each succeeding month until further order of the court.

This the Judge thought reasonable allowance "in view of the plaintiff's present circumstances and difficulties." For counsel fees he allowed the sum of \$60,000, and at the request of the victors, made in advance, he divided the spoils among them as follows:

To Tyler and Tyler,	\$25,000
To David S. Terry,	10,000
To Moon and Flournoy,	10,000
To W. H. Levy,	10,000
To Clement, Osmond and Clement,	5,000

By what role \$2,500 was awarded as a proper monthly allowance to the woman whose services to Mr. Sharon had commanded but \$500 per month it is difficult to conjecture. It was benevolence itself to give \$60,000 to a troop of lawyers enlisted under the command of Tyler, who had agreed to conduct the proceedings wholly at his own cost, for one-half of what could be made by the buccaneering enterprise. It seemed to be the purpose of these attorneys to see how much of Mr. Sharon's money they could, with Judge Sullivan's assistance, lay their hands upon before the entry of the judgment in the case. From the judgment an appeal could be taken. By anticipating its entry they thought that they had obtained an order from which no appeal would lie.

It was not until three days after this remarkable order was made that the decree was entered by Judge Sullivan declaring plaintiff and defendant to be husband and wife; that he had deserted her, and that she was entitled to a decree of divorce, with one-half of the common property accumulated by the parties since the date of what he decided to be a valid marriage contract.<sup>11</sup> Sharon appealed from the final judgment, and also from the order for alimony. Notwithstanding this appeal, and the giving of a bond on appeal in the sum of \$300,000 to secure the payment of all alimony and counsel fees, Judge Sullivan granted an order directing Mr. Sharon to show cause why he should not be punished for contempt in failing to pay alimony and counsel fees, as directed by the order.

The Supreme Court, upon application, granted an order temporarily staying proceedings in the case. This stay of proceedings was subsequently made permanent, during the pendency of the appeal.

Mr. Sharon died November 15, 1885. That very day had been set for a hearing of Sharon's motion for a new trial. The argument was actually commenced on that day and continued until the next, at which time the motion was ordered off the calendar because meantime Mr. Sharon had deceased.

### Chapter III. Proceedings in the United States Circuit Court

While these proceedings were being had in the state courts the case of Sharon vs. Hill in the federal court was making slow progress. Miss Hill's attorneys seemed to think that her salvation depended upon reaching a decision in her case before the determination of Sharon's suit in the United States Circuit Court. They were yet to learn, as they afterwards did, that after a United States court takes jurisdiction in a case, it cannot be ousted of that jurisdiction by the decision of a state court, in a proceeding subsequently commenced in the latter. Seldom has "the law's delay" been exemplified more



thoroughly than it was by the obstacles which her attorneys were able to interpose at every step of the proceedings in the federal court.

Sharon commenced his suit in the United States Circuit Court October 3, 1883, twenty-eight days before his enemy commenced hers in the State Superior Court. By dilatory pleas her counsel succeeded in delaying her answer to Sharon's suit until after the decision in her favor in the state court. She did not enter an appearance in the federal court until the very last day allowed by the rule. A month later she filed a demurrer.<sup>12</sup> Her counsel contrived to delay the argument of this demurrer for seven weeks after it was filed. It was finally argued and submitted on the 21st of January, 1864. On the 3d of March it was overruled and the defendant was ordered to answer in ten days, to wit, March 13th. Then the time for answering was extended to April 24<sup>th</sup>. When that day arrived her counsel, instead of filing an answer, filed a plea in abatement, denying the non-residence of Mr. Sharon in the State of California, on which depended his right to sue in the federal court. To this Mr. Sharon's counsel filed a replication on the 5th of May. It then devolved upon Miss Hill's counsel to produce evidence of the fact alleged in the plea, but, after a delay of five months and ten days, no evidence whatever was offered, and the court ordered the plea to be argued on the following day. It was overruled, and thirty days were given to file an answer to Sharon's suit. The case in the state court had then been tried, argued, and submitted thirty days before, but Miss Hill's counsel were not yet ready to file their answer within the thirty days given them, and the court extended the time for answer until December 30th. Six days before that day arrived Judge Sullivan rendered his decision. At last, on the 30th of December, 1884, fourteen months after the filing of Sharon's complaint, Sarah Althea's answer was filed in the federal court, in which, among other things, she set up the proceedings and decree of the state court, adjudging the alleged marriage contract to be genuine and legal, and the parties to be hus-

band and wife, and three days later Sharon filed his replication. There was at no time any delay or want of diligence on the part of the plaintiff in prosecuting this suit to final judgment. On the contrary, as is plainly shown in the record above stated, the delays were all on the part of the defendant. The taking of the testimony in the United States Circuit Court commenced on the 12th of February, 1885, and closed on the 12th of August following.

The struggle in the state court was going on during all the time of the taking of the testimony in the federal court, and intensified the excitement attendant thereon. Miss Hill was in constant attendance before the examiner who took the testimony, often interrupting the proceedings with her turbulent and violent conduct and language, and threatening the lives of Mr. Sharon's counsel. She constantly carried a pistol, and on occasions exhibited it during the examination of witnesses, and, pointing it at first one and then another, expressed her intention of killing them at some stage of the proceedings. She was constantly in contempt of the court, and a terror to those around her. Her conduct on one occasion, in August, 1885, became so violent that the taking of the testimony could not proceed, and Justice Field, the presiding judge of the circuit, made an order that she should be disarmed, and that a bailiff of the court should sit constantly at her side to restrain her from any murderous outbreak, such as she was constantly threatening. Her principal attorney, Tyler, was also most violent and disorderly. Judge Terry, while less explosive, was always ready to excuse and defend his client. (See Report of Proceedings in Sharon vs. Hill, 11 Sawyer's Circuit Court Reps., 122.)

Upon the request of counsel for the complainant, the examiner in one case reported to the court the language and the conduct of Miss Hill. Among other things, he reported her as saying:

"When I see this testimony [from which certain scandalous remarks of hers were omitted] I feel like taking

that man Stewart\* out and cowhiding him.<sup>13</sup> I will shoot him yet; that very man sitting there. To think that he would put up a woman to come here and deliberately lie about me like that. I will shoot him. They know when I say I will do it that I will do it. I shall shoot him as sure as you live; that man that is sitting right there. And I shall have that woman Mrs. Smith arrested for this, and make her prove it."

And again:

"I can hit a four-bit piece nine times out of ten."

The examiner said that pending the examination of one of the witnesses, on the occasion mentioned, the respondent drew a pistol from her satchel, and held it in her right hand; the hand resting for a moment upon the table, with the weapon pointed in the direction of Judge Evans. He also stated that on previous occasions she had brought to the examiner's room during examinations a pistol, and had sat for some length of time holding it in her hand, to the knowledge of all persons present at the time. After the reading of the examiner's report in open court, Justice Field said:

"In the case of William Sharon versus Sarah Althea Hill, the Examiner in Chancery appointed by the court to take the testimony has reported to the court that very disorderly proceedings took place before him on the 3d instant; that at that day, in his room, when counsel of the parties and the defendant were present, and during the examination of "a witness by the name of Piper, the defendant became very much excited, and threatened to take the life of one of the counsel, and that subsequently she drew a pistol and declared her intention to carry her threat into effect.<sup>14</sup> It ap-

pears also from the report of the examiner that on repeated occasions the defendant has attended before him, during the examination of witnesses, armed with a pistol. Such conduct is an offense against the laws of the United States punishable by fine and imprisonment. It interferes with the due order of proceedings in the administration of justice, and is well calculated to bring them into contempt. I, myself, have not heretofore sat in this case and do not expect to participate in its decision; I intend in a few days to leave for the East, but I have been consulted by my associate,<sup>15</sup> and have been requested to take part in this side proceeding, for it is of the utmost importance for the due administration of justice that such misbehavior as the examiner reports should be stopped, and measures be taken which will prevent its recurrence. My associate will comment on the laws of Congress which make the offense a misdemeanor, punishable by fine and imprisonment.

"The marshal of the court will be directed to disarm the defendant whenever she goes before the examiner or into court in any future proceeding, and to appoint an officer to keep strict surveillance over her, in order that she may not carry out her threatened purpose. This order will be entered. The Justice then said that it is to be observed that this block, embracing this building—the courthouse—is under the exclusive jurisdiction of the United States. Every offense committed within it is an offense against the United States, and the State has no jurisdiction whatever. This fact seems to have been forgotten by the parties."

\*Senator Stewart, who was one of the counsel against her in the suit.

The following is the order then entered as directed by Justice Field:

"Whereas it appears from the report to this court of the Examiner in Chancery in this case appointed to take the depositions of witnesses, that on the 3d day of August, instant, at his office, counsel of the parties appeared, namely, William M. Stewart, Esquire, and Oliver P. Evans, Esquire,<sup>16</sup> for the complainant, and W. B. Tyler, Esquire,<sup>17</sup> for the defendant, and the defendant in person, and that during the examination before said examiner of a witness named Piper, the defendant became excited and threatened the life of the counsel of the complainant present, and exhibited a pistol with a declared intention to carry such threat into effect, thereby obstructing the order of the proceedings, and endeavoring to bring the same into contempt; and

"Whereas it further appears that said defendant habitually attends before said examiner carrying a pistol,

*"It is ordered,* That the marshal of this court take such measures as may be necessary to disarm the said defendant, and keep her disarmed, and under strict surveillance, while she is attending the examination of witnesses before said examiner, and whenever attending in court, and that a deputy be detailed for that purpose."<sup>18</sup>

#### Chapter IV. Decision of the Case in the Federal Court.

The taking of the testimony being completed, the cause was set for a hearing on September 9th. After an argument of thirteen days the cause was submitted on the 29th of September, 1885. On the 26th of December, 1885, the court rendered its decision, that the alleged declaration of marriage and the letters purporting to have been addressed "My Dear Wife" were false and forged, and that the contempo-



Appointed chief justice of the California supreme court in 1868, Lorenzo Sawyer presided over the Sharon case. An organizer of California's Republican party, Sawyer was appointed to the Ninth Circuit in 1870 when Congress provided for circuit court judges. He served in that capacity until his death in 1891.

aneous conduct of the parties, and particularly of the defendant, was altogether incompatible with the claim of marriage or the existence of any such declaration or letters.<sup>19</sup>

A decree was ordered accordingly, and the court made the following further order:

"As the case was argued and submitted during the lifetime of the complainant, who has since deceased, the decree will be entered nunc pro tunc, as of September 29, 1885, the date of its submission and a day prior to the decease of the complainant."<sup>20</sup>

The opinion of the court was delivered by Judge Deady,<sup>21</sup> of the United States District Court of Oregon, who sat in the case with Judge Sawyer,<sup>22</sup> the circuit judge.

Of the old negress under whose direction the fraudulent marriage contract had been manufactured, and under whose advice and direction the suit in the state court had been brought, the Judge said:

"Mary E. Pleasant, better known as Mammie Pleasant, is a conspicuous and important figure in this affair; without her it would probably never have been brought before the public. She appears to be a shrewd old negress of some means.

"In my judgment this case and the forgeries and perjuries committed in its support had their origin largely in the brain of this scheming, trafficking, crafty old woman."

He found that the declaration of marriage was forged by the defendant by writing the declaration over a simulated signature, and that her claim to be the wife of the plaintiff was wholly false, and had been put forth by her and her co-conspirators for no other purpose than to despoil the plaintiff of his property. Judge Sawyer also filed an opinion in the case, in which he declared that the weight of the evidence satisfactorily established the forgery and the fraudulent character of the instrument in question.

#### **Chapter V. The Marriage of Terry and Miss Hill.**

Sarah Althea now received a powerful recruit, who enlisted for the war. This was one of her lawyers, David S. Terry, whom she married on the 7th day of January, 1886, twelve days after the decision of the Circuit Court against her, and which he had heard announced, but before a decree had been entered in conformity with the decision. Terry seemed willing to take the chances that the decree of the Superior Court would not be reversed in the Supreme Court of the State. The decision of the federal court he affected to utterly disregard. It was estimated that not less than \$5,000,000 would be Sarah Althea's share of Sharon's estate, in the event of success in her suit. She would be a rich widow if it could be established that she had ever been a wife. She had quarreled with Tyler, her principal attorney, long before, and accused him of failing in his professional duty. If she could es-

cape from the obligations of her contract with him, she would not be compelled to divide with him the hoped-for \$5,000,000.

Although Judge Terry had been Chief Justice of the Supreme Court of California, the crimes of perjury and forgery and subornation of perjury which had been loudly charged in Judge Sullivan's opinion against the woman, in whose favor he gave judgment, seemed to him but trifles. Strangely enough, neither he nor Sarah Althea ever uttered a word of resentment against him on account of these charges.

The marriage of Terry with this desperate woman in the face of an adverse decision of the Circuit Court, by which jurisdiction was first exercised upon the subject-matter, was notice to all concerned that, by all the methods known to him, he would endeavor to win her cause, which he thus made his own. He took the position that any denial of Sarah Althea's pretense to have been the wife of Sharon was an insult to her, which could only be atoned by the blood of the person who made it. This was the proclamation of a vendetta against all who should attempt to defend the heirs of Mr. Sharon in the possession of that half of their inheritance which he and Sarah Althea had marked for their own. His subsequent course showed that he relied upon the power of intimidation to secure success. He was a man of powerful frame, accustomed all his life to the use of weapons, and known to be always armed with a knife. He had the reputation of being a fighting man. He had decided that Sarah Althea had been the lawful wife of Sharon, and that therefore he had married a virtuous widow. He had not often been crossed in his purpose or been resisted when he had once taken a position. By his marriage he virtually served notice on the judges of the Supreme Court of the State, before whom the appeal was then pending, that he would not tamely submit to be by them proclaimed to be the dupe of the discarded woman of another. It was well understood that he intended to hold them personally responsible to him for any decision that would have that effect. These



intentions were said to have been made known to them.

His rule in life, as once stated by himself, was to compel acquiescence in his will by threats of violence, and known readiness to carry his threats into effect. This, he said, would in most cases insure the desired result. He counted on men's reluctance to engage in personal difficulties with him. He believed in the persuasiveness of ruffianism.

Whether he thought his marriage would frighten Judges Sawyer and Deady, who had just rendered their decision in the United States Circuit Court, and cause them either to modify the terms of the decree not yet entered, or deter them from its enforcement, is a matter of uncertainty. He was of the ultra State's-rights school and had great faith in the power of the courts of a State when arrayed against those of the United States. He had always denied the jurisdiction of the latter in the case of Sarah Althea, both as to the subject-matter and as to the parties. He refused to see any difference between a suit for a divorce and a suit to cancel a forged paper, which, if allowed to pass as genuine, would entitle its holder to another's property. He persisted in denying that Sharon had been a citizen of Nevada during his lifetime, and ignored the determination of this question by the Circuit Court.

But if Judge Terry had counted on the fears of the United States judges of California he had reckoned too boldly, for on the 15th of January, 1886, eight days after his marriage, the decree of the Circuit Court was formally entered. This decree adjudged the alleged marriage contract of August 25, 1880, false, counterfeited, fabricated, and fraudulent, and ordered that it be surrendered to be cancelled and annulled, and be kept in the custody of the clerk, subject to the further order of the court; and Sarah Althea Hill and her representatives were perpetually enjoined from alleging the genuineness or the validity of the instrument, or making use of it in any way to support her claims as wife of the complainant.

The execution of this decree would, of course, put an end to Sarah Althea's claim, the hope of maintaining which was supposed to have been the motive of the marriage. To defeat its execution then became the sole object of Terry's life. This he hoped to do by antagonizing it with a favorable decision of the Supreme Court of the State, on the appeals pending therein. It has heretofore been stated that the case against Sharon in the Superior Court was removed from the calendar on the 14th day of November, 1885, because of the defendant's death on the previous day. The 11th of February following, upon proper application, the court ordered the substitution of Frederick W. Sharon as executor and sole defendant in the suit in the place of William Sharon, deceased. The motion for a new trial was argued on the 28th of the following May, and held under advisement until the 4th of the following October, when it was denied. From this order of denial an appeal was taken by the defendant.

It must be borne in mind that there were now two appeals in this case to the Supreme Court of the State from the Superior Court. One taken on the 25th of February, 1885, from the judgment of Judge Sullivan, and from his order for alimony and fees, and the other an appeal taken October 4, 1886, from the order denying the new trial in the cause.

On the 31st of January, 1888, the Supreme Court rendered its decision, affirming the judgment of the Superior Court in favor of Sarah Althea, but reversing the order made by Judge Sullivan granting counsel fees, and reducing the allowance for alimony from \$2,500 per month to \$500. Four judges concurred in the decision, namely, McKinstry,<sup>23</sup> Searles,<sup>24</sup> Patterson,<sup>25</sup> and Temple.<sup>26</sup> Three judges dissented, to wit, Thornton,<sup>27</sup> Sharpstein,<sup>28</sup> and McFarland.<sup>29</sup>

There then remained pending in the same court the appeal from the order granting a new trial. It was reasonable that Terry should expect a favorable decision on this appeal, as



soon as it could be reached. This accomplished, he and Sarah Althea thought to enter upon the enjoyment of the great prize for which they had contended with such desperate energy. Terry had always regarded the decree of the Circuit Court as a mere harmless expression of opinion, which there would be no attempt to enforce, and which the state courts would wholly ignore. Whatever force it might finally be given by the Supreme Court of the United States appeared to him a question far in the future, for he supposed he had taken an appeal from the decree. This attempted appeal was found to be without effect, because when ordered the suit had abated by the death of the plaintiff, and no appeal could be taken until the case was revived by order of the court. This order was never applied for. The two years within which an appeal could have been taken expired January 15, 1888. The decree of the Circuit Court had therefore become final at that time.

#### Chapter VI. The Bill of Revivor.

It was at this stage of the prolonged legal controversy that Justice Field first sat in the case. The executor of the Sharon estate, on the 12th of March, 1888, filed a bill of revivor in the United States Circuit Court. This was a suit to revive the case of Sharon vs. Hill, that its decree might stand in the same condition and plight in which it was at the time of its entry, which, being *nunc pro tunc*, was of the same effect as if the entry had preceded the death of Mr. Sharon, the case having been argued and submitted during his lifetime. The decree directed the surrender and cancellation of the forged marriage certificate, and perpetually enjoined Sarah Althea Hill, and her representatives, from alleging the genuineness or validity of that instrument, or making any use of the same in evidence, or otherwise to support any rights claimed under it.

The necessity for this suit was the fact that the forged paper had not been surrendered for cancellation, as ordered by the decree, and the

plaintiff feared that the defendant would claim and seek to enforce property rights as wife of the plaintiff, by authority of the alleged written declaration of marriage, under the decree of another court, essentially founded thereupon, contrary to the perpetual injunction ordered by the Circuit Court. To this suit, David S. Terry, as husband of the defendant, was made a party. It merely asked the Circuit Court to place its own decree in a position to be executed, and thereby prevent the spoliation of the Sharon estate, under the authority of the decree of Judge Sullivan in the suit in the state court subsequently commenced. A demurrer was filed by the defendant. It was argued in July before Justice Field, Judge Sawyer, and District Judge Sabin.<sup>30</sup> It was overruled on the 3d of September, when the court ordered that the original suit of Sharon against Hill, and the final decree therein, stand revived in the name of Frederick W. Sharon as executor, and that the said suit and the proceedings therein be in the same plight and condition they were in at the death of William Sharon, so as to give the executor, complainant as aforesaid, the full benefit, rights, and protection of the decree, and full power to enforce the same against the defendants, and each of them, at all times and in all places, and in all particulars. The opinion in the case was delivered by Justice Field. During its delivery he was interrupted by Mrs. Terry with violent and abusive language, and an attempt by her to take a pistol from a satchel which she held in her hand. Her removal from the court-room by order of Justice Field; her husband's assault upon the marshal with a deadly weapon for executing the order, and the imprisonment of both the Terrys for contempt of court, will be more particularly narrated hereafter.

The commencement of the proceedings for the revival of the suit was well calculated to alarm the Terrys. They saw that the decree in the Circuit Court was to be relied upon for something more than its mere moral effect. Their feeling towards Judges Sawyer and Deady was one of most intense hatred. Judge

Deady was at his home in Oregon, beyond the reach of physical violence at their hands, but Judge Sawyer was in San Francisco attending to his official duties. Upon him they took an occasion to vent their wrath.

It was on the 14th of August, 1888, after the commencement of the revivor proceedings, but before the decision. Judge Sawyer was returning in the railway train to San Francisco from Los Angeles, where he had been to hold court. Judge Terry and his wife took the same train at Fresno. Judge Sawyer occupied a seat near the center of the sleeping-car, and Judge and Mrs. Terry took the last section of the car, behind him, and on the same side. A few minutes after leaving Fresno, Mrs. Terry walked down the aisle to a point just beyond Judge Sawyer, and turning around with an ugly glare at him, hissed out, in a spiteful and contemptuous tone: "Are you here?" to which the Judge quietly replied: "Yes, Madam," and bowed. She then resumed her seat. A few minutes after, Judge Terry walked down the aisle about the same distance, looked over into the end section at the front of the car, and finding it vacant, went back, got a small hand-bag, and returned and seated himself in the front section, with his back to the engine and facing Judge Sawyer. Mrs. Terry did not (at the moment) accompany him. A few minutes later she walked rapidly down the passage, and as she passed Judge Sawyer, seized hold of his hair at the back of his head, gave it a spiteful twitch and passed quickly on, before he could fully realize what had occurred. After passing she turned a vicious glance upon him, which was continued for some time after taking her seat by the side of her husband. A passenger heard Mrs. Terry say to her husband: "I will give him a taste of what he will get bye and bye." Judge Terry was heard to remark: "The best thing to do with him would be to take him down the bay and drown him." Upon the arrival of Judge Sawyer at San Francisco, he entered a street car, and was followed by the Terrys. Mrs. Terry took a third seat from him, and seeing him, said: "What, are you in this car, too?" When the Terrys left the car Mrs. Terry addressed some remark to

Judge Sawyer in a spiteful tone, and repeated it. He said he did not quite catch it, but it was something like this: "We will meet again. This is not the end of it."

Persons at all familiar with the tricks of those who seek human life, and still contrive to keep out of the clutches of the law, will see in the scene above recited an attempt to provoke an altercation which would have been fatal to Judge Sawyer, if he had resented the indignity put upon him by Mrs. Terry, by even so much as a word. This could easily have been made the pretext for an altercation between the two men, in which the result would not have been doubtful. There could have been no proof that Judge Terry knew of his wife's intention to insult and assault Judge Sawyer as she passed him, nor could it have been proven that he knew she had done so. A remonstrance from Sawyer could easily have been construed by Terry, upon the statement of his wife, into an original, unprovoked, and aggressive affront, it is now, however, certain that the killing of Judge Sawyer was not at that time intended. It may have been, to use Mrs. Terry's words, "to give him a taste of what he would get bye and bye," if he should dare to render the decision in the revivor case adversely to them.

This incident has been here introduced and dwelt upon for the purpose of showing the tactics resorted to by the Terrys during this litigation, and the methods by which they sought to control decisions. It is entirely probable that they had hopes of intimidating the federal judges, as many believed some state judges had been, and that thus they might "from the nettle danger, pluck the flower safety."<sup>31</sup>

We have seen that they reckoned without their host. We shall now see to what extent their rage carried them on the day that the decision was rendered reviving the decree.

### Chapter VII. The Terrys Imprisoned for Contempt.

On the day after Judge Sawyer's return from Los Angeles he called the marshal to his chambers, and notified him of Mrs. Terry's violent

conduct towards him on the train in the presence of her husband, so that he might take such steps as he thought proper to keep order when they came into the court-building, and see that there was no disturbance in the courtroom. On the morning of September 3d, the marshal was again summoned to Judge Sawyer's room, where Judge Field was also present. They informed him that the decision in the revival suit would be rendered that day, and they desired him to be present, with a sufficient number of bailiffs to keep order in court. They told him that judging from the action of the Terrys on the train, and the threats they were making so publicly, and which were being constantly published in the newspapers, it was not impossible that they might create a disturbance in the court-room.

When the court opened that day, it found Terry and his wife already seated within the bar, and immediately in front of the judges. As it afterward appeared, they were both on a war-footing, he being armed with a concealed bowie-knife, and she with a 41-calibre revolver, which she carried in a small hand-bag, five of its chambers being loaded. The judges took their seats on the bench, and very shortly afterward Justice Field, who presided, began reading the opinion of the court in which both of his associates concurred. A printed pamphlet copy of this opinion contains 61 pages, of which 18 are taken up with a statement of the case. The opinion commences at page 19 and covers the remaining 42 pages of the pamphlet.

From time to time, as the reading of the opinion progressed, Mrs. Terry, who was greatly excited, was observed to unclasp and clasp again the fastening of her satchel which contained her pistol, as if to be sure she could do so at any desired moment. At the 11th page of the opinion the following passage occurs:

"The original decree is not self-executing in all its parts; it may be questioned whether any steps could be taken for its enforcement, until it was revived, but if this were oth-

erwise, the surrender of the alleged marriage contract for cancellation, as ordered, requires affirmative action on the part of the defendant. The relief granted is not complete until such surrender is made. When the decree pronounced the instrument a forgery, not only had the plaintiff the right that it should thus be put out of the way of being used in the future to his embarrassment and the embarrassment of his estate, but public justice required that it should be formally cancelled, that it might constantly bear on its face the evidence of its bad character, whenever or wherever presented or appealed to."

When Mrs. Terry heard the above words concerning the surrender of the alleged marriage contract for cancellation, she first endeavored for a few seconds, but unsuccessfully, to open the satchel containing her pistol. For some reason the catch refused to yield. Then, rising to her feet, and placing the satchel before her on the table, she addressed the presiding justice, saying:

"Are you going to make me give up my marriage contract?"

Justice Field said, "Be seated, madam." She repeated her question:

"Are you going to take the responsibility of ordering me to deliver up that contract?"

She was again ordered to resume her seat. At this she commenced raving loudly and violently at the justice in coarse terms, using such phrases as these:

"Mr. Justice Field, how much have you been bought for? Everybody knows that you have been bought; that this is a paid decision."

"How big was the sack?"

"How much have you been paid for the decision?"



"You have been bought by Newland's coin; everybody knows you were sent out here by the Newlands to make this decision."<sup>32</sup>

"Every one of you there have been paid for this decision."

At the commencement of this tirade, and after her refusal to desist when twice ordered to do so, the presiding justice directed the marshal to remove her from the court-room. She said defiantly:

"I will not be removed from the court-room; you dare not remove me from the court-room."

Judge Terry made no sign of remonstrance with her, had not endeavored to restrain her, but had, on the contrary, been seen to nod approvingly to her, as if assenting to something she had said to him just before she sprang to her feet. The instant, however, the court directed her removal from the room, of which she had thus taken temporary possession, to the total suspension of the court proceedings, his soul was "in arms and eager for the fray." As the marshal moved toward the offending woman, he rose from his seat, under great excitement, exclaiming, among other things, "No living man shall touch my wife!" or words of that import, and dealt the marshal a violent blow in the face,\* breaking one of his front teeth. He then unbuttoned his coat and thrust his hand under his vest, where his bowie-knife was kept, apparently for the purpose of drawing it, when he was seized by persons present, his hands held from drawing his weapon, and he himself forced down on his back. The marshal, with the assistance of a deputy, then removed Mrs. Terry from the court-room, she struggling, screaming, kicking, striking, and scratching them as she went, and pouring out imprecations upon Judges Field and Sawyer, denouncing them as "corrupt scoundrels," and

declaring she would kill them both. She was taken from the room into the main corridor, thence into the marshal's business office, and then into an inner room of his office. She did not cease struggling when she reached that room, but continued her frantic abuse.

While Mrs. Terry was being removed from the court-room Terry was held down by several strong men. He was thus, by force alone, prevented from drawing his knife on the marshal. While thus held he gave vent to coarse and denunciatory language against the officers. When Mrs. Terry was removed from the court-room he was allowed to rise. He at once made a swift rush for the door leading to the corridor on which was the marshal's office. As he was about leaving the room or immediately after stepping out of it, he succeeded in drawing his knife. As he crossed the threshold he brandished the knife above his head saying, "I am going to my wife." There was a terrified cry from the bystanders: "He has got a knife." His arms were then seized by a deputy marshal and others present, to prevent him from using it, and a desperate struggle ensued. Four persons held on to the arms and body of Terry, and one presented a pistol to his head, threatening at the same time to shoot him if he did not give up the knife. To these threats Terry paid no attention, but held on to the knife, actually passing it during the struggle from one hand to the other. David Neagle then seized the handle of the knife and commenced drawing it through Terry's hand, when Terry relinquished it.<sup>33</sup>

The whole scene was one of the wildest alarm and confusion. To use the language of one of the witnesses, "Terry's conduct throughout this affair was most violent. He acted like a demon, and all the time while in the corridor he used loud and violent language, which could be plainly heard in the court-room, and, in fact, throughout the building," applying to the officers vile epithets, and threatening to cut their hearts out if they did not let him go to his wife. The knife which Terry drew, and which he afterwards designated as "a small sheath knife,"

\*One of the witnesses stated that Terry also said, "Get a written order from the court."

was, including the handle, nine and a quarter inches long, the blade being five inches, having a sharp point, and is commonly called a bowie-knife. He himself afterwards represented that he drew this knife, not "because he wanted to hurt anybody, but because he wanted to force his way into the marshal's office."

The presiding justice had read only a small portion the opinion of the court when he was interrupted by the boisterous and violent proceedings described. On their conclusion, by the arrest of the Terrys, he proceeded with the reading of the opinion, which occupied nearly a whole hour. The justices, without adjourning the court, then retired to the adjoining chambers of the presiding justice for deliberation. They there considered of the action which should be taken against the Terrys for their disorderly and contemptuous conduct. After determining what that should be they returned to the court-room and announced it. For their conduct and resistance to the execution of the order of the court both were adjudged guilty of contempt and ordered, as a punishment, to be imprisoned in the county jail, Terry for six months and his wife for thirty days. When Terry heard of the order, and the commitment was read to him, he said, "Judge Field" (applying to him a coarse and vituperative epithet) "thinks when I get out, when I get released from jail, that he will be in Washington, but I will meet him when he comes back next year, and it will not be a very pleasant meeting for him."

Mrs. Terry said that she would kill both Judges Field and Sawyer, and repeated the threat several times. While the prisoners were being taken to jail, Mrs. Terry said to her husband, referring to Judge Sawyer: "I wooled him good on the train coming from Los Angeles. He has never told that." To which he replied: "He will not tell that; that was too good."

She said she could have shot Judge Field and killed him from where she stood in the court-room, but that she was not ready then to kill the old villain; she wanted him to live longer. While crossing the ferry to Oakland

she said, "I could have killed Judges Field and Sawyer; I could shoot either one of them, and you would not find a judge or a jury in the State would convict me." She repeated this, and Terry answered, saying: "No, you could not find a jury that would convict any one for killing the old villain," referring to Judge Field.

The jailer at Alameda testified that one day Mrs. Terry showed him the sheath of her husband's knife, saying: "That is the sheath of that big bowie-knife that the Judge drew. Don't you think it is a large knife?" Judge Terry was present, and laughed and said: "Yes; I always carry that," meaning the knife.

To J. H. O'Brien, a well-known citizen, Judge Terry, said that "after he got out of jail he would horsewhip Judge Field. He said he did not think he would ever return to California, but this earth was not large enough to keep him from finding Judge Field, and horsewhipping him," and said, "if he resents it I will kill him."

To a newspaper writer, Thomas T. Williams, he said: "Judge Field would not dare to come out to the Pacific Coast, and he would have a settlement with him if he did come."<sup>34</sup>

J. M. Shannon, a friend of Terry's for thirty years, testified that while the Terrys were in jail he called there with Mr. Wigginton, formerly a member of Congress from California; that during the call Mrs. Terry said something to her husband to the effect that they could not do anything at all in regard to it. He said: "Yes, we can." She asked what they could do.<sup>35</sup> He said: "I can kill old Sawyer, damn him. I will kill old Sawyer, and then the President will have to appoint some one in his place." In saying this "he brought his fist down hard and seemed to be mad."

Ex-Congressman Wigginton also testified concerning this visit to Terry. It occurred soon after the commitment. He went to arrange about some case in which he and Terry were counsel on opposite sides. He told Terry of a rumor that there was some old grudge or difference between him and Judge Field. Terry said there was none he knew of. He said:





"I could have killed Judges Field and Sawyer; I could shoot either one of them, and you would not find a judge or a jury in the State would convict me," claimed Sarah Althea Terry, referring to her desire to avenge herself against the judges who decided her case unfavorably.

"When Judge Field's name was mentioned as candidate for President of the United States,'—I think he said,—'when I was a delegate to the convention, it being supposed that I had certain influence with a certain political element, that also had delegates in the convention, some friend or friends'—I will not be sure whether it was friend or friends—'of

Judge Field came to me and asked for my influence with these delegates to secure the nomination for Judge Field. My answer'—I am now stating the language as near as I can of Judge Terry's—'my answer was, "no, I have no influence with that element" I understood it to be the workingmen's delegates. I could not control these delegates, and if I could would not

control them for Field.' He said: 'That may have caused some alienation, but I do not know that Field knew that.'"

Mr. Wigginton said that Mrs. Terry asked her husband what he could do, and he replied, showing more feeling than he had before: "Do? I can kill old Sawyer, and by God, if necessary, I will, and the President will then have to appoint some one else in his place."<sup>36</sup>

**Chapter VIII. Terry's Petition to the Circuit Court for a Release—Its Refusal—He Appeals to the Supreme Court—Unanimous Decision against Him there—President Cleveland Refuses to Pardon Him—Falsehoods Refuted.**

On the 12th of September Terry petitioned the Circuit Court for a revocation of the order of imprisonment in his case, and in support thereof made the following statement under oath:

"That when petitioner's wife, the said Sarah A. Terry, first arose from her seat, and before she uttered a word, your petitioner used every effort in his power to cause her to resume her seat and remain quiet, and he did nothing to encourage her in her acts of indiscretion; when this court made the order that petitioner's wife be removed from the court-room your petitioner arose from his seat with the intention and purpose of himself removing her from the court-room quietly and peaceably, and that he had no intention or design of obstructing or preventing the execution of said order of the court; that he never struck or offered to strike the United States marshal until the said marshal had assaulted himself, and had in his presence violently, and as he believed unnecessarily, assaulted the petitioner's wife.

"Your petitioner most solemnly swears that he neither drew nor attempted to draw any deadly weapon of any kind whatever in said court-room, and that he did not assault or attempt to assault the U.S. marshal with any deadly weapon in said court-room or elsewhere. And in this connection he respectfully represents that after he left said court-room he heard loud talking in one of the rooms of the U.S. marshal, and among the voices proceeding therefrom he recognized that of his wife, and he thereupon attempted to force his way into said room through the main office of the United States marshal; the door of the room was blocked by such a crowd of men that the door could not be closed; that your petitioner then, for the first time, drew from inside his vest a small sheath-knife, at the same time saying to those standing in his way in said door, that he did not want to hurt any one; that all he wanted was to get into the room where his wife was. The crowd then parted and your petitioner entered the doorway, and there saw a United States deputy marshal with a revolver in his hand pointed to the ceiling of the room. Some one then said: 'Let him in if he will give up his knife,' and your petitioner immediately released hold of the knife to some one standing by.

"In none of these transactions did your petitioner have the slightest idea of showing any disrespect to this honorable court or any of the judges thereof.

"That he lost his temper, he respectfully submits was a natural consequence of himself being assaulted when he was making an honest effort to peaceably and quietly enforce the order of the court, so as avoid a scandalous scene, and of his seeing his



When Terry drew a knife and threatened to kill the judges and others in the courtroom, one of the spectators, U.S. Marshal David Neagle, wrestled the knife away from him. Justice Field sentenced both Terry and his wife, Sarah Althea, to jail for contempt of court.

wife so unnecessarily assaulted in his presence."

It will be observed that Terry, in his petition, contradicts the facts recited in the orders for the commitment of himself and his wife. These orders were made by Justice Field, Circuit Judge Sawyer, and District Judge Sabin from the district of Nevada, who did not depend upon the testimony of others for information as to the facts in the case, but were, themselves, eye witnesses and spoke from personal observation and absolute knowledge.

In passing upon Terry's petition, these judges, speaking through Justice Field, who

delivered the opinion of the court, bore testimony to a more particular account of the conduct of Terry and his wife than had been given in the order for the commitment. As the scene has already been described at length, this portion of the opinion of the court would be a mere repetition, and is therefore omitted. After reciting the facts, Justice Field referred to the gravity of Terry's offense in the following terms:

"The misbehavior of the defendant, David S. Terry, in the presence of the court, in the court-room, and in the corridor, which was near thereto,

and in one of which (and it matters not which) he drew his bowie-knife, and brandished it with threats against the deputy of the marshal and others aiding him, is sufficient of itself to justify the punishment imposed. But, great as this offense was, the forcible resistance offered to the marshal in his attempt to execute the order of the court, and beating him, was a far greater and more serious affair. The resistance and beating was the highest possible indignity to the Government. When the flag of the country is fired upon and insulted, it is not the injury to the bunting, the linen, or silk on which the stars and stripes are stamped which startles and arouses the country. It is the indignity and insult to the emblem of the nation's majesty which stirs every heart, and makes every patriot eager to resent them. So, the forcible resistance to an officer of the United States in the execution of the process, orders, and judgments of their courts is in like manner an indignity and insult to the power and authority of the Government which can neither be overlooked nor extenuated."

After reviewing Terry's statement, Justice Field said:

"We have read this petition with great surprise at its omissions and misstatements. As to what occurred under our immediate observation, its statements do not accord with the facts as we saw them; as to what occurred at the further end of the room and in the corridor, its statements are directly opposed to the concurring accounts of the officers of the court and parties present, whose position was such as to preclude error in their observations. According to the sworn state-

ment of the marshal, which accords with our own observations, so far from having struck or assaulted Terry, he had not even laid his hands upon him when the violent blow in the face was received. And it is clearly beyond controversy that Terry never voluntarily surrendered his bowie-knife, and that it was wrenched from him only after a violent struggle.

"We can only account for his misstatement of facts as they were seen by several witnesses, by supposing that he was in such a rage at the time that he lost command of himself, and does not well remember what he then did, or what he then said. Some judgment as to the weight this statement should receive, independently of the incontrovertible facts at variance with it, may be formed from his speaking of the deadly bowie-knife he drew as 'a small sheath-knife,' and of the shameless language and conduct of his wife as 'her acts of indiscretion.'

"No one can believe that he thrust his hand under his vest where his bowie-knife was carried without intending to draw it. To believe that he placed his right hand there for any other purpose—such as to rest it after the violent fatigue of the blow in the marshal's face or to smooth down his ruffled linen—would be childish credulity.

"But even his own statement admits the assaulting of the marshal, who was endeavoring to enforce the order of the court, and his subsequently drawing a knife to force his way into the room where the marshal had removed his wife. Yet he offers no apology for his conduct; expresses no regret for what he did, and makes no reference to his violent

and vituperative language against the judges and officers of the court, while under arrest, which is detailed in the affidavits filed."

In refusing to grant the petition the court said:

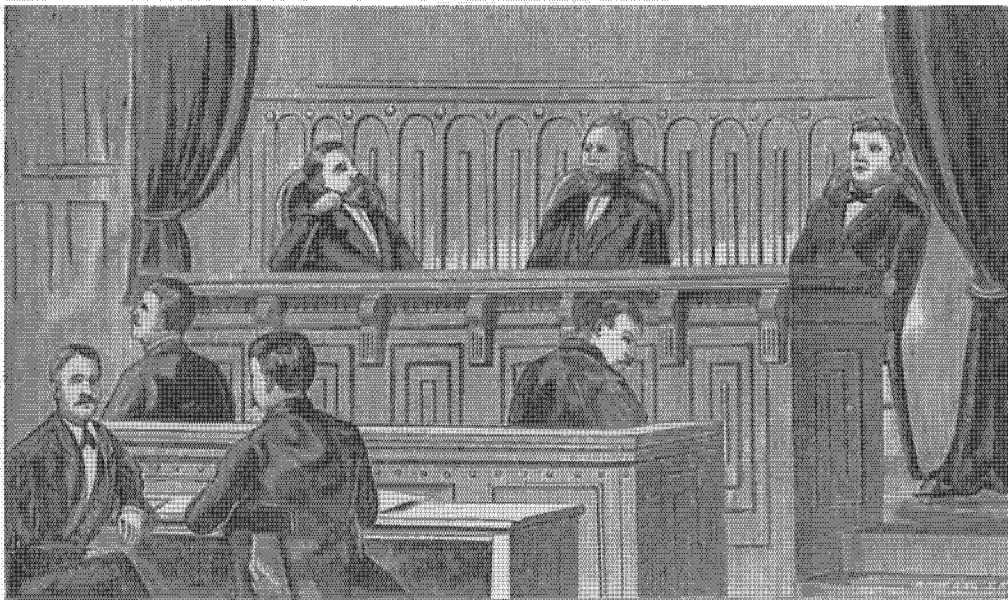
"There is nothing in his petition which would justify any remission of the imprisonment. The law imputes an attempt to accomplish the natural result of one's acts, and when these acts are of a criminal nature it will not accept, against such implication, the denial of the transgressor. No one would be safe if the denial of a wrongful or criminal act would suffice to release the violator of the law from the punishment due his offenses."

On September 17, 1888, after the announcement of the opinion of the court by

Mr. Justice Field denying the petition of D. S. Terry for a revocation of the order committing him for contempt,<sup>37</sup> Mr. Terry made public a correspondence between himself and Judge Solomon Heydenfeldt, which explains itself, and is as follows:<sup>38</sup>

"MY DEAR TERRY:

"The papers which our friend Stanley sends you will explain what we are trying to do. I wish to see Field to-morrow and sound his disposition, and if it seems advisable I will present our petition. But in order to be effective, and perhaps successful, I wish to feel assured and be able to give the assurance that failure to agree will not be followed by any attempt on your part to break the peace either by action or demonstration. I know that you would never compromise me in any such manner, but it will give me the



THE SUPREME COURT. TERRY CHIEF JUSTICE, FIELD AND BALDWIN, ASSOCIATE JUSTICES.

In 1888, Justice Field read the circuit court opinion denying Terry's petition for a revocation of the order committing him for contempt. Field knew Terry from their time sitting together on the California supreme court from 1857 to 1859. This 1859 engraving shows Chief Justice Terry, Justice Field, and Judge Joseph G. Baldwin sitting on the bench from left to right.



power to make an emphatic assertion to that effect and that ought to help.

"Please answer promptly.

"S. HEYDENFELDT."

The reply of Judge Terry is as follows:

"DEAR HEYDENFELDT:

"Your letter was handed me last evening. I do not expect a favorable result from any application to the Circuit Court, and I have very reluctantly consented that an application be made to Judge Field, who will probably wish to pay me for my refusal to aid his presidential aspirations four years ago. I had a conversation with Garber on Saturday last in which I told him if I was released I would seek no personal satisfaction for what had passed. You may say as emphatically as you wish that I do not contemplate breaking the peace, and that, so far from seeking, I will avoid meeting any of the parties concerned. I will not promise that I will refrain from denouncing the decision or its authors. I believe that the decision was purchased and paid for with coin from the Sharon estate, and I would stay here for ten years before I would say that I did not so believe. If the judges of the Circuit Court would do what is right they would revoke the order imprisoning my wife. She certainly was in contempt of court, but that great provocation was given by going outside the record to smirch her character ought to be taken into consideration in mitigation of the sentence. Field, when a legislator, thought that no court should be allowed to punish for contempt by imprisonment for a longer period than five days. My wife has already been in prison double that time for words spoken under very great provocation. No matter what the

result, I propose to stay here until my wife is dismissed.

"Yours truly,

"D. S. TERRY."

In the opinion of the court, referred to in the foregoing letter as "smirching the character" of Mrs. Terry, there was nothing said reflecting upon her, except what was contained in quotations from the opinion of Judge Sullivan of the State court in the divorce case of Sharon vs. Hill in her favor. These quotations commenced at page 58 of the pamphlet copy of Justice Field's opinion, when less than three pages remained to be read. It was at page 29 of the pamphlet that Justice Field was reading when Mrs. Terry interrupted him and was removed from the court-room. After her removal he resumed the reading of the opinion, and only after reading 29 pages, occupying nearly an hour, did he reach the quotations in which Judge Sullivan expressed his own opinion that Mrs. Terry had committed perjury several times in his court. The reading of them could not possibly have furnished her any provocation for her conduct. She had then been removed from the court-room more than an hour. Besides, if they "smirched" her character, why did she submit to them complacently when they were originally uttered from the bench by Judge Sullivan in his opinion rendered in her favor?

Justice Field, in what he was reading that so incensed Mrs. Terry, was simply stating the effect of a decree previously rendered in a case, in the trial of which he had taken no part. He was stating the law as to the rights established by that decree. The efforts then made by Terry, and subsequently by his friends and counsel, to make it appear that his assault upon the marshal and defiance of the court were caused by his righteous indignation at assaults made by Judge Field upon his wife's character were puerile, because based on a falsehood. The best proof of this is the opinion itself.

Judge Terry next applied to the Supreme Court of the United States for a writ of habeas

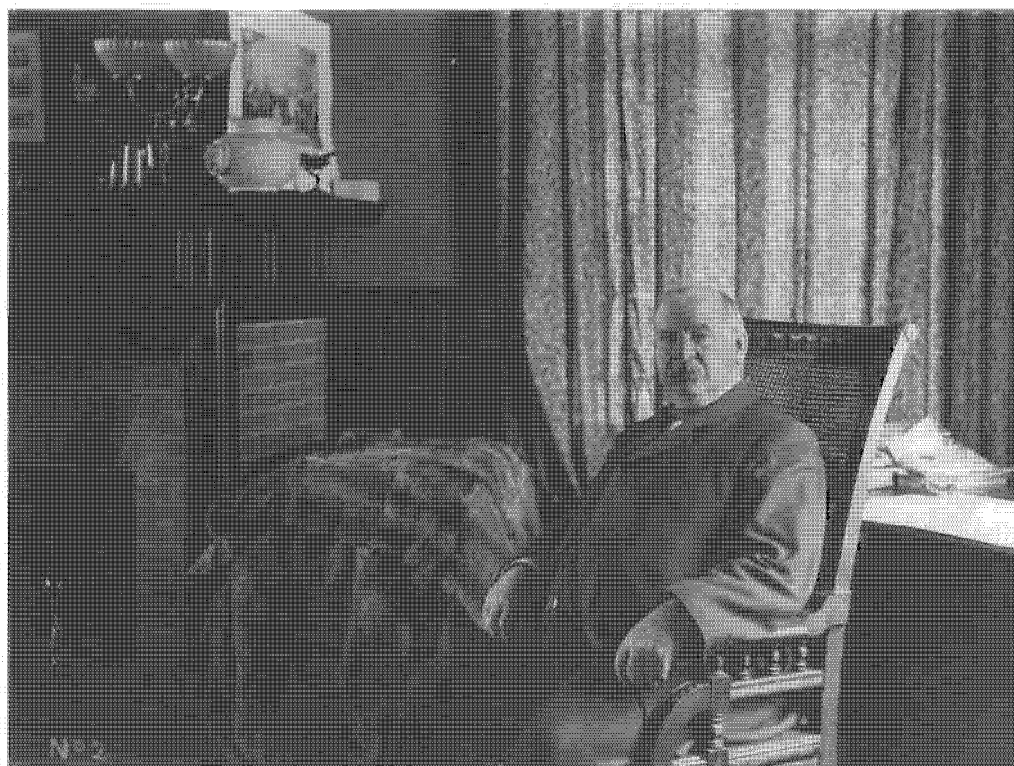
corpus. In that application he declared that on the 12th day of September, 1888, he addressed to the Circuit Court a petition duly verified by his oath, and then stated the petition for release above quoted. Yet in a communication published in the *San Francisco Examiner* of October 22d he solemnly declared that this very petition was not filed by any one on his behalf. After full argument by the Supreme Court the writ was denied, November 12, 1888, by an unanimous court, Justice Field, of course, not sitting in the case. Justice Harlan delivered the opinion of the Court.<sup>39</sup>

#### **Chapter IX. President Cleveland Refuses To Pardon Terry—False Statements of Terry Refuted.**

Before the petition for habeas corpus was presented to the Supreme Court of the United States, Judge Terry's friends made a strenu-

ous effort to secure his pardon from President Cleveland. The President declined to interfere. In his efforts in that direction Judge Terry made gross misrepresentations as to Judge Field's relation with himself, which were fully refuted by Judge Heydenfeldt, the very witness he had invoked. Judge Heydenfeldt had been an Associate of Judge Terry on the State supreme bench.<sup>40</sup> These representations and their refutation are here given as a necessary element in this narrative.

Five days after he had been imprisoned, to wit, September 8, Terry wrote a letter to his friend Zachariah Montgomery at Washington, then Assistant Attorney-General for the Interior Department under the Grant Administration, in which he asked his aid to obtain a pardon from the President. Knowing that it would be useless to ask this upon the record of his conduct as shown by the order of his commitment, he resorted to the desperate expedient of



Before the petition for habeas corpus was presented to the Supreme Court of the United States, Judge Terry's friends made a strenuous effort to secure his pardon from President Grover Cleveland. Despite the intercession of Terry's old friend Zacharias Montgomery, who had been assistant attorney general for the Interior Department in the Grant administration, Cleveland refused to intervene.

endeavoring to overcome that record by putting his own oath to a false statement of the facts, against the statement of the three judges, made on their own knowledge, as eye-witnesses, and supported by the affidavits of court officers, lawyers, and spectators.

To Montgomery he wrote:

"I have made a plain statement of the facts which occurred in the court, and upon that propose to ask the intervention of the President, and I request you to see the President; tell him all you know of me, and what degree of credit should be given to a statement by me upon my own knowledge of the facts. When you read the statement I have made you will be satisfied that the statement in the order of the court is false."

He then proceeded to tell his story as he told it in his petition to the Circuit Court. His false representations as to the assault he made upon the marshal, and as to his alleged provocation therefor, were puerile in the extreme. He stood alone in his declaration that the marshal first assaulted him, while the three judges and a dozen witnesses declared the very opposite. His denial that he had assaulted the marshal with a deadly weapon was contradicted by the judges and the others, who said they saw him attempt to draw a knife in the court-room, which attempt, followed up as it was continually until successful, constituted an assault with that weapon. To call his bowie-knife "a small sheath-knife," and the outrageous conduct of his wife "acts of indiscretion," to pretend that he lost his temper because he was assaulted "while making an honest effort to peaceably and quietly enforce the order of the court," and finally to pretend that his wife had been "unnecessarily assaulted" in his presence, was all not only false, but simply absurd and ridiculous.

He said: "I don't want to stay in prison six months for an offense of which I am not guilty. There is no way left except to appeal

to the President. The record of a court imports absolute verity, so I am not allowed to show that the record of the Circuit Court is absolutely false. If you can help me in this matter you will confer on me the greatest possible favor."

He told Montgomery that it had been suggested to him that one reason for Field's conduct was his refusal to support the latter's aspirations for the Presidency. In this connection he made the following statement:

"In March, 1884, I received a note from my friend Judge Heydenfeldt, saying that he wished to see me on important business, and asking me to call at his office. I did so, and he informed me that he had received a letter from Judge Field, who was confident that if he could get the vote of California in the Democratic National Convention, which would assemble that year, he would be nominated for President and would be elected as, with the influence of his family and their connection, that he would certainly carry New York; that Judge Field further said that a Congressman from California and other of his friends had said that if I would aid him, I could give him the California delegation; that he understood I wanted official recognition as, because of my duel years ago, I was under a cloud; that if I would aid him, I should have anything I desired."

It will be observed that he here positively states that Judge Heydenfeldt told him he had received a letter from Judge Field, asking Terry's aid and promising, for it, a reward. Judge Heydenfeldt, in a letter dated August 21, 1889, to the *San Francisco Examiner*, branded Terry's assertion as false. The letter to the *Examiner* is as follows:

"The statement made in to-day's *Examiner* in reference to the alleged letter from Justice Field to me, derived, as is stated by Mr. Ashe, from a

conversation with Judge Terry, is utterly devoid of truth.<sup>41</sup>

"I had at one time, many years ago, a letter from Justice Field, in which he stated that he was going to devote his leisure to preparing for circulation among his friends his reminiscences, and, referring to those of early California times, he requested me to obtain from Judge Terry his, Terry's, version of the Terry-Broderick duel, in order that his account of it might be accurate.<sup>42</sup> As soon as I received this letter, I wrote to Judge Terry, informing him of Judge Field's wishes, and recommending him to comply, as coming, as the account would, from friendly hands, it would put him correct upon the record, and would be in a form which would endure as long as necessary for his reputation on that subject.

"I received no answer from Judge Terry, but meeting him, some weeks after, on the street in this city, he excused himself, saying that he had been very busy, and adding that it was unnecessary for him to furnish a version of the duel, as the published and accepted version was correct.

"The letter to me from Justice Field above referred to is the only letter from Justice Field to me in which Judge Terry's name was ever mentioned, and, with the exception of the above-mentioned street conversation, Judge Field was never the subject of conversation between Judge Terry and myself, from the time I left the bench, on the 1st of January, 1857, up to the time of Terry's death.

"As to the statement that during Terry's trouble with the Sharon case, I offered Terry the use of Field's letter, it results from what I have above stated—that it is a vile falsehood, whoever may be responsible for it.

"I had no such letter, and consequently could have made no such offer.

"San Francisco, August 21, 1889.

"S. HEYDENFELDT."

Judge Heydenfeldt subsequently addressed the following letter to Judge Field:

"SAN FRANCISCO, August 31, 1889.

"MY DEAR JUDGE: I received yours of yesterday with the extract from the *Washington Post* of the 22d inst., containing a copy of a letter from the late Judge Terry to the Hon. Zack Montgomery.

"The statement in that letter of a conversation between Terry and myself in reference to you is untrue. The only conversation Terry and I ever had in relation to you was, as heretofore stated, in regard to a request from you to me to get from Terry his version of the Terry-Broderick duel, to be used in your intended reminiscences.

"I do not see how Terry could have made such an erroneous statement, unless, possibly, he deemed that application as an advance made by you towards obtaining his political friendship, and upon that built up a theory, which he moulded into the fancy written by him in the Montgomery letter.

"In all of our correspondence, kept up from time to time since your first removal to Washington down to the present, no letter of yours contained a request to obtain the political support of any one.

"I remain, dear Judge, very truly yours,

"S. HEYDENFELDT.

Hon. STEPHEN J. FIELD,  
"Palace Hotel, San Francisco."

At the hearing of the Neagle case, Justice Field was asked if he had been informed of any statements made by Judge Terry of ill feeling existing between them before the latter's imprisonment for contempt.<sup>43</sup> He replied:

"Yes, sir. Since that time I have seen a letter purporting to come from Terry to Zack Montgomery, published in Washington, in which he ascribed my action to personal hostility, because he had not supported me in some political aspiration. There is not one particle of truth in that statement. It is a pure invention. In support of his statement he referred to a letter received or an interview had with Judge Heydenfeldt. There is not the slightest foundation for it, and I cannot understand it, except that the man seems to me to have been all changed in the last few years, and he did not hesitate to assert that the official actions of others were governed by improper considerations. I saw charges made by him against judges of the State courts; that they had been corrupt in their decisions against him; that they had been bought. That was the common assertion made by him when decisions were rendered against him."

He then referred to the above letters of Judge Heydenfeldt, declaring Terry's assertion to be false.

It should be borne in mind that Terry's letter to Montgomery was written September 8th. It directly contradicts what he had said to ex-Congressman Wigginton on the 5th or 6th of the same month. To that gentleman he declared that he knew of no "old grudge or little difference" between himself and Judge Field. He said he had declined to support the latter for the Presidency, and added: "That may have caused some alienation, but I do not know that Judge Field knew that."

In his insane rage Terry did not realize how absurd it was to expect people to believe



Former Congressman P. D. Wigginton testified that he had visited Terry in jail to consult with him about a legal case they were working on as opposing counsel. When Wigginton informed Terry that he was rumored to be feuding with Justice Field, Terry denied it.

that Judge Sawyer and Judge Sabin, both Republicans, had participated in putting him in jail, to punish him for not having supported Justice Field for the Presidency in a National Democratic Convention years before.

Perhaps Terry thought his reference to the fact that Judge Field's name had been previously used in Democratic Conventions, in connection with the Presidency, might have some effect upon President Cleveland's mind.

This letter was not forwarded to Zachariah Montgomery until a week after it was written. He then stated in a postscript that he had delayed sending it upon the advice of his attorneys pending the application to the Circuit Court for his release. Again he charged that the judges had made a false record against him, and that evidence would be presented to the President to show it.

Terry and his friends brought all the pressure to bear that they could command, but the President refused his petition for a pardon, and, as already shown, the Supreme Court unanimously decided that his imprisonment for contempt had been lawfully ordered. He was therefore obliged to serve out his time.



Mrs. Terry served her thirty days in jail, and was released on the 3d of October.

There is a federal statute that provides for the reduction of a term of imprisonment of criminals for good behavior. Judge Terry sought to have this statute applied in his case, but without success. The Circuit Court held that the law relates to state penitentiaries, and not to jails, and that the system of credits could not be applied to prisoners in jail. Besides this, the credits in any case are counted by the year, and not by days or months. The law specifies that prisoners in state prisons are entitled to so many months' time for the first year, and so many for each subsequent year. As Terry's sentence ran for six months, the court said the law could not apply. He consequently remained in jail until the 3d of March, 1889.

#### CHAPTER X. Terry's Continued Threats to Kill Justice Field—Return of the Latter to California in 1889.

Justice Field left California for Washington in September, 1888, a few days after the denial of Terry's petition to the Circuit Court for a release. The threats against his life and that of Judge Sawyer so boldly made by the Terrys were as well known as the newspaper press could make them. In addition to this source of information, reports came from many other directions, telling of the rage of the Terrys and their murderous intentions. From October, 1888, till his departure for California, in June following, 1889, his mail almost every day contained reports of what they were saying, and the warnings and entreaties of his friends against his return to that State. These threats came to the knowledge of the Attorney-General of the United States, who gave directions to the marshal of the northern district of California to see to it that Justice Field and Judge Sawyer should be protected from personal violence at the hands of these parties.

Justice Field made but one answer to all who advised against his going to hold court in California in 1889, and that was, "I cannot and

will not allow threats of personal violence to deter me from the regular performance of my judicial duties at the times and places fixed by law. As a judge of the highest court of the country, I should be ashamed to look any man in the face if I allowed a ruffian, by threats against my person, to keep me from holding the regular courts in my circuit."

Terry's murderous intentions became a matter of public notoriety, and members of Congress and Senators from the Pacific Coast, in interviews with the Attorney-General, confirmed the information derived by him from other sources of the peril to which the United States judges in California were subjected. He, in consequence, addressed the following letter on the subject to Marshal Franks:<sup>44</sup>

"DEPARTMENT OF JUSTICE,

"WASHINGTON, April 27, 1889.

"JOHN C. FRANKS,

"United States Marshal, San Francisco, Cal.

"SIR: The proceedings which have heretofore been had in the case of Mr. and Mrs. Terry in your United States Circuit Court have become matter of public notoriety, and I deem it my duty to call your attention to the propriety of exercising unusual precaution, in case farther proceedings shall be had in that case, for the protection of His Honor Justice Field, or whoever may be called upon to hear and determine the matter. Of course, I do not know what may be the feelings or purpose of Mr. and Mrs. Terry in the premises, but many things which have happened indicate that violence on their part is not impossible. It is due to the dignity and independence of the court and the character of its judges that no effort on the part of the Government shall be spared to make them feel entirely safe and free from anxiety in the discharge of their high duties.

"You will understand, of course, that this letter is not for the public, but to put you upon your guard. It will be proper for you to show it to the District Attorney if deemed best.

"Yours truly,

"W. H. H. MILLER,<sup>45</sup>  
*"Attorney-General."*

A month later the Attorney-General authorized the employment of special deputies for the purpose named in the foregoing letter.

#### **Chapter XI. Further Proceedings in the State Court—Judge Sullivan's Decision Reversed.**

Mrs. Terry did not wait for the release of her husband from jail before renewing the battle. On the 22d of January, 1889, she gave notice of a motion in the Superior Court for the appointment of a receiver who should take charge of the Sharon estate, which she alleged was being squandered to the injury of her interest therein acquired under the judgment of Judge Sullivan. On the 29th of January an injunction was issued by the United States Circuit Court commanding her and all others to desist from this proceeding. The Terrys seemed to feel confident that this would bring on a final trial of strength between the federal and state courts, and that the state court would prevail in enforcing its judgment and orders.

The motion for a receiver was submitted after full argument, and on the 3d of June following Judge Sullivan rendered a decision asserting the jurisdiction of his court to entertain the motion for a receiver, and declaring the decree of the United States Circuit Court inoperative. In his opinion Judge Sullivan reviewed the opinion of Justice Field in the revivor suit, taking issue therewith. As that decision had been affirmed by the Supreme Court of the United States nearly a month before, to wit, on the 13th of May, 1889, it was rather late for such a discussion. Having thus decided, however, that

the motion for a receiver could be made, he set the hearing of the same for July 15, 1889.

On the 27th of May, one week before the rendering of this decision by Judge Sullivan, the mandate of the United States Supreme Court had been filed in the Circuit Court at San Francisco, by which the decree of that court was affirmed. Whether a receiver would be appointed by Judge Sullivan, in the face of the decision of the Supreme Court of the United States, became now an interesting question. Terry and his lawyers affected to hold in contempt the Supreme Court decree, and seemed to think no serious attempt would be made to enforce it.

Meantime, both of the Terrys had been indicted in the United States Circuit Court for the several offenses committed by them in assaulting the marshal in the court-room as hereinbefore described. These indictments were filed on the 20th of September. Dilatory motions were granted from time to time, and it was not until the 4th of June that demurrers to the indictments were filed. The summer vacation followed without any argument of these demurrers. It was during this vacation that Justice Field arrived in California, on the 20th of June. The situation then existing was as follows:

The criminal proceedings against the Terrys were at a standstill, having been allowed to drag along for nine months, with no farther progress than the filing of demurrers to the indictments.

The appeal to the Supreme Court of the State from Judge Sullivan's order denying a new trial had been argued and submitted on the 4th of May, but no decision had been rendered.

Despite the pendency of that appeal, by reason of which the judgment of the Supreme Court of the State had not yet become final, and despite the mandate of the United States Supreme Court affirming the decree in the revivor case, Judge Sullivan had, as we have already seen, set the 15th of July for the hearing of the motion of the Terrys for the appointment of a receiver to take charge of the Sharon estate.

For them to proceed with this motion would be a contempt of the United States Circuit Court.

The arrival of Justice Field should have instructed Judge Terry that the decree of that court could not be defied with impunity, and that the injunction issued in it against further proceedings upon the judgment in the state court would be enforced with all the power authorized by the Constitution and laws of the United States for the enforcement of judicial process.

As the 15th of July approached, the lawyers who had been associated with Terry commenced discussing among themselves what would be the probable consequence to them of disobeying an injunction of the United States Circuit Court. The attorneys for the Sharon estate made known their determination to apply to that Court for the enforcement of its writ in their behalf. The Terrys' experience in resisting the authority of that court served as a warning for their attorneys.

On the morning of the 15th of July Judge Terry and his wife appeared, as usual, in the Superior Court room. Two of their lawyers came in, remained a few minutes and retired. Judge Terry himself remained silent. His wife arose and addressed the court, saying that her lawyers were afraid to appear for her. She said they feared if they should make a motion in her behalf, for the appointment of a receiver, Judge Field would put them in jail; therefore, she said, she appeared for herself. She said if she got in jail she would rather have her husband outside, and this was why she made the motion herself, while he remained a spectator.

The hearing was postponed for several days. Before the appointed day therefor, the Supreme Court of the State, on the 17th of July, rendered its decision, reversing the order of Judge Sullivan refusing a new trial, thereby obliterating the judgment in favor of Sarah Althea, and the previous decision of the appellate court affirming it. The court held that this previous judgment had not become the law of the case pending the appeal from the order

denying a new trial. It held that where two appeals are taken in the same case, one from the judgment and the other from the order denying a new trial, the whole case must be held to be under the control of the Supreme Court until the whole is disposed of, and the case remanded for further proceedings in the court below. The court reversed its previous decision, and declared that if the statements made by Sarah Althea and by her witnesses had been true, she never had been the wife of William Sharon, for the reason that, after the date of the alleged contract of marriage, the parties held themselves out to the public as single and unmarried people, and that even according to the findings of fact by Judge Sullivan the parties had not assumed marital rights, duties, and obligations. The case was therefore remanded to the Superior Court for a new trial.

On the 2d of August the demurrers to the several indictments against the Terrys came up to be heard in the United States District Court. The argument upon them concluded on the 5th. On the 7th the demurrer to one of the indictments against Sarah Althea was overruled and she entered a plea of not guilty. No decision was rendered at that time upon either of the five other indictments.

On the following day, August 8th, Justice Field left San Francisco and went to Los Angeles for the purpose of holding court.

## **Chapter XII. Attempted Assassination of Justice Field, Resulting in Terry's Own Death at the Hands of a Deputy United States Marshal.**

In view of what was so soon to occur, it is important to understand the condition of mind into which Judge Terry and his wife had now wrought themselves. They had been married about two years and a half. In their desperate struggle for a share of a rich man's estate they had made themselves the terror of the community. Armed at all times and ready for mortal combat with whoever opposed their claims, they seemed, up to the 17th of July,

For them to proceed with this motion would be a contempt of the United States Circuit Court.

The arrival of Justice Field should have instructed Judge Terry that the decree of that court could not be defied with impunity, and that the injunction issued in it against further proceedings upon the judgment in the state court would be enforced with all the power authorized by the Constitution and laws of the United States for the enforcement of judicial process.

As the 15th of July approached, the lawyers who had been associated with Terry commenced discussing among themselves what would be the probable consequence to them of disobeying an injunction of the United States Circuit Court. The attorneys for the Sharon estate made known their determination to apply to that Court for the enforcement of its writ in their behalf. The Terrys' experience in resisting the authority of that court served as a warning for their attorneys.

On the morning of the 15th of July Judge Terry and his wife appeared, as usual, in the Superior Court room. Two of their lawyers came in, remained a few minutes and retired. Judge Terry himself remained silent. His wife arose and addressed the court, saying that her lawyers were afraid to appear for her. She said they feared if they should make a motion in her behalf, for the appointment of a receiver, Judge Field would put them in jail; therefore, she said, she appeared for herself. She said if she got in jail she would rather have her husband outside, and this was why she made the motion herself, while he remained a spectator.

The hearing was postponed for several days. Before the appointed day therefor, the Supreme Court of the State, on the 17th of July, rendered its decision, reversing the order of Judge Sullivan refusing a new trial, thereby obliterating the judgment in favor of Sarah Althea, and the previous decision of the appellate court affirming it. The court held that this previous judgment had not become the law of the case pending the appeal from the order

denying a new trial. It held that where two appeals are taken in the same case, one from the judgment and the other from the order denying a new trial, the whole case must be held to be under the control of the Supreme Court until the whole is disposed of, and the case remanded for further proceedings in the court below. The court reversed its previous decision, and declared that if the statements made by Sarah Althea and by her witnesses had been true, she never had been the wife of William Sharon, for the reason that, after the date of the alleged contract of marriage, the parties held themselves out to the public as single and unmarried people, and that even according to the findings of fact by Judge Sullivan the parties had not assumed marital rights, duties, and obligations. The case was therefore remanded to the Superior Court for a new trial.

On the 2d of August the demurrers to the several indictments against the Terrys came up to be heard in the United States District Court. The argument upon them concluded on the 5th. On the 7th the demurrer to one of the indictments against Sarah Althea was overruled and she entered a plea of not guilty. No decision was rendered at that time upon either of the five other indictments.

On the following day, August 8th, Justice Field left San Francisco and went to Los Angeles for the purpose of holding court.

## **Chapter XII. Attempted Assassination of Justice Field, Resulting in Terry's Own Death at the Hands of a Deputy United States Marshal.**

In view of what was so soon to occur, it is important to understand the condition of mind into which Judge Terry and his wife had now wrought themselves. They had been married about two years and a half. In their desperate struggle for a share of a rich man's estate they had made themselves the terror of the community. Armed at all times and ready for mortal combat with whoever opposed their claims, they seemed, up to the 17th of July,



to have won their way in the State courts by intimidation. The decision of the United States Circuit Court was rendered before they were married. It proclaimed the pretended marriage agreement a forgery, and ordered it to be delivered to the clerk of the court for cancellation. Terry's marriage with Sarah Althea, twelve days after this, was a declaration of intention to resist its authority.

The conduct of the pair in the Circuit Court on the 3d of September must have had some object. They may have thought to break up the session of the court for that day, and to so intimidate the judges that they would not carry out their purpose of rendering the decision; or they may have hoped that, if rendered, it would be allowed to slumber without any attempt to enforce it; or even that a rehearing might be granted, and a favorable decision forced from the court. It takes a brave man on the bench to stand firmly for his convictions in the face of such tactics as were adopted by the Terrys. The scene was expected also to have its effect upon the minds of the judges of the Supreme Court of the State, who then were yet to pass finally upon Sullivan's judgment on the appeal from the order denying a new trial.

But the Terrys had not looked sufficiently at the possible consequence of their actions. They had thus far gone unresisted. As District Attorney Carey wrote to the Attorney-General:

"They were unable to appreciate that an officer should perform his official duty when that duty in any way requires that his efforts be directed against them."

When, therefore, Justice Field directed the removal of Mrs. Terry from the court, and when her doughty defendant and champion, confident of being able to defeat the order, found himself vanquished in the encounter, disarmed, arrested, and finally imprisoned, his rage was boundless. He had found a tribunal which cared nothing for his threats, and was able to overcome his violence. A court that would put

him in the Alameda jail for six months for resisting its order would enforce all its decrees with equal certainty.

From the time of the Terrys' incarceration in the Alameda county jail their threats against Justice Field became a matter of such notoriety that the drift of discussion was not so much whether they would murder the Justice, as to when and under what circumstances they would be likely to do so.

There is little doubt that Terry made many threats for the express purpose of having them reach the knowledge of Judge Field at Washington, in the hope and belief that they would deter him from going to California. He probably thought that the Judge would prefer to avoid a violent conflict, and that if his absence could be assured it might result in allowing the decree of the United States Circuit Court to remain a dead letter.

He told many people that Justice Field would not dare come out to the Pacific Coast. He got the idea into his mind, or pretended to, that Justice Field had put him in jail in order to be able to leave for Washington before a meeting could be had with him. Terry would of course have preferred Field's absence and a successful execution of Sullivan's judgment to his presence in the State and the enforcement of the federal decree.

When the announcement was made that Justice Field had left Washington for San Francisco, public and private discussions were actively engaged in, as to where he would be likely to encounter danger. A special deputy was sent by the marshal to meet the overland train on which he was travelling, at Reno, in Nevada.<sup>46</sup> The methods of Mrs. Terry defied all calculations. She was as likely to make her appearance, with her burly husband as an escort, at the State line, as she finally did at the breakfast table at Lathrop. Justice Field reached his quarters in San Francisco on the 20th of June. From that day until the 14th of August public discussion of what the Terrys would do continued. Some of the newspapers seemed bent upon provoking a conflict,



and inquired with devilish mischief when Terry was going to carry out his threatened purpose.

The threats of the Terrys and the rumors of their intended assault upon Justice Field were reported to him and he was advised to go armed against such assault, which would be aimed against his life. He answered: "No, sir! I will not carry arms, for when it is known that the judges of our courts are compelled to arm themselves against assaults in consequence of their judicial action it will be time to dissolve the courts, consider government a failure, and let society lapse into barbarism."

As the time approached for the hearing of the motion for a receiver before Judge Sullivan, July 15th, grave apprehensions were entertained of serious trouble. Great impatience was expressed with the Supreme Court of the State for not rendering its decision upon the appeal from the order denying a new trial. It was hoped that the previous decision might be reversed, and a conflict between the two jurisdictions thus avoided. When the decision came, on the 17th of July, there seemed to be some relaxation of the great tension in the public mind. With the Supreme Court of the State, as well as the Supreme Court of the United States, squarely on the record against Mrs. Terry's pretensions to have been the wife of William Sharon, it was hoped that the long war had ended.

When Justice Field left San Francisco for Los Angeles he had no apprehensions of danger, and strenuously objected to being accompanied by the deputy marshal. Some of his friends were less confident. They realized better than he did the bitterness that dwelt in the hearts of Terry and his wife, intensified as it was by the realization of the dismal fact that their last hope had expired with the decision of the Supreme Court of the State. The marshal was impressed with the danger that would attend Justice Field's journey to and from the court at Los Angeles.

He went from San Francisco on the 8th of August. After holding court in Los Angeles

he took the train for San Francisco August 13th, the deputy marshal occupying a section in the sleeping car directly opposite to his. Judge Terry and his wife left San Francisco for their home in Fresno the day following Justice Field's departure for Los Angeles. Fresno is a station on the Southern Pacific between Los Angeles and San Francisco. His train left Los Angeles for San Francisco at 1.30 Tuesday afternoon, August 13th. The deputy marshal got out at all the stations at which any stop was made for any length of time, to observe who got on board. Before retiring he asked the porter of the car to be sure and wake him in time for him to get dressed before they reached Fresno. At Fresno, where they arrived during the night, he got off the train and went out on the platform. Among the passengers who took the train at that station were Judge Terry and wife. He immediately returned to the sleeper and informed Justice Field, who had been awakened by the stopping of the train, that Terry and his wife had got on the train. He replied: "Very well. I hope that they will have a good sleep."

Neagle slept no more that night. The train reached Merced, an intervening station between Fresno and Lathrop, at 5.30 that morning. Neagle there conferred with the conductor, on the platform, and referred to the threats so often made by the Terrys. He told him that Justice Field was on the train, and that he was accompanying him. He requested him to telegraph to Lathrop, to the constable usually in attendance there, to be at hand, and that if any trouble occurred he would assist in preventing violence.

Justice Field got up before the train reached Lathrop, and told the deputy marshal that he was going to take his breakfast in the dining-room at that place. The following is his statement of what took place:

"He said to me, 'Judge, you can get a good breakfast at the buffet on board.'

I did not think at the time what he was driving at, though I am now satisfied that he wanted me to take breakfast on

the car and not get off. I said I prefer to have my breakfast at this station. I think I said I had come down from the Yosemite Valley a few days before, and got a good breakfast there, and was going there for that purpose.

"He replied: 'I will go with you.'

We were among the first to get off from the train."

As soon as the train arrived, Justice Field, leaning on the arm of Neagle, because of his lameness, proceeded to the dining-room, where they took seats for breakfast. There were in this dining-room fifteen tables, each one of which was ten feet long and four feet wide. They were arranged in three rows of five each, the tables running lengthwise with each other, with spaces between them of four feet. The aisles between the two rows were about seven feet apart, the rows running north and south.

Justice Field and Neagle were seated on the west side of the middle table in the middle row, the Justice being nearer the lower corner of the table, and Neagle at his left. Very soon after—Justice Field says "a few minutes," while Neagle says "it may be a minute or so"—Judge Terry and his wife entered the dining-room from the east. They walked up the aisle, between the east and middle rows of tables, so that Justice Field and Neagle were faced towards them. Judge Terry preceded his wife. Justice Field saw them and called Neagle's attention to them. He had already seen them.

As soon as Mrs. Terry had reached a point nearly in front of Justice Field, she turned suddenly around, and scowling viciously, went in great haste out of the door at which she had come in. This was for the purpose, as it afterwards appeared, of getting her satchel with the pistol in it, which she had left in the car. Judge Terry apparently paid no attention to this movement, but proceeded to the next table above and seated himself at the upper end of it, facing the table at which Justice Field was seated. Thus there were between the two men as they sat at the tables a distance equal to two table-lengths and one space of four feet, making

about twenty-four feet. Terry had been seated but a very short time—Justice Field thought it a moment or two, Neagle thought it three or four minutes—when he arose and moved down towards the door, this time walking through the aisle *behind* Justice Field, instead of the one in front of him as before. Justice Field supposed, when he arose, that he was going out to meet his wife, as she had not returned, and went on with his breakfast; but when Terry had reached a point behind him, and a little to the right, within two or three feet of him, he halted. Justice Field was not aware of this, nor did he know that Terry had stopped, until he was struck by him a violent blow in the face from behind, followed instantaneously by another blow at the back of his head. Neagle had seen Terry stop and turn. Between this and Terry's assault there was a pause of four or five seconds. Instantaneously upon Terry's dealing a blow, Neagle leaped from his chair and interposed his diminutive form between Justice Field and the enraged and powerful man, who now sought to execute his long-announced and murderous purpose. Terry gave Justice Field no warning of his presence except a blow from behind with his right hand.

As Neagle rose, he shouted: "Stop, stop, I am an officer." Judge Terry had drawn back his right arm for a third blow at Justice Field, and with clinched fist was about to strike, when his attention was thus arrested by Neagle, and looking at him he evidently recognized in him the man who had drawn the knife from his hand in the corridor before the marshal's office on the third of September of the preceding year, while he was attempting to cut his way into the marshal's office. Neagle put his right hand up as he ordered Terry to stop, when Terry carried his right hand at once to his breast, evidently to seize the knife which he had told the Alameda county jailer he "always carried." Says Neagle:

"This hand came right to his breast. It went a good deal quicker than I can explain it. He continued looking at me in a desperate manner and his hand got there."



When Terry attacked Justice Field with a bowie-knife at the train station in Lathrop, Marshal Neagle (left), the deputy who had disarmed Terry in the circuit court and subsequently been assigned to protect Field, intervened. He threw himself in front of Field and then shot Terry dead.

The expression of Terry's face at that time was described by Neagle in these words:

"The most desperate expression that I ever saw on a man's face, and I have seen a good many in my time. It meant life or death to me or him."

Having thus for a moment diverted the blow aimed at Justice Field and engaged Terry himself, Neagle did not wait to be butchered with the latter's ready knife, which he was

now attempting to draw, but raised his six-shooter with his left hand (he is left-handed) and holding the barrel of it with his right hand, to prevent the pistol from being knocked out of his hands, he shot twice; the first shot into Terry's body and the second at his head. Terry immediately commenced sinking very slowly. Knowing by experience that men mortally wounded have been often known to kill those with whom they were engaged in such an encounter, Neagle fired the second shot to

defend himself and Justice Field against such a possibility.

The following is an extract from Justice Field's testimony, commencing at the point where Judge Terry rose from his seat at the breakfast table:

"I supposed, at the time, he was going out to meet his wife, as she had not returned, so I went on with my breakfast. It seems, however, that he came around back of me. I did not see him, and he struck me a violent blow in the face, followed instantaneously by another blow. Coming so immediately together, the two blows seemed like one assault. I heard 'Stop, stop,' cried by Neagle. Of course I was for a moment dazed by the blows. I turned my head around and saw that great form of Terry's with his arm raised and fist clinched to strike me. I felt that a terrific blow was coming, and his arm was descending in a curved way as though to strike the side of my temple, when I heard Neagle cry out: 'Stop, stop, I am an officer.' Instantly two shots followed. I can only explain the second shot from the fact that he did not fall instantly. I did not get up from my seat, although it is proper for me to say that a friend of mine thinks I did, but I did not. I looked around and saw Terry on the floor. I looked at him and saw that particular movement of the eyes that indicates the presence of death. Of course it was a great shock to me. It is impossible for any one to see a man in the full vigor of life, with all those faculties that constitute life instantly extinguished without being affected, and I was. I looked at him for a moment, then went around and looked at him again, and panned on. Great excitement followed. A gentleman came to me, whom I did not know, but I think

it was Mr. Lidgerwood, who has been examined as a witness in this case, and said: 'What is this?' I said: 'I am a Justice of the Supreme Court of the United States. My name is Judge Field. Judge Terry threatened my life and attacked me, and the deputy marshal has shot him.' The deputy marshal was perfectly cool and collected, and stated: 'I am a deputy marshal, and I have shot him to protect the life of Judge Field,' I cannot give you the exact words, but I give them to you as near as I can remember them. A few moments afterwards the deputy marshal said to me: 'Judge, I think you had better go to the car.' I said, 'Very well.' Then this gentleman, Mr. Lidgerwood, said: 'I think you had better.' And with the two I went to the car. I asked Mr. Lidgerwood to go back and get my hat and cane, which he did. The marshal went with me, remained some time, and then left his seat in the car, and, as I thought, went back to the dining-room. (This is, however, I am told, a mistake, and that he only went to the end of the car.) He returned, and either he or some one else stated that there was great excitement; that Mrs. Terry was calling for some violent proceedings. I must say here that, dreadful as it is to take life, it was only a question of seconds whether my life or Judge Terry's life should be taken. I am firmly convinced that had the marshal delayed two seconds both he and myself would have been the victims of Terry."

"In answer to a question whether he had a pistol or other weapon on the occasion of the homicide, Justice Field replied: 'No, sir. I have never had on my person or used a weapon since I went on the bench of the Supreme

Court of this State, on the 13th of October, 1857, except once, when, years ago, I rode over the Sierra Nevada mountains in a buggy with General Hutchinson, and at that time I took a pistol with me for protection in the mountains. With that exception,<sup>47</sup> I have not had on my person, or used, any pistol or other deadly weapon.'

Judge Terry had fallen very near the place where he first stopped, near the seat occupied by Justice Field at the table.

Neagle testified that if Justice Field had had a weapon, and been active in using it, he was at such a disadvantage, seated as he was, with Terry standing over him, that he would have been unable to raise his hand in his own defense.

A large number of witnesses were examined, all of whom agreed upon the main facts as above stated. Some of them distinctly heard the blows administered by Terry upon Justice Field's face and head. All testified to the loud warning given Terry by Neagle that he was an officer of the law, accompanied by his command that Terry should desist. It was all the work of a few seconds. Terry's sudden attack, the quick progress of which, from the first blow, was neither arrested nor slackened until he was disabled by the bullet from Neagle's pistol, could have been dealt with in no other way. It was evidently a question of the instant whether Terry's knife or Neagle's pistol should prevail. Says Neagle:

"He never took his eyes off me after he looked at me, or I mine off him. I did not hear him say anything. The only thing was he looked like an infuriated giant to me. I believed if I waited two seconds I should have been cut to pieces. I was within four feet of him."

Q. "What did the motion that Judge Terry made with his right hand indicate to you?"

A. "That he would have had that knife out there within another second and a half, and trying to cut my head off."

Terry, in action at such a time, from all accounts, was more like an enraged wild animal than a human being. The supreme moment had arrived to which he had been looking forward for nearly a year, when the life of the man he hated was in his hands. He had repeatedly sworn to take it. Not privately had he made these threats. With an insolence and an audacity born of lawlessness and of a belief that he could hew his way with a bowie-knife in courts as well as on the streets, he had publicly sentenced Judge Field to death as a penalty for vindicating the majesty of the law in his imprisonment for contempt.

It would have been the wildest folly that can be conceived of for the murderous assault of such a man to have been met with mild persuasion, or an attempt to arrest him. As well order a hungry tiger to desist from springing at his prey, to sheathe his outstretched claws and suffer himself to be bound, as to have met Terry with anything less than the force to which he was himself appealing. Every man who knows anything of the mode of life and of quarrelling and fighting among the men of Terry's class knows full well that when they strike a blow they mean to follow it up to the death, and they mean to take no chances. The only way to prevent the execution of Terry's revengeful and openly avowed purpose was by killing him on the spot. Only a lunatic or an imbecile or an accomplice would have pursued any other course in Neagle's place than the one he pursued, always supposing he had Neagle's nerve and cool self-possession to guide him in such a crisis.

While this tragedy was being enacted Mrs. Terry was absent, having returned to the car for the satchel containing her pistol. Before she returned, the shot had been fired that defeated the conspiracy between her and her husband against the life of a judge for the performance of his official duties. She returned to the hotel with her satchel in her hand just



as her husband met his death. The manager of the hotel stopped her at the door she was entering, and seized her satchel. She did not relinquish it, but both struggled for its possession. A witness testified that she screamed out while so struggling: "Let me get at it; I will fix him." Many witnesses testified to her frantic endeavor to get the pistol. She called upon the crowd to hang the man that killed Judge Terry, and cried out, "Lynch Judge Field." Again and again she made frantic appeals to those present to Lynch Judge Field. She tried to enter the car where he was, but was not permitted to do so. She cried out, "If I had my pistol I would fix him."

The testimony subsequently taken left no room to doubt that Terry had his deadly knife in its place in his breast at the time he made the attack on Justice Field. As the crowd were all engaged in breakfasting, his movements attracted little attention, and his motion toward his breast for the knife escaped the notice of all but Neagle and one other witness. Neagle rushed between Terry and Justice Field, and the latter had not a complete view of his assailant at the moment when the blow intended for him was changed into a movement for the knife with which Judge Terry intended to dispose of the alert little man, with whom he had had a former experience, and who now stood between him and the object of his greater wrath.

But the conduct of Mrs. Terry immediately after the homicide was proof enough that her husband's knife had been in readiness. The conductor of the train swore that he saw her lying over the body of her husband about a minute, and when she rose up she unbuttoned his vest and said: "You may search him; he has got no weapon on him." Not a word had been said about his having had a weapon. No one had made a movement towards searching him, as ought to have been done; but this woman, who had been to the car for her pistol and returned with it to join, if necessary, in the murderous work, had all the time and opportunity necessary for taking the knife from its resting-place under his vest, smearing one of

her hands with his blood, which plainly showed where it had been and what she had been doing. Neagle could not search the body, for his whole attention was directed to the protection of Justice Field. Mrs. Terry repeated the challenge to search the body for the knife after it had been removed. This showed clearly that the idea uppermost in her mind was to then and there manufacture testimony that he had not been armed at all. Her eagerness on this subject betrayed her. Had she herself then been searched, after rising from Terry's body, the knife would doubtless have been found concealed upon her person. A number of witnesses testified to her conduct as above described. She said also: "You will find that he has no arms, for I took them from him in the car, and I said to him that I did not want him to shoot Justice Field, but I did not object to a fist bout."

This reference to a fist bout was, of course, an admission that they had premeditated the assault. It was Judge Terry's knife and not a pistol that Judge Field had to fear. Terry's threats had always pointed to some gross indignity that he would put upon Justice Field, and then kill him if he resented or resisted it. One of his threats was that he would horsewhip Judge Field, and that if he resented it he would kill him. In short, his intentions seem to have been to commit an assassination in alleged self-defense.

The train soon left the station for San Francisco. A constable of Lathrop had taken the train, and addressing Neagle told him that he would have to arrest him.<sup>48</sup> This officer had no warrant and did not himself witness the homicide. Justice Field told him that he ought to have a warrant before making the arrest, remarking, if a man should shoot another when he was about to commit a felony, such as setting fire to your house, you would not arrest him for a murder; or if a highwayman got on the train to plunder. The officer replied very courteously by the suggestion that there would have to be an inquest. Neagle at once said, "I am ready to go," thinking it better to avoid all controversy, and being perfectly willing to answer anywhere for what he had done. Arriving

at the next station (Tracy), Neagle and the officer took a buggy and went to the county jail at Stockton. Thus was a deputy marshal of the United States withdrawn from the service of his Government while engaged in a most important and as yet unfinished duty because he had with rigid faithfulness performed that duty. He was arrested by an officer who had no warrant and had not witnessed the homicide, and lodged in jail.

Meanwhile a detective in San Francisco received a telegram from the sheriff of San Joaquin county to arrest Judge Field. Supposing it to be his duty to comply with this command, the detective crossed the bay to meet the train for that purpose. Marshal Franks said to him: "You shall not arrest him. You have no right to do so. It would be an outrage, and if you attempt it I will arrest you."

The news of these exciting events produced an intense excitement in San Francisco. Upon his arrival at this place, under the es-

cort of the marshal and many friends, Justice Field repaired to his quarters in the Palace Hotel.<sup>49</sup>

### Chapter XIII. Sarah Althea Terry Charges Justice Field and Deputy Marshal Neagle with Murder.

The body of Judge Terry was taken from Lathrop to Stockton, accompanied by his wife, soon after his death. On that very evening Sarah Althea Terry swore to a complaint before a justice of the peace named Swain,<sup>50</sup> charging Justice Field and Deputy Marshal Neagle with murder. After the investigation before the coroner Assistant District Attorney Gibson stated that the charge against Justice Field would be dismissed, as there was no evidence whatever to connect him with the killing.

Mrs. Terry did not see the shooting and was not in the hotel at the time of the homicide.



Sarah Althea Terry had Neagle and Field arrested for killing her husband. Neagle was imprisoned, but Field was released on his own recognizance and the charges against him were later dropped. Pictured is the telegram sent to Attorney General Miller by one of his deputies reporting on the gunfight at Lathrop Station.

Having, therefore, no knowledge upon which to base her statement, her affidavit was entitled to no greater consideration than if it had stated that it was made solely upon her belief without any positive information on the subject.

Only the most violent of Terry's friends favored the wanton indignity upon Justice Field, and his arrest, but they had sufficient influence with the district attorney, Mr. White,<sup>51</sup> a young and inexperienced lawyer, to carry him along with them. The justice of the peace before whom Sarah Althea had laid the information issued a warrant on the following day for the arrest both of Justice Field and Neagle. From this time this magistrate and the district attorney appeared to act under orders from Mrs. Terry.

The preliminary examination was set for Wednesday of the following week, during which time the district attorney stated for publication that Justice Field would have to go to jail and stay there during the six intervening days. It was obvious to all rational minds that Mrs. Terry's purpose was to use the machinery of the magistrate's court for the purpose of taking Judge Field to Stockton, where she could execute her threats of killing him or having him killed; and if she should fail to do so, or postpone it, then to have the satisfaction of placing a justice of the Supreme Court of the United States in a prisoner's cell, and hold him there for six days awaiting an examination, that being the extreme length of time that he could be so held under the statute. The district attorney was asked if he had realized the danger of bringing Justice Field to Stockton, where he might come in contact with Mrs. Terry. The officer replied:<sup>52</sup>

"We had intended that if Justice Field were brought here, Mrs. Terry would be placed under the care of *her friends*, and that all precautions to prevent any difficulty that was in the power of the district attorney would be taken."

That was to say, Mrs. Terry would do no violence to Justice Field unless "her friends" permitted her to do so. As some of them were possessed of the same murderous feelings towards Justice Field as those named here, the whole transaction had the appearance of a conspiracy to murder him.

No magistrate can lawfully issue a warrant without sufficient evidence before him to show probable cause. It was a gross abuse of power and an arbitrary and lawless act to heed the oath of this frenzied woman, who notoriously had not witnessed the shooting, and had, but a few hours before, angrily insisted upon having her own pistol returned to her that she, herself, might kill Justice Field. It was beyond belief that the magistrate believed that there was probable cause, or the slightest appearance of a cause, upon which to base the issue of the warrant.

Neagle was brought into court at Stockton at 10 o'clock on the morning after the shooting, to wit, on Thursday, the 15th, and his preliminary examination set for Wednesday, the 21st. Bail could not be given prior to that examination. This examination could have proceeded at once, and a delay of six days can only be accounted for by attributing it to the malice and vindictiveness of the woman who seemed to be in charge of the proceedings.

The keen disappointment of Mrs. Terry, and those who were under her influence, at Judge Terry's failure to murder Justice Field, must have been greatly soothed by the prospect of having yet another chance at the latter's life, and, in any event, of seeing him in a cell in the jail during the six days for which the examination could be delayed for that express purpose. The sheriff of San Joaquin county proceeded to San Francisco with the warrant for his arrest on Thursday evening. In company with the chief of police and Marshal Franks, he called upon Justice Field, and after a few moments' conversation it was arranged that he should present the warrant at one o'clock on the following day, at the building in which the federal courts are held.

#### Chapter XIV. Justice Field's Arrest and Petition for Release on Habeas Corpus.

At the appointed hour Justice Field awaited the sheriff in his chambers, surrounded by friends, including judges, ex-judges, and members of the bar. As the sheriff entered Justice Field arose and pleasantly greeted him. The sheriff bore himself with dignity, and with a due sense of the extraordinary proceeding in which his duty as an officer required him to be a participant. With some agitation he said: "Justice Field, I presume you are aware of the nature of my errand." "Yes," replied the Justice, "proceed with your duty; I am ready. An officer should always do his duty." The sheriff stated to him that he had a warrant, duly executed and authenticated, and asked him if he should read it. "I will waive that, Mr. Sheriff," replied the Justice. The sheriff then handed him the warrant, which he read, folded it up and handed it back, saying pleasantly: "I recognize your authority, sir, and submit to the arrest; I am, sir, in your custody."

Meanwhile a petition had been prepared to be presented to Judge Sawyer for a writ of *habeas corpus*, returnable at once before the United States court. As soon as the arrest was made the petition was signed and presented to Judge Sawyer, who ordered the writ to issue returnable forthwith. In a very few minutes U.S. Marshal Franks served the writ on the sheriff.<sup>53</sup>

While the proceedings looking to the issue of the writ were going on, Justice Field had seated himself, and invited the sheriff to be seated. The latter complied with the invitation, and began to say something in regard to the unpleasant duty which had devolved upon him, but Justice Field promptly replied: "Not so, not so; you are but doing your plain duty, and I mine in submitting to arrest. It is the first duty of judges to obey the law."

As soon as the *habeas corpus* writ had been served, the sheriff said he was ready to go into the court. "Let me walk with you," said Justice Field, as they arose, and took the

sheriff's arm. In that way they entered the court-room. Justice Field seated himself in one of the chairs usually occupied by jurors. Time was given to the sheriff to make a formal return to the writ, and in a few minutes he formally presented it. The petition of Judge Field for the writ set forth his official character, and the duties imposed upon him by law, and alleged that he had been illegally arrested, while he was in the discharge of those duties, and that his illegal detention interfered with and prevented him from discharging them.

Then followed a statement of the facts, showing the arrest and detention to be illegal. This statement embraced the principal facts connected with the contempt proceedings in 1888, and the threats then and thereafter made by the Terrys of violence upon Justice Field; the precautions taken in consequence thereof by the Department of Justice for his protection from violence at their hands, and the murderous assault made upon him, and his defense by Deputy Marshal Neagle, resulting in the death of Terry, and that he, the petitioner, in no manner defended or protected himself, and gave no directions to the deputy marshal, and that he was not armed with any weapon. The petition then states: "That under the circumstances detailed, the said Sarah Althea Terry, as your petitioner is informed and believes, and upon such information and belief alleges, falsely and maliciously swore out the warrant of arrest hereinbefore set out against your petitioner, without any further basis for the charge of murder than the facts hereinbefore detailed, and that the warrant aforesaid was issued by such justice of the peace, without any just or probable cause therefore.\*\*\* And your petitioner further represents that the charge against him, and the warrant of arrest in the hands of said sheriff, are founded upon the sole affidavit of Mrs. Sarah Althea Terry, who was not present and did not see the shooting which caused the death of said David S. Terry."

In order to show the little reliance to be placed in the oath of Mrs. Terry, the petition stated:



"That in a suit brought by William Sharon, now deceased, against her before her marriage to the said Terry, it was proved and held by the Circuit Court of the United States that she had committed the forgery of the document produced in that case, and had attempted to support it by perjury and subornation of perjury, and had also been guilty of acts and conduct showing herself to be an abandoned woman, without veracity.\*\*\*"

"Your petitioner further represents that the abandoned character of the said Sarah Althea Terry, and the fact that she was found guilty of perjury and forgery in the case above mentioned by the said Circuit Court, and the fact of the revengeful malice entertained toward your petitioner by said Sarah Althea Terry, are notorious in the State of California, and are notorious in the city of Stockton, and as your petitioner believes are well known to the district attorney of the said county of San Joaquin, and also to the said justice of the peace who issued the said warrant; and your petitioner further alleges that had either of the said officers taken any pains whatever to ascertain the truth in the case, he would have ascertained and known that there was not the slightest pretext or foundation for any such charge as was made, and also that the affidavit of the said Sarah Althea Terry was not entitled to the slightest consideration whatever.

"Your petitioner further states that it is to him incomprehensible how any man, acting in a consideration of duty, could have listened one moment to charges from such a source, and without having sought some confirmation from disinterested witnesses; and your petitioner believes and charges that the whole object of

the proceeding is to subject your petitioner to the humiliation of arrest and confinement at Stockton, when the said Sarah Althea Terry may be able, by the aid of partisans of hers, to carry out her long continued and repeated threats of personal violence upon your petitioner, and to prevent your petitioner from discharging the duties of his office in cases pending against her in the federal court at San Francisco."

The sheriff's return was as follows:

"Return of sheriff of San Joaquin county, Cala., County of San Joaquin, State of California:

"SHERIFF'S OFFICE.

*"To the Honorable Circuit Court of the United States for the Northern District of California:*

"I hereby certify and return that before the coming to me of the heretofore annexed writ of *habeas corpus*, the said Stephen J. Field was committed to my custody, and is detained by me by virtue of a warrant issued out of the justice's court of Stockton township, State of California, county of San Joaquin, and by the endorsement made upon said warrant. Copy of said warrant and endorsement is annexed hereto, and made a part of this return. Nevertheless, I have the body of the said Stephen J. Field before the honorable court, as I am in the said writ commanded.

"August 16, 1889.

"THOMAS CUNNINGHAM,<sup>54</sup>

*"Sheriff, San Joaquin Co., California."*

In order to give the petitioner time to traverse the return if he thought it expedient to do so,<sup>55</sup> and to give him and the State time to produce witnesses, the further hearing upon the return was adjourned until the following



Thursday morning, the 22d, and the petitioner was released on his recognizance with a bond fixed at \$5,000.

On the same day a petition on the part of Neagle was presented to Judge Sawyer asking that a writ of *habeas corpus* issue in his behalf to Sheriff Cunningham. The petition was granted at once, and served upon the sheriff immediately after the service of the writ issued on behalf of Justice Field. Early on the morning of Saturday, August 17, Neagle was brought from Stockton by the sheriff at 4.30 A. M. District Attorney White and Mrs. Terry's lawyer, Maguire, were duly notified of this movement and were passengers on the same train. At 10.30 Sheriff Cunningham appeared in the Circuit Court with Neagle to respond to the writ. He returned that he held Neagle in custody under a warrant issued by a justice of the peace of that county, a copy of which he produced; and also a copy of the affidavit of Sarah Althea Terry upon which the warrant was issued. A traverse to that return was then filed, presenting various grounds why the petitioner should not be held, the most important of which were that an officer of the United States, specially charged with a particular duty, that of protecting one of the justices of the Supreme Court of the United States whilst engaged in the performance of his duty, could not, for an act constituting the very performance of that duty, be taken from the further discharge of his duty and imprisoned by the State authorities, and that when an officer of the United States in the discharge of his duties is charged with an offense consisting in the performance of those duties, and is sought to be arrested, and taken from the further performance of them, he can be brought before the tribunals of the nation of which he is an officer, and the fact then inquired into. The attorney-general of the State<sup>56</sup> appeared with the district attorney of San Joaquin county, and contended that the offense of which the petitioner was charged could only be inquired into before the tribunals of the State.

#### Chapter XV. Judge Terry's Funeral—Refusal of the Supreme Court of California to Adjourn on the Occasion.

The funeral of Judge Terry occurred on Friday, the 16<sup>th</sup>. An unsuccessful attempt was made for a public demonstration. The fear entertained by some that eulogies of an incendiary character would be delivered was not realized. The funeral passed off without excitement. The rector being absent, the funeral service was read by a vestryman of the church.

On the day after Judge Terry's death the following proceedings occurred in the Supreme Court of the State:

Late, in the afternoon, just after the counsel in a certain action had concluded their argument, and before the next cause on the calendar was called, James L. Crittenden, Esq.,<sup>57</sup> who was accompanied by W. T. Baggett, Esq.,<sup>58</sup> arose to address the court. He said: "Your honors, it has become my painful and sad duty to formally announce to the court the death of a former chief justice" —

Chief Justice Beatty:<sup>59</sup> "Mr. Crittenden, I think that is a matter which should be postponed until the court has had a consultation about it."

The court then, without leaving the bench, held a whispered consultation. Mr. Crittenden then went on to say: "I was doing this at the request of several friends of the deceased. It has been customary for the court to take formal action prior to the funeral. In this instance, I understand the funeral is to take place to-morrow."

Chief Justice Beatty: "Mr. Crittenden, the members of the court wish to consult with each other on this matter, and you had better postpone your motion of formal announcement until to-morrow morning."

Mr. Crittenden and Mr. Baggett then withdrew from the court-room.

On the following day, in the presence of a large assembly, including an unusually large

attendance of attorneys, Mr. Crittenden renewed his motion. He said:

"If the court please, I desire to renew the matter which I began to present last evening. As a friend—a personal friend—of the late Judge Terry, I should deem myself very cold, indeed, and very far from discharging the duty which is imposed upon that relation, if I did not present the matter which I propose to present to this bench this morning. I have known the gentleman to whom I have reference for over thirty years, and I desire simply now, in stating that I make this motion, to say that the friendship of so many years, and the acquaintance and intimacy existing between that gentleman and his family and myself for so long a period, require that I should at this time move this court, as a court, out of recollection for the memory of the man who presided in the Supreme Court of this State for so many years with honor, ability, character, and integrity, and, therefore, I ask this court, out of respect for his memory, to adjourn during the day on which he is to be buried, which is to-day."

Chief Justice Beatty said:

"I regret very much that counsel should have persisted in making this formal announcement, after the intimation from the court. Upon full consultation we thought it would be better that it should not be done. The circumstances of Judge Terry's death are notorious, and under these circumstances this court had determined that it would be better to pass this matter in silence, and not to take any action upon it; and that is the order of the court."

The deceased had been a chief justice of the tribunal which, by its silence, thus emphasized its condemnation of the conduct by which

he had placed himself without the pale of its respect.<sup>60</sup>

#### Chapter XVI. Habeas Corpus Proceedings in Justice Field's Case.

On Thursday, August 22d, the hearing of the *habeas corpus* case of Justice Field commenced in the United States Circuit Court, under orders from the Attorney-General, to whom a report of the whole matter had been telegraphed. The United States district attorney appeared on behalf of Justice Field. In addition to him there also appeared as counsel for Justice Field, Hon. Richard T. Mesick, Saml. M. Wilson, Esq., and W. F. Herrin, Esq.<sup>61</sup> The formal return of the writ of *habeas corpus* had been made by the sheriff of San Joaquin county on the 16th. To that return Justice Field presented a traverse, which was in the following language, and was signed and sworn to by him:

"The petitioner, Stephen J. Field, traverses the return of the sheriff of San Joaquin county, State of California, made by him to the writ of *habeas corpus* by the circuit judge on the ninth circuit, and made returnable before the Circuit Court of said circuit, and avers:

"That he is a justice of the Supreme Court of the United States, allotted to the ninth judicial circuit, and is now and has been for several weeks in California, in attendance upon the Circuit Court of said circuit in the discharge of his judicial duties; and, further, that the said warrant of the justice of the peace, H. V. J. Swain, in Stockton, California, issued on the 14th day of August, 1889, under which the petitioner is held, was issued by said justice of the peace without reasonable or probable cause, upon the sole affidavit of one Sarah Althea Terry, who did not see the commission of the act which she charges to have been a murder,

and who is herself a woman of abandoned character, and utterly unworthy of belief respecting any matter whatever; and, further, that the said warrant was issued in the execution of a conspiracy, as your petitioner is informed, believes, and charges, between the said Sarah Althea Terry and the district attorney, White, and the said justice of the peace, H. V. J. Swain, and one E. L. Colnon, of said Stockton, to prevent by force and intimidation your petitioner from discharging the duties of his office hereafter, and to injure him in his person on account of the lawful discharge of the duties of his office heretofore, by taking him to Stockton, where he could be subjected to indignities and humiliation, and where they might compass his death.

"That the said conspiracy is a crime against the United States, under the laws thereof, and was to be executed by an abuse of the process of the State court, two of said conspirators being officers of the said county of San Joaquin, one the district attorney and the other a justice of the peace, the one to direct and the other to issue the warrant upon which your petitioner could be arrested.

"And the petitioner further avers that the issue of said writ of *habeas corpus* and the discharge of your petitioner thereunder were and are essential to defeat the execution of the said conspiracy.

"And your petitioner further avers that the accusation of crime against him, upon which said warrant was issued, is a malicious and malignant falsehood, for which there is not even a pretext; that he neither advised nor had any knowledge of the intention of any one to commit the act which resulted in the death of David S. Terry, and that he has not carried or

used any arm or weapon of any kind for nearly thirty years.

"All of which your petitioner is ready to establish by full and competent proof.

"Wherefore your petitioner prays that he may be discharged from said arrest and set at liberty.

"STEPHEN J. FIELD."

The facts alleged in this document were beyond dispute, and constituted an outrageous crime, and one for which the conspirators were liable to imprisonment for a term of six years, under section 5518 of the Revised Statutes of the United States. To this traverse the counsel for the sheriff filed a demurrer, on the ground that it did not appear by it that Justice Field was in custody for an act done or omitted in pursuance of any law of the United States, or of any order or process or decree of any court or judge thereof, and it did not appear that he was in custody in violation of the Constitution or any law or treaty of the United States. The case was thereupon submitted with leave to counsel to file briefs at any time before the 27th of August, to which time the further hearing was adjourned.

Before that hearing the Governor of the State addressed the following communication to the attorney-general:

"EXECUTIVE DEPARTMENT,

"STATE OF CALIFORNIA,

"SACRAMENTO, August 21, 1889.

"Hon. A. G. Johnston,

"Attorney-General, Sacramento.

"DEAR SIR: The arrest of Hon. Stephen J. Field, a justice of the Supreme Court of the United States, on the unsupported oath of a woman who, on the very day the oath was taken, and often before, threatened his life, will be a burning disgrace to the State unless disavowed. I therefore urge upon you the propriety of at once instructing the district attorney of San Joaquin county to dismiss



the unwarranted proceedings against him.

"The question of the jurisdiction of the state courts in the case of the deputy United States marshal, Neagle, is one for argument. The unprecedented indignity on Justice Field does not admit of argument.

"Yours truly,

"R. W. WATERMAN,<sup>62</sup>

"Governor."

This letter of Governor Waterman rang out like an alarm bell, warning the chief law officer of the State that a subordinate of his was prostituting its judicial machinery to enable a base woman to put a gross indignity upon a justice of the Supreme Court of the United States, whom she had just publicly threatened to kill, and also to aid her in accomplishing that purpose. The wretched proceeding had already brought upon its authors indignant denunciation and merciless ridicule from every part of the Union. The attorney-general responded to the call thus made upon him by instructing the district attorney to dismiss the charge against Justice Field, because no evidence existed to sustain it.

The rash young district attorney lost no time in extricating himself from the position in which the arrest of Justice Field had placed him. On the 26th of August, upon his motion, and the filing of the attorney-general's letter, the charge against Justice Field was dismissed by the justice of the peace who had issued the warrant against him.

The dismissal of this charge released him from the sheriff's claim to his custody, and the *habeas corpus* proceedings in his behalf fell to the ground. On the 27th, the day appointed for the further hearing, the sheriff announced that in compliance with the order of the magistrate he released Justice Field from custody, whereupon the case of *habeas corpus* was dismissed.

In making the order, Circuit Judge Sawyer severely animadverted on what he deemed the shameless proceeding at Stockton. He said:

"We are glad that the prosecution of Mr. Justice Field has been dismissed, founded, as it was, upon the sole, reckless, and as to him manifestly false affidavit of one whose relation to the matters leading to the tragedy, and whose animosity towards the courts and judges who have found it their duty to decide against her, and especially towards Mr. Justice Field, is a part of the judicial and notorious public history of the country.

"It was, under the circumstances, and upon the sole affidavit produced, especially after the coroner's inquest, so far as Mr. Justice Field is concerned, a shameless proceeding, and, as intimated by the Governor of the Commonwealth, if it had been further persevered in, would have been a lasting disgrace to the State.

"While a justice of the Supreme Court of the United States, like every other citizen, is amenable to the laws, he is not likely to commit so grave an offense as murder, and should he be so unfortunate as to be unavoidably involved in any way in a homicide, he could not afford to escape, if it were in his power to do so; and when the act is so publicly performed by another, as in this instance, and is observed by so many witnesses, the officers of the law should certainly have taken some little pains to ascertain the facts before proceeding to arrest so distinguished a dignitary, and to attempt to incarcerate him in prisons with felons, or to put him in a position to be further disgraced, and perhaps assaulted by one so violent as to be publicly reported, not only then but on numerous previous occasions, to have threatened his life.

"We are extremely gratified to find that, through the action of the chief magistrate, and the attorney-general, a higher officer of the law,

we shall be spared the necessity of further inquiring as to the extent of the remedy afforded the distinguished petitioner, by the Constitution and laws of the United States, or of enforcing such remedies as exist, and that the stigma cast upon the State of California by this hasty and, to call it by no harsher term, ill-advised arrest will not be intensified by further prosecution."

Thus ended this most remarkable attempt upon the liberty of a United States Supreme Court Justice, under color of State authority, the execution of which would again have placed his life in great peril.

The grotesque feature of the performance was aptly presented by the following imaginary dialogue which appeared in an Eastern paper:

Newsboy: "Man tried to kill a judge in California!"

Customer: "What was done about it?"

Newsboy: "Oh! They arrested the judge."

The illegality of Justice Field's arrest will be perfectly evident to whoever will read sections 811, 812, and 813 of the Penal Code of California. These sections provide that no warrant can be issued by a magistrate until he has examined, on oath, the informant, taken depositions setting forth the facts tending to establish the commission of the offense and the guilt of the accused, and himself been satisfied by these depositions that there is reasonable ground that the person accused has committed the offense. None of these requirements had been met in Justice Field's case.

It needs no lawyer to understand that a magistrate violates the plain letter as well as the spirit of these provisions of law when he issues a warrant without first having before him some evidence of the probable, or at least the possible, guilt of the accused. If this were otherwise, private malice could temporarily sit in judgment upon the object of its hatred, however blameless, and be rewarded for perjury

by being allowed the use of our jails as places in which to satisfy its vengeance. Such a view of the law made Sarah Althea the magistrate at Stockton on the 14th of August, and Justice Swain her obsequious amanuensis. Such a view of the law would enable any convict who had just served a term in the penitentiary to treat himself to the luxury of dragging to jail the judge who sentenced him, and keeping him there without bail as long as the magistrate acting for him could be induced to delay the examination.

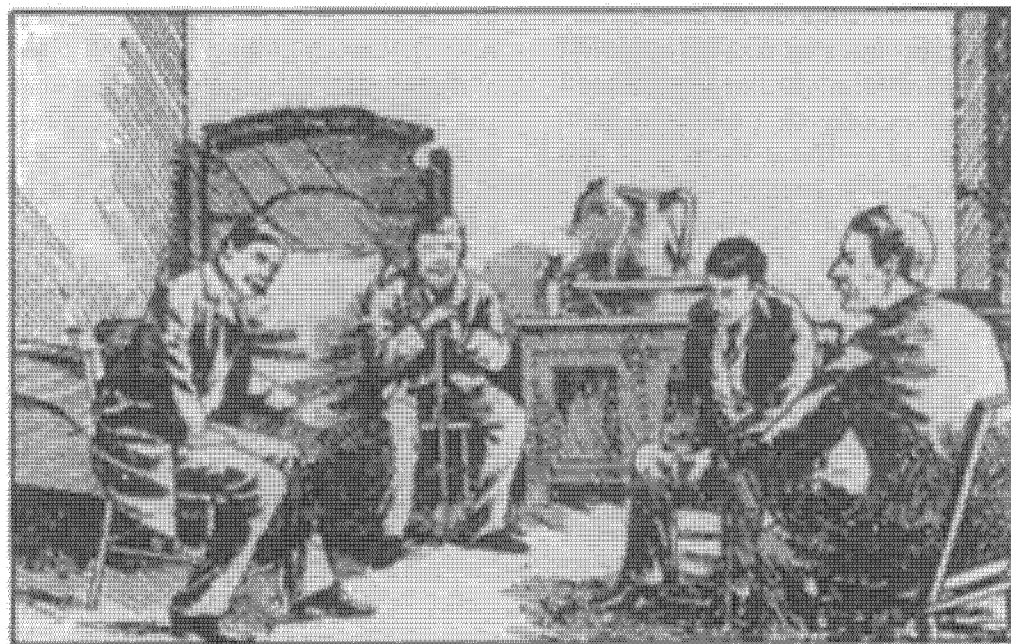
The arrest of Justice Field was an attempt to kidnap him for a foul purpose, and if the United States circuit judge had not released him he would have been the victim of as arbitrary and tyrannical treatment as is ever meted out in Russia to the most dangerous of nihilists, to punish him for having narrowly escaped assassination by no act or effort of his own.

#### Chapter XVII. Habeas Corpus Proceedings in Neagle's Case.

This narrative would not be complete without a statement of the proceedings in the United States Circuit Court, and in the United States Supreme Court on appeal, in the *habeas corpus* proceedings in the case of Neagle, the deputy marshal, whose courageous devotion to his official duties had saved the life of Justice Field at the expense of that of his would-be assassin. We have already seen that Neagle, being in the custody of the sheriff of San Joaquin county, upon a charge of murder in the shooting of Judge Terry, had presented a petition to the United States Circuit Court for a writ of *habeas corpus* to the end that he might thereby be restored to his liberty.

A writ was issued, and upon its return, August 17th, the sheriff of San Joaquin county produced Neagle and a copy of the warrant under which he held him in custody, issued by the justice of the peace of that county, and also of the affidavit of Sarah Althea Terry, upon which the warrant was granted. Neagle being

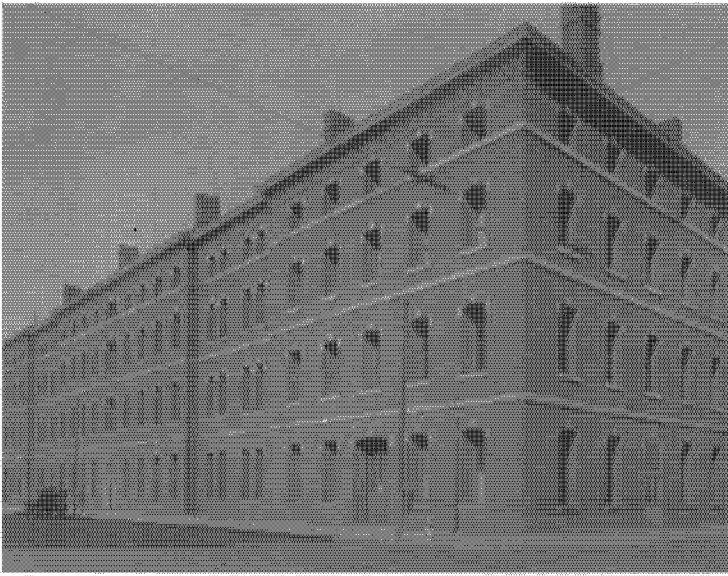




This 1889 illustration shows Neagle in his cell receiving visitors. The U.S. attorney of San Francisco appealed to the circuit court for Neagle's release.

desirous of traversing the return of the sheriff, further proceedings were adjourned until the 22d of the month, and in the meantime he was placed in the custody of the United States marshal for the district. On the 22d a traverse of the return was filed by him stating the particulars of the homicide with which he was charged as narrated above, and averring that he was at the time of its commission a deputy marshal of the United States for the district, acting under the orders of his superior, and under the directions of the Attorney-General of the United States in protecting the Associate Justice, whilst in the discharge of his duties, from the threatened assault and violence of Terry, who had declared that on meeting the Justice he would insult, assault, and kill him, and that the homicide with which the petitioner is charged was committed in resisting the attempted execution of these threats in the belief that Terry intended at the time to kill the Justice, and that but for such homicide he would have succeeded in his attempt. These particulars are stated with great fullness of detail. To this traverse, which was

afterwards amended, but not in any material respect, a demurrer was interposed for the sheriff by the district attorney of San Joaquin county. Its material point was that it did not appear from the traverse that Neagle was in the custody of the sheriff for an act done or omitted in pursuance of any law of the United States, or any order, process, or decree of any court or judge thereof, or in violation of the Constitution or a treaty of the United States. The court then considered whether it should hear testimony as to the facts of the case, or proceed with the argument of the demurrer to the traverse. It decided to take the testimony, and to hear counsel when the whole case was before it, on the merits as well as on the question of jurisdiction. The testimony was then taken. It occupied several days, and brought out strongly the facts which have been already narrated, and need not here be repeated. When completed, the question of the jurisdiction of the Circuit Court of the United States to interfere in the matter was elaborately argued by the attorney-general of the State, and special



The U.S Circuit Court convened in the Appraiser's Building at Sansome and Washington Streets in San Francisco. Inside is lodged the federal courtroom where Field presided over Terry's divorce case, where Neagle disarmed the Terrys, and where Neagle's *habeus corpus* hearing took place.

counsel who appeared with the district attorney of San Joaquin county on behalf of the State, they contending that the offense, with which the petitioner was charged, could only be inquired into before a tribunal of the State.<sup>63</sup>

Mr. Carey, United States district attorney, and Messrs. Herrin, Mesick, and Wilson, special counsel, appeared on behalf of the petitioner, and contended for the jurisdiction, and for the discharge of the petitioner upon the facts of the case. They did not pretend that any person in the State, be he high or low, might not be tried by the local authorities for a crime committed against the State, but they did contend that when the alleged crime consisted in an act which was claimed to have been done in the performance of a duty devolving upon him by a law of the United States, it was within the competency of their courts to inquire, in the first instance, whether that act thus done was in the performance of a duty devolving upon him; and if it was, that the alleged offender had not committed a crime against the State, and was entitled to be discharged. Their arguments were marked by great ability and learning, and their perusal would be interesting and instructive, but space will not allow me to give even a synopsis of them.

The court, in deciding the case, went into a full and elaborate consideration, not only of its jurisdiction, but of every objection on the merits presented by counsel on behalf of the State. Only a brief outline can be given.

The court held that it was within the competency of the President, and of the Attorney-General as the head of the Department of Justice, representing him, to direct that measures be taken for the protection of officers of the Government whilst in the discharge of their duties, and that it was specially appropriate that such protection should be given to the justices of the Supreme Court of the United States, whilst thus engaged in their respective circuits, and in passing to and from them; that the Attorney-General, representing the President, was fully justified in giving orders to the marshal of the California district to appoint a deputy to look specially to the protection of Justices Field and Sawyer from assault and violence threatened by Terry and his wife; and that the deputy marshal, acting under instructions for their protection, was justified in any measures that were necessary for that purpose, even to taking the life of the assailant.

The court recognized that the Government of the United States exercised full jurisdiction,

within the sphere of its powers, over the whole territory of the country, and that when any conflict arose between the State and the General Government in the administration of their respective powers, the authority of the United States must prevail, for the Constitution declares that it and the laws of the United States in pursuance thereof "shall be the supreme law of the land, and that the judges in every State shall be bound thereby, anything in the Constitution and laws of any State to the contrary notwithstanding." The court quoted the language of the Supreme Court in *Tennessee v. Davis* (100 U.S. 257, 263), that "It [the General Government] can act only through its officers and agents, and they must act within the States. If, when thus acting and within the scope of their authority, those officers can be arrested and brought to trial in a State court, for an alleged offense against the law of the State, yet warranted by the Federal authority they possess, and if the General Government is powerless to interfere at once for their protection—if their protection must be left to the action of the State court—the operations of the General Government may, at any time, be arrested at the will of one of its members. The legislation of a State may be unfriendly. It may affix penalties to acts done under the immediate direction of the National Government and in obedience to its laws. It may deny the authority conferred by those laws. The State court may administer not only the laws of the State, but equally Federal law, in such a manner as to paralyze the operations of the Government. And even if, after trial and final judgment in the State court, a case can be brought into the United States court for review, the officer is withdrawn from the discharge of his duty during the pendency of the prosecution, and the exercise of acknowledged Federal power arrested. We do not think such an element of weakness is to be found in the Constitution. The United States is a government with authority extending over the whole territory of the Union, acting upon the States and upon the people of the States. While it is limited in the number of its powers,

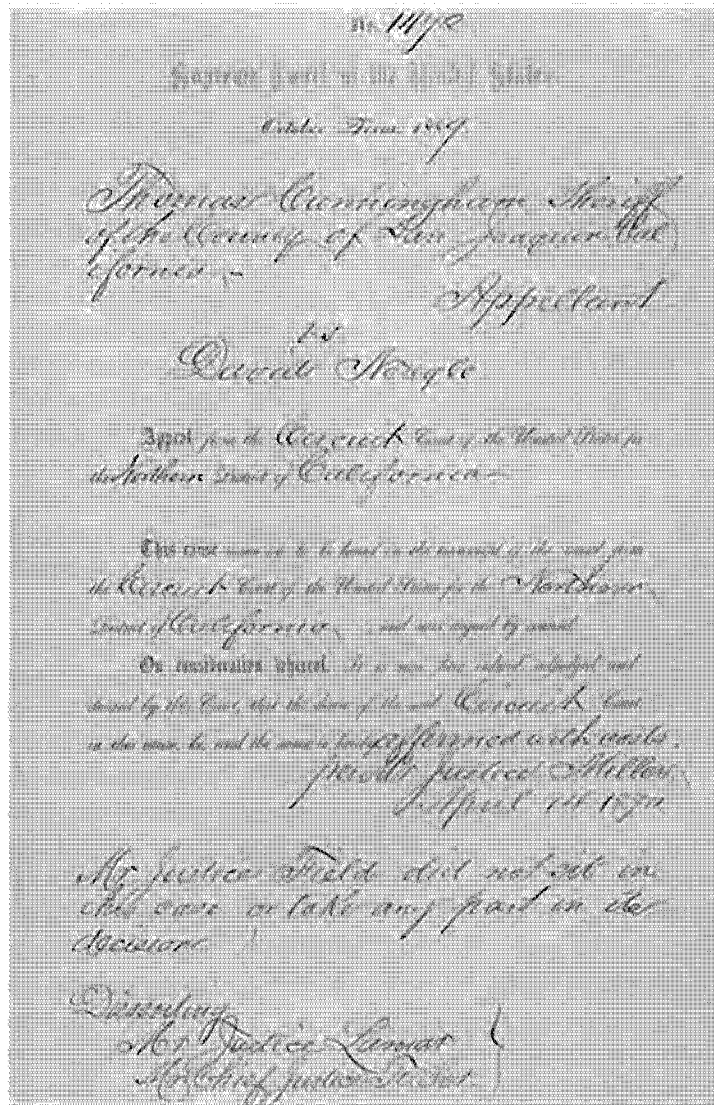
so far as its sovereignty extends, it is supreme. No State government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it." To this strong language the Circuit Court added:

"The very idea of a government composed of executive, legislative, and judicial departments necessarily comprehends the power to do all things, through its appropriate officers and agents, within the scope of its general governmental purposes and powers, requisite to preserve its existence, protect it and its ministers, and give it complete efficiency in all its parts. It necessarily and inherently includes power in its executive department to enforce the laws, keep the national peace with regard to its officers while in the line of their duty, and protect by its all-powerful arm all the other departments and the officers and instrumentalities necessary to their efficiency while engaged in the discharge of their duties."

In language attributed to Mr. ex-Secretary Bayard,<sup>64</sup> used with reference to this very case, which we quote, not as a controlling judicial authority, but for its intrinsic, sound, common sense, "The robust and essential principle must be recognized and proclaimed, that the inherent powers of every government which is sufficient to authorize and enforce the judgment of its courts are, equally, and at all times, and in all places, sufficient to protect the individual judge who, fearlessly and conscientiously in the discharge of his duty, pronounces those judgments."

In reference to the duties of the President and the powers of the Attorney-General under him, and of the latter's control of the marshals of the United States, the court observed that

When the circuit granted the motion for Neagle's release, the state of California appealed to the U.S. Supreme Court. Pictured is the Court's decision to uphold the lower court's decision to release Neagle. The decision became a landmark because it greatly expanded executive authority by permitting the President to take necessary law enforcement actions, even in the absence of specific laws.



the duties of the President are prescribed in terse and comprehensive language in section 3 of article II of the Constitution, which declares that "he shall take care that the laws be faithfully executed;" that this gives him all the authority necessary to accomplish the purposes intended—all the authority necessarily inherent in the office, not otherwise limited, and that Congress, added the court, in pursuance of powers vested in it, has provided for seven departments, as subordinate to the President, to aid him in performing his executive functions. Section 346, R. S., provides that "there

shall be at the seat of government an executive department to be known as the Department of Justice, and an Attorney-General, who shall be the head thereof." He thus has the general supervision of the executive branch of the national judiciary, and section 362 provides, as a portion of his powers and duties, that he "shall exercise general superintendence and direction over the attorneys and marshals of all the districts in the United States and the Territories as to the manner of discharging their respective duties; and the several district attorneys and marshals are required to report to the

Attorney-General an account of their official proceedings, and of the state and condition of their respective offices, in such time and manner as the Attorney-General may direct." Section 788, R. S., provides that "the marshals and their deputies shall have, in each State, the same powers in executing the laws of the United States as the sheriffs and their deputies in such State may have, by law, in executing the laws thereof." By section 817 of the penal code of California the sheriff is a "peace officer," and by section 4176 of the political code he is "to preserve the peace" and "prevent and suppress breaches of the peace." The marshal is, therefore, under the provisions of the statute cited, "a peace officer," so far as keeping the peace in any matter wherein the powers of the United States are concerned, and as to such matters he has all the powers of the sheriff, as peace officer under the laws of the State. He is, in such matters, "to preserve the peace" and "prevent and suppress breaches of the peace." An assault upon or an assassination of a judge of a United States court while engaged in any matter pertaining to his official duties, on account or by reason of his judicial decisions, or action in performing his official duties, is a breach of the peace, affecting the authority and interests of the United States, and within the jurisdiction and power of the marshal or his deputies to prevent as a peace officer of the National Government. Such an assault is not merely an assault upon the person of the judge as a man; it is an assault upon the national judiciary, which he represents, and through it an assault upon the authority of the nation itself. It is, necessarily, a breach of the national peace. As a national peace officer, under the conditions indicated, it is the duty of the marshal and his deputies to prevent a breach of the national peace by an assault upon the authority of the United States, in the person of a judge of its highest court, while in the discharge of his duty. If this be not so, in the language of the Supreme Court, "Why do we have marshals at all?" What useful functions can they perform in the economy of the National Government?

Section 787 of the Revised Statutes also declares that "It shall be the duty of the marshal of each district to attend the District and Circuit Courts when sitting therein, and to execute throughout the district all lawful precepts directed to him and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty." There is no more authority specifically conferred upon the marshal by this section to protect the judge from assassination in open court, without a specific order or command, than there is to protect him out of court, when on the way from one court to another in the discharge of his official duties. The marshals are in daily attendance upon the judges, and performing official duties in their chambers. Yet no statute specifically points out those duties or requires their performance. Indeed, no such places as chambers for the circuit judges or circuit justices are mentioned at all in the statutes. Yet the marshal is as clearly authorized to protect the judges there as in the courtroom. All business done out of court by the judge is called chamber business. But it is not necessary to be done in what is usually called chambers. Chamber business may be done, and often is done, on the street, in the judge's own house, at the hotel where he stops, when absent from home, or it may be done in transitu, on the cars in going from one place to another within the proper jurisdiction to hold court. Mr. Justice Field could, as well, and as authoritatively, issue a temporary injunction, grant a writ of *habeas corpus*, an order to show cause, or do any other chamber business for the district in the dining-room at Lathrop, as at his chambers in San Francisco, or in the courtroom. The chambers of the judge, where chambers are provided, are not an element of jurisdiction, but are a convenience to the judge, and to suitors—places where the judge at proper times can be readily found, and the business conveniently transacted.

But inasmuch as the Revised Statutes of the United States (sec. 753) declare that the writ of *habeas corpus* shall not extend to "a prisoner in jail unless where he is in custody—



for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof, or in custody in violation of the Constitution or of a law or treaty of the United States," it was urged in the argument by counsel for the State that there is no statute which specifically makes it the duty of a marshal or deputy marshal to protect the judges of the United States whilst out of the court-room, travelling from one point to another in their circuits, on official business, from the violence of litigants who have become offended at the adverse decisions made by them in the performance of their judicial duties, and that such officers are not within the provisions of that section. To this the court replied that the language of the section is, "an act done in pursuance of a law of the United States"—not in pursuance of a statute of the United States; and that the statutes do not present in express terms all the law of the United States; that their incidents and implications are as much a part of the law as their express provisions; and that when they prescribe duties providing for the accomplishment of certain designated objects, or confer authority in general terms, they carry with them all the powers essential to effect the ends designed. As said by Chief Justice Marshall in *Osborn v. Bank of the United States* (9 Wheaton, 865-866),<sup>65</sup> "It is not unusual for a legislative act to involve consequences which are not expressed. An officer, for example, is ordered to arrest an individual. It is not necessary, nor is it usual, to say that he shall not be punished for obeying this order. His security is implied in the order itself. It is no unusual thing for an act of Congress to imply, without expressing, this very exemption from State control, which is said to be so objectionable in this instance. The collectors of the revenue, the carriers of the mail, the mint establishment, and all those institutions which are public in their nature, are examples in point. It has never been doubted that all who are employed in them are protected while in the line of duty; and yet this protection is not expressed in any act of Congress. It

is incidental to, and is implied in, the several acts by which these institutions are created; and is secured to the individuals employed in them by the judicial power alone—that is, the judicial power is the instrument employed by the Government in administering this security."

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NOTE.—I find the following apt illustrations of this doctrine in a journal of the day:

If a military or naval officer of the United States, in the necessary suppression of a mutiny or enforcement of obedience, should wound or take the life of a subordinate, would it be contended that, if arrested for that act by the State authority, he could not be released on *habeas corpus*, because no statute expressly authorized the performance of the act? If the commander of a revenue cutter should be directed to pursue and retake a vessel which, after seizure, had escaped from the custody of the law, and the officer in the performance of that duty, and when necessary to overcome resistance, should injure or kill a member of the crew of the vessel he was ordered to recapture, and if for that act he should be arrested and accused of crime under the State authority, will any sensible person maintain that the provisions of the *habeas corpus* act could not be invoked for his release, notwithstanding that no statute could be shown which directly authorized the act for which he was arrested? If by command of the President a company of troops were marched into this city to protect the subtreasury from threatened pillage, and in so doing life were taken, would not the act of the officer who commanded the troops be an act done in pursuance of the laws of the United States, and in the lawful exercise of its authority? Could he be imprisoned and tried before a State jury on the charge of murder, and the courts of the United States be powerless to inquire into the facts on *habeas corpus* and to discharge him if found to have acted in the performance of his duty? Can the authority of the United States for the protection of their officers be less than their authority to protect their property?

There appears to be but one rational answer to these questions.

In all these cases the authority vested in the officer to suppress a mutiny, or to overtake and capture an escaped vessel, or to protect the subtreasury from threatened pillage, carries with it power to do all things necessary to accomplish the object desired, even the killing of the offending party. The law conferring the authority thus extended to the officer in these cases, is in the sense of the *habeas corpus* act, a law of the United States to do all things necessary for the execution of that authority.

Upon this the Circuit Court observed:

"If the officers referred to in the preceding passage are to be protected while in the line of their duty, without any special law or statute requiring such protection, the judges of the courts, the principal officers in a department of the Government second to no other, are also to be protected, and their executive subordinates—the marshals and their deputies—shielded from harm by the national laws while honestly engaged in protecting the heads of the courts from assassination."

To the position that the preservation of the peace of the State is devolved solely upon the officers of the State, and not in any respect upon the marshals of the United States, the court replied:

This position is already answered by what has been said. But it is undoubtedly true that it was the imperative duty of the State to preserve the public peace and amply protect the life of Justice Field, *but it did not do it*, and had the United States relied upon the State to keep the peace as to him—one of the justices of the highest court—in relation to matters concerning the performance of his official duties, they would have leaned upon a broken reed. The result of the efforts to obtain an officer from the State to assist in preserving the peace and protecting him at Lathrop was anything but successful. The officer of the State at Lathrop, instead of arresting the conspirator of the contemplated murderer, the wife of the deceased, arrested the officer of the United States, assigned by the Government to the special duty of protecting the justice against the very parties, while in the actual prosecution of duties assigned to him, without

warrant, thereby leaving his charge without the protection provided by the Government he was serving, at a time when such protection seemed most needed. And, besides, the use of the State police force beyond the limits of a county for the protection of Justice Field would have been impracticable, as the powers of the sheriff would have ended at its borders, and of other township and city peace officers at the boundaries of their respective townships and cities. Only a United States marshal or his deputy could have exercised these official functions throughout the judicial district, which embraces many counties. The only remedy suggested on the part of the State was to arrest the deceased and hold him to bail to keep the peace under section 706 of the Penal Code, the highest limit of the amount of bail being \$5,000. But although the threats are conceded to have been publicly known in the State, no State officer took any means to provide this flimsy safeguard. And the execution of a bond in this amount to keep the peace would have had no effect in deterring the intended assailants from the commission of the offense contemplated, when the penalties of the law would not deter them.

As to the deliberation and wisdom of Neagle's conduct under the circumstances, the court, after stating the established facts, concludes as follows:

"When the deceased left his seat, some thirty feet distant, walked stealthily down the passage in the rear of Justice Field and dealt the unsuspecting jurist two preliminary blows, doubtless by way of reminding him that the time for vengeance had at last come, Justice Field was already

at the traditional 'wall' of the law. He was sitting quietly at a table, back to the assailant, eating his breakfast, the side opposite being occupied by other passengers, some of whom were women, similarly engaged. When, in a dazed condition, he awoke to the reality of the situation and saw the stalwart form of the deceased with arm drawn back for a final mortal blow, there was no time to get under or over the table, had the law, under any circumstances, required such an act for his justification. Neagle could not seek a 'wall' to justify his acts without abandoning his charge to certain death. When, therefore, he sprang to his feet and cried, 'Stop! I am an officer,' and saw the powerful arm of the deceased drawn back for the final deadly stroke instantly change its direction to his left breast, apparently seeking his favorite weapon, the knife, and at the same time heard the half-suppressed, disappointed growl of recognition of the man who, with the aid of half a dozen others, had finally succeeded in disarming him of his knife at the court-room a year before, the supreme moment had come, or, at least, with abundant reason he thought so, and fired the fatal shot. The testimony all concurs in showing this to be the state of facts, and the almost universal consensus of public opinion of the United States seems to justify the act. On that occasion a second, or two seconds, signified, at least, two valuable lives, and a reasonable degree of prudence would justify a shot one or two seconds too soon rather than a fraction of a second too late. Upon our minds the evidence leaves no doubt whatever that the homicide was fully justified by the circumstances. Neagle on the scene of action, facing the party making a

murderous assault, knowing by personal experience his physical powers and his desperate character, and by general reputation his life-long habit of carrying arms, his readiness to use them, and his angry, murderous threats, and seeing his demoniac looks, his stealthy assault upon Justice Field from behind, and, remembering the sacred trust committed to his charge—Neagle, in these trying circumstances, was the party to determine when the supreme moment for action had come, and if he, honestly, acted with reasonable judgment and discretion, the law justifies him, even if he erred. But who will have the courage to stand up in the presence of the facts developed by the testimony in this case, and say that he fired the smallest fraction of a second too soon?

"In our judgment he acted, under the trying circumstances surrounding him, in good faith and with consummate courage, judgment, and discretion. The homicide was, in our opinion, clearly justifiable in law, and in the forum of sound, practical common sense commendable. This being so, and the act having been 'done \*\*\* in pursuance of a law of the United States,' as we have already seen, it cannot be an offense against, and he is not amenable to, the laws of the State."

The petitioner was accordingly discharged from arrest.<sup>66</sup>

### Chapter XVIII. Expressions of Public Opinion.

This case and all the attendant circumstances—the attempted assassination of Justice Field by his former associate, Terry; the defeat of this murderous attempt by Deputy

Marshal Neagle; the arrest of Justice Field and the deputy marshal upon the charge of murder, and their discharge—created very great interest throughout the United States. They were the subject of articles in all the leading journals of the country; and numerous telegrams and letters of congratulation were sent to the Justice on his escape from the murderous attempt. Satisfaction was very generally expressed at the fate which Terry met, and much praise was given to the courageous conduct of Neagle and at the bearing of Justice Field under the trying circumstances.

A few of the letters received by him are here given, and citations are made from some of the periodicals, which indicated the general sentiment of the country.

Letter from Hon. T. F. Bayard, ex-Secretary of State:

WILMINGTON, DELAWARE, *August 18, 1889.*

MY DEAR BROTHER FIELD:

I was absent from home when I first saw in the newspapers an account of the infamous assault of the Terrys—husband and wife—upon you, and the prompt and courageous action of Deputy Marshal Neagle that happily frustrated the iniquitous plot against your life.

Accept, my dear friend, my fervent congratulations on your escape from the designs of this madman and of the shameless creature who was his wife and accomplice.

For the sake of our country and its reputation in the eyes of Christendom, I am indeed grateful that this vile stab at its judicial power, as vested in your personality, miscarried, and that by good fortune the insane malice of a disappointed suitor should have been thwarted.

Your dignified courage in this tragical episode is most impressive, and, while it endears you the more to

those who love you, will wring even from your foes a tribute of respect and admiration.

Passing over the arguments that may be wrought out of the verbiage of our dual constitution of government, the robust and essential principle *must* be recognized and proclaimed—that the *inherent powers* of every government which are sufficient to authorize and enforce the judgments of its courts are equally and at all times and in all places sufficient to protect the individual judge who fearlessly and conscientiously, in the discharge of his duty, pronounces those judgments.

The case, my dear friend, is not yours alone; it is equally mine and that of every other American. A principle so vital to society, to the body politic, was never more dangerously and wickedly assailed than by the assault of Terry and his wife upon you for your just and honorable performance of your duty as a magistrate.

I can well comprehend the shock to which this occurrence has subjected you, and I wish I could be by your side to give you assurance orally (if any were needed) of that absolute sympathy and support to which you are so fully entitled. But these lines will perhaps suffice to make you feel the affectionate and steadfast regard I entertain for you, and which this terrible event has but increased.

I cannot forbear an expression of the hope that the arguments of jurisdiction and other points which must attend the litigation and settlement of this tragedy may not be abated or warped to meet any temporary local or partisan demand.

The voice of Justice can never speak in clearer or more divine accents than when heard in vindication

and honor of her own faithful ministers.

Ever, my dear Judge Field,  
Sincerely yours,  
T. F. BAYARD.

The Hon. STEPHEN J. FIELD,  
*San Francisco Cal.*

Letter from Hon. E. J. Phelps, former Minister to England:

BURLINGTON, VERMONT, *August 17, 1889.*

MY DEAR JUDGE FIELD:

Pray let me congratulate you most heartily on the Terry transaction. Nothing that has ever occurred in the administration of justice has given me more satisfaction than this prompt, righteous, and effectual vindication through an officer of the court of the sanctity of the judiciary when in the discharge of its duty. What your marshal did was exactly the right thing, at the right time, and in the right way. I shall be most happy to join in a suitable testimonial to him, if our profession will, as they ought, concur in presenting it.\*\*\*

Your own coolness and carriage in confronting this danger in the discharge of your duty must be universally admired, and will shed an additional lustre on a judicial career which was distinguished enough without it.

You have escaped a great peril—acquired a fresh distinction—and vindicated most properly the dignity of your high station.

I am glad to perceive that this is the general opinion.

Anticipating the pleasure of seeing you in Washington next term,

I am always, dear sir,  
Most sincerely yours,  
E. J. PHELPS

Letter from Hon. George F. Hoar, Senator from Massachusetts:

WORCESTER, *August 16, 1889.*

MY DEAR JUDGE FIELD:

I think I ought to tell you, at this time, how high you stand in the confidence and reverence of all good men here, how deeply they were shocked by this outrage attempted not so much on you as on the judicial office itself, and how entirely the prompt action of the officer is approved. I hope you may long be spared to the public service.

I am faithfully yours,  
GEO. F. HOAR.

Letter from Hon. J. Proctor Knott, for many years a Member of Congress from Kentucky and Chairman of the Judiciary Committee of the House of Representatives, and afterwards Governor of Kentucky:

LEBANON, KENTUCKY, *September 5, 1889.*

MY DEAR JUDGE:\*\*\*

I have had it in mind to write you from the moment I first heard of your fortunate escape from the fiendish assassination with which you were so imminently threatened, but I have, since the latter part of May, been suffering from a most distressing affection of the eyes which has rendered it extremely difficult, and frequently, for days together, quite impossible to do so. Even now, though much improved, I write in great pain, but I cannot get my consent to delay it longer on any account. You are to be congratulated, my dear friend, and you know that no one could possibly do so with more genuine, heartfelt sincerity than I do myself.\*\*\*

I had been troubled, ever since I saw you had gone to your circuit, with apprehensions that you would be assassinated, or at least subjected



to some gross outrage, and cannot express my admiration of the serene heroism with which you went to your post of duty, determined not to debase the dignity of your exalted position by wearing arms for your defense, notwithstanding you were fully conscious of the danger which menaced you. It didn't surprise me, however, for I knew the stuff you were made of had been tested before. But I was surprised and disgusted, too, that *you* should have been charged or even suspected of anything wrong in the matter. The magistrate who issued the warrant for your arrest may possibly have thought it his duty to do so, without looking beyond the "railing accusation" of a baffled and infuriated murderess, which all the world instinctively knew to be false, yet I suppose there is not an intelligent man, woman, or child on the continent who does not consider in an infamous and unmitigated outrage, or who is not thoroughly satisfied that the brave fellow who defended you so opportunely was legally and morally justifiable in what he did. I have not been in a condition to *think* very coherently, much less to read anything in relation to the question of jurisdiction raised by the State authorities in the *habeas corpus* issued in your behalf by the U.S. Circuit Court, and it may be that, from the mere newspaper's reports that have reached me, I have been unable to fully apprehend the objections which are made to the courts hearing all the facts on the trial of the writ; but it occurs to me as a plain principle of common sense that the federal government should not only have the power, but that it is necessary to its own preservation, to protect its officers from being wantonly or maliciously interfered with, hindered

or obstructed in the lawful exercises of their official duties, not arbitrarily of course, but through its regularly constituted agencies, and according to the established principles of law; and where such obstruction consists in the forcible restraint of the officer's liberty, I see no reason why the federal judiciary should not inquire into it on *habeas corpus*, when it is alleged to be not only illegal but contrived for the very purpose of hindering the officer in the discharge of his official duties, and impairing the efficiency of the public service. It is true that in such an investigation a real or apparent conflict between State and federal authority may be presented, which a due regard to the respective rights of the two governments would require to be considered with the utmost caution, such caution, at least, as it is fair to presume an intelligent court would always be careful to exercise, in view of the absolute importance of maintaining as far as possible the strictest harmony between the two jurisdictions. Yet those rights are determined and by fixed legal principles, which it would be impossible for a court to apply in any case without a competent knowledge of the *facts* upon which their application in the particular case might depend. For instance, if your court should issue a writ of *habeas corpus* for the relief of a federal officer upon the averments in his petition that he was forcibly and illegally restrained of his liberty for the purpose of preventing him from performing his official duties, and it should appear in the return to the writ that the person detaining the prisoner was a ministerial officer of the State government authorized by its laws to execute its process, and that he held the petitioner in custody by virtue of

a warrant of arrest in due form, issued by a competent magistrate, to answer for an offense against the State laws, I presume the court, in the absence of any further showing, would instantly remand the petitioner to the custody of the State authorities without regard to his official position or the nature of his public duties. But, on the other hand, suppose there should be a traverse of the return, averring that the warrant of the arrest, though apparently regular in all respects, was in truth but a fraudulent contrivance designed and employed for the sole purpose of hindering and obstructing the petitioner in the performance of his duties as an officer of the government of the United States; that the magistrate who issued it, knowingly and maliciously abused his authority for that purpose in pursuance of a conspiracy between himself and others, and not in good faith, and upon probable cause to bring the prisoner to justice for a crime against the State. How then? Here is an apparent conflict—not a *real* one—between the rights of the government of the United States and the government of the State. The one has a right to the service of its officer, and the right to prevent his being unlawfully interfered with or obstructed in the performance of his official duties; the other has the right to administer its laws for the punishment of crime through its own tribunals; but it must be observed that the former has no right to shield one of its officers from a valid prosecution for a violation of the laws of the latter not in conflict with the Constitution and laws of the United States, nor can it be claimed that the latter has any right to suffer its laws to be prostituted, and its authority fraudulently abused, in aid of a conspir-

acy to defeat or obstruct the functions of the former. Such an abuse of authority is not, and cannot be in any sense, a *bona fide* administration of State laws, but is itself a crime against them. What, then, would your court do? You would probably say: If it is true that this man is held without probable cause under a fraudulent warrant, issued in pursuance of a conspiracy to which the magistrate who issued it was a party, to give legal color to a malicious interference with his functions as a federal official, he is the victim of a double crime—a crime against the United States and a crime against the State—and it is not only our duty to vindicate his right to the free exercise of his official duties, but the right of the federal government to his services, and its right to protect him in the legal performance of the same. But if, on the other hand, he has raised a mere “false clamor”—if he is held in good faith upon a valid warrant to answer for a crime committed against the State, it is equally as obligatory upon us to uphold its authority, and maintain its right to vindicate its own laws through its own machinery. To determine between these two hypotheses we must know the *facts*. \*\*\* The same simple reasoning, it occurs to me, applies to Mr. Neagle’s case. Whether he acted in the line of his duty under the laws of the United States, as an officer of that government, is clearly a question within the jurisdiction of the federal judiciary. If he *did*, he cannot be held responsible to the State authority; if he did *not*, he should answer, if required, before its tribunals of justice. I presume no court of ordinary intelligence, State or federal, would question these obvious principles; but how *any* court could

determine whether he did or did not act in the line of his official duty under the laws of his government without a judicial inquiry into the *facts* connected with the transaction I am unable to imagine.\*\*\*

I am, as always,  
Your faithful friend,  
J. PROCTOR KNOTT.

HON. S. J. FIELD,  
*Associate Justice Supreme Court*  
*U. S.*

Letter from Hon. William D. Shipman,  
formerly U.S. District Judge for the District  
of Connecticut:

NEW YORK, *October 20, 1889.*

DEAR JUDGE:

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I have attentively read Judge Sawyer's opinion in the Neagle *habeas corpus* case, and I agree with his main conclusions. It seems to me that the whole question of jurisdiction turns on the fact whether you were, at the time the assault was made on you, engaged in the performance of your official duty.

You had been to Los Angeles to hold court there and had finished that business. In going there you were performing an official duty as much as you were when you had held court there. It was then your official duty to go from Los Angeles to San Francisco and hold court there. You could not hold court at the latter place without going, and you were engaged in the line of your official duty in performing that journey for that purpose, as you were in holding the court after you got there. The idea that a judge is not performing official duty when he goes from court-house to court-house or from court-room to court-room in his own circuit seems to me

to be absurd. The distance from one court-house or court-room to another is not material, and does not change or modify the act or duty of the judge.

Now, Neagle was an officer of your court, charged with the duty of protecting your person while you were engaged in the performance of your official duty. His duty was to see to it that you were not unlawfully prevented from performing *your* official duty—not hindered or obstructed therein. For the State authorities to indict him for repelling the assault on you in the only way which he could do so effectually seems to me to be as unwarranted by law as it would be for them to indict him for an assault on Terry when he assisted in disarming the latter in the court-room last year.

When, therefore, it was conceded on the argument that if the affair at Lathrop had taken place in the court-room during the sitting of the court, the jurisdiction of the Circuit Court would be unquestionable, it is difficult for me to see why the whole question of federal jurisdiction was not embraced in that concession. Assassinating a judge *on* the bench would no more obstruct and defeat public justice than assassinating him on his way to the bench. In each case he is *proceeding in the line of official duty imposed on him by law* and his official oath. The law requires him to go to court wherever the latter is held, and he is as much engaged in performing the duty thus imposed on him while he is proceeding to the place of his judicial labors as he is in performing the latter after he gets there.

It would, therefore, seem to go without saying that any acts done in defense and protection of the judge in

the performance of the duties of his office must pertain to the exclusive jurisdiction of the court of which he forms a part.

The fact that the assault on you was avowedly made in revenge for your judicial action in a case heard by you gives a darker tinge to the deed, but, perhaps, does not change the legal character of the assault itself.

That Neagle did his whole duty, and in no way exceeded it, is too plain for argument.

Yours faithfully,  
W. D. SHIPMAN.

Mr. Justice FIELD.

Letter from James C. Welling, president of Columbian University, Washington:

HARTFORD, August 15, 1889.

MY DEAR JUDGE:

It is a relief to know that Justice, as well as the honored justice of our Supreme Judiciary, has been avenged by the pistol-shot of Neagle. The life of Terry has long since been forfeited to law, to decency, and to morals. He has already exceeded the limit assigned by holy scripture to men of his ilk. "The bloody-minded man shall not live out half his days." The mode of his death was in keeping with his life. Men who break all the laws of nature should not expect to die by the laws of nature.

In all this episode you have simply worn the judicial ermine without spot or stain. You defeated a bold, bad man in his machinations, and the enmity you thereby incurred was a crown of honor. I am glad that you are to be no longer harassed by the menace of this man's violence, for such a menace is specially trying to a minister of the law. We all know that Judge Field the *man* would not flinch from a thousand Terrys, but

Judge Field the *Justice* could hardly take in his own hands the protection of his person, where the threatened outrage sprang *entirely* from his official acts.

I wish, therefore, to congratulate you on your escape alike from the violence of Terry and from the necessity of killing him with your own hands. It was meet that you should have been defended by an executive officer of the court assailed in your person. For doubtless Terry, and the hag who was on the hunt with him, were minded to murder you.

Convey my cordial felicitations to Mrs. Field, and believe me ever, my dear Mr. Justice,

Your faithful friend,  
JAMES. C. WELLING.

Mr. Justice FIELD.

Letter from Right Rev. B. Wistar Morris, Episcopal Bishop of Oregon:

BISHOPCROFT, PORTLAND, OREGON,  
August 22, 1889.

MY DEAR JUDGE FIELD:

I hope a word of congratulation from your Oregon friends for your escape in the recent tragedy will not be considered an intrusion. Of course we have all been deeply interested in its history, and proud that you were found as you were, without the defenses of a bully.

I will not trespass further on your time than to subscribe myself,

Very truly your friend,  
B. WISTAR MORRIS.

MR. JUSTICE FIELD.

A copy of the following card was enclosed in this letter:

AN UNARMED JUSTICE.  
PORTLAND OREGON, August 19.  
*To the Editor of the Oregonian:*

There is one circumstance in the history of the Field and Terry tragedy that seems to me is worthy of more emphatic comment than it has yet received. I mean the fact that Judge Field had about his person no weapon of defense whatever, though he knew that this miserable villain was dogging his steps for the purpose of assaulting him, perhaps of taking his life. His brother, Mr. Cyrus W. Field, says:

"It was common talk in the East here, among my brother's friends, that Terry's threats to do him bodily harm were made with the full intent to follow them up. Terry threatened openly to shoot the Justice, and we, who knew him, were convinced he would certainly do it if he ever got a chance.

"I endeavored to dissuade my brother from making the trip west this year, but to no purpose, and he said, 'I have a duty to perform there, and this sort of thing can't frighten me away. I know Terry will do me harm if he gets a chance, and as I shall be in California some time, he will have chances enough. Let him take them.'

"When urged to arm himself he made the same reply. He said that when it came to such a pass in this country that judges find it necessary to go armed, it will be time to close the courts themselves."

This was a manly and noble reply and must recall to many minds that familiar sentiment: "He is thrice armed who has his quarrel just." With the daily and hourly knowledge that this assassin was ever upon his track, this brave judge goes about his duty and scorns to take to himself the defenses of a bully or a brigand; and in doing so, how immeasurably has he placed himself above the vile creature that

sought his life, and all others who resort to deeds of violence. "They that take the sword shall perish with the sword," is a saying of wide application, and had it been so in this case; had this brave and self-possessed man been moved from his high purpose by the importunity of friends, and when slain by his enemy, had been found armed in like manner with the murderer himself, what a stain would it have been upon his name and honor? And how would our whole country have been disgraced in the eyes of the civilized world, that her highest ministers of justice must be armed as highwaymen as they go about their daily duties!

Well said this undaunted servant of the state: "Then will it be time to close the courts themselves." May we not hope, Mr. Editor, that this example of one occupying this high place in our country may have some influence in staying the spirit and deeds of violence now so rife, and that they who are so ready to resort to the rifle and revolver may learn to regard them only as the instruments of the coward or the scoundrel?

B. WISTAR MORRIS.

The citations given below from different journals, published at the time, indicated the general opinion of the country. With rare exceptions it approved of the action of the Government, the conduct of Neagle, and the bearing of Justice Field.

The *Alta California*, a leading paper in California, had, on August 15, 1889, the day following the tragedy, the following article:

#### THE TERRY TRAGEDY.

The killing of David S. Terry by the United States Marshal David Neagle yesterday was an unfortunate affair, regretted, we believe, by no one more than by Justice Field, in whose



defense the fatal shot was fired. There seems, however, to be an almost undivided sentiment that the killing was justifiable. Every circumstance attending the tragedy points to the irresistible conclusion that there was a premeditated determination on the part of Terry and his wife to provoke Justice Field to an encounter, in which Terry might either find an excuse for killing the man against whom he had threatened vengeance, or in which his wife might use the pistol which she always carries, in the pretended defense of her husband. For some time past it has been feared that a meeting between Terry and Justice Field would result in bloodshed. There is now indisputable proof that Terry had made repeated threats that he would assault Justice Field the first time he met him off the bench, and that if the Judge resisted he would kill him. Viewed in the light of these threats, Terry's presence on the same train with Justice Field will hardly be regarded as accidental, and his actions in the breakfast-room at Lathrop were directly in line with the intentions he had previously expressed. Neagle's prompt and deadly use of his revolver is to be judged with due reference to the character and known disposition of the man with whom he had to deal and to his previous actions and threats. He was attending Justice Field, against the will of the latter and in spite of his protest, in obedience to an order from the Attorney-General of the United States to Marshal Franks to detail a deputy to protect the person of Justice Field from Terry's threatened violence. A slap in the face may not, under ordinary circumstances, be sufficient provocation to justify the taking of human life; but it must be

remembered that there were no ordinary circumstances and that Terry was no ordinary man. Terry was a noted pistol-shot; it was known that he invariably carried arms and that he boasted of his ability to use them. If on this occasion he was unarmed, as Mrs. Terry asserts,\* Neagle had no means of knowing that fact; on the contrary, to his mind every presumption was in favor of the belief that he carried both pistol and knife, in accordance with his usual habit. As a peace officer, even apart from the special duty which had been assigned to him, he was justified in taking the means necessary to prevent Terry from continuing his assault; but the means necessary in the case of one man may be wholly inadequate with a man bearing the reputation of David S. Terry, a man who only a few months previously had drawn a knife while resisting the lawful authority of another United States officer. It is true that if Terry was unarmed, the deputy marshal might have arrested him without taking his life or seriously endangering his own; but Terry was a man of gigantic stature, and, though aged, in possession of a giant's strength; and there is no one who was acquainted with him, or has had opportunity to learn his past history, who does not know that he was a desperate man, willing to take desperate chances and to resort to desperate means when giving way to his impulses of passion, and that any person who should at such a moment attempt to stay his hand would do so at the risk of his life. Whether he had a pistol with him at that moment or not,

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\*It has been conclusively established since that he was armed with his usual bowie-knife at the time.

there was every reason to believe that he was armed, and that the blow with his hand was intended only as the precursor to a more deadly blow with a weapon. At such moments little time is allowed for reflection. The officer of the law was called upon to act and to act promptly. He did so, and the life of David S. Terry was the forfeit. He fell, a victim to his own ungovernable passions, urged on to his fate by the woman who was at once his wife and his client, and perhaps further incited by sensational newspaper articles which stirred up the memory of his resentment for fancied wrongs, and taunted him with the humiliation of threats unfulfilled.

The close of Judge Terry's life ends a career and an era. He had the misfortune to carry into a ripened state of society the conditions which are tolerable only where social order is not fully established. Restless under authority, and putting violence above law, he lived by the sword and has perished by it.

That example which refused submission to judicial finalities was becoming offensive to California, but the incubus of physical fear was upon many who realized that the survival of frontier ways into non-frontier period was a damage to the State. But, be this as it may, the stubborn spirit that defied the law has fallen by the law.

When Justice Field showed the highest judicial courage in the opening incidents of the tragedy that has now closed, the manhood of California received a distinct impetus. When the Justice, with threats made against his life, returned to the State unarmed, and resentful of protection against assault, declaring that when judges must arm to de-

fend themselves from assault offered in reprisal of their judicial actions society must be considered dissolved, he was rendering to our institutions the final and highest possible service. The event that followed, the killing of Terry in the act of striking him the second time from behind, while he sat at table in a crowded public dining-room, was the act of the law. The Federal Department of Justice, by its chief, the Attorney-General of the United States, had ordered its officer, the United States marshal for the northern district of California, to take such means and such measures as might be necessary to protect the persons of the judges against assault by Judge Terry, in carrying out the threats that he had made. This order was from the executive arm of the Government, and it was carried out to the letter. Judge Terry took the law into his own hands and fell. Nothing can add to the lesson his fate teaches. It is established now that in California no man is above the law; that no man can affect the even poise of justice by fear. Confiding in his own strength as superior to the law, David S. Terry fell wretchedly.

No more need be said. New California inscribes upon her shield, "Obedience to the law the first condition of good citizenship," and the past is closed.

*The Record-Union* of Sacramento, one of the leading papers of California, on August 15, 1889, the day following the tragedy, had the following article under the head—

#### KILLING OF JUDGE TERRY.

In the news columns of the *Record-Union* will be found all the essential details of the circumstances of the killing of D. S. Terry. It will be evident to the reader that they readily sap

the whole case, and that there is no substantial dispute possible concerning the facts. These truths we assert, without fear of successful contradiction, establish the justifiableness of the act of the United States marshal who fired upon and killed Terry. We think there will be no dispute among sensible men that a federal circuit judge or a justice of the supreme bench, passing from one portion of the circuit to another in which either is required to open a court and hear causes, and for the purpose of fully discharging his official duties, is while en route in the discharge of an official function, and constructively his court is open to the extent that an assault upon him, because of matters pending in his court, or because of judgments he has rendered or is to render, is an assault upon the court, and his bailiff or marshal detailed to attend the court or to aid in preserving the order and dignity of the court has the same right to protect him from assault then that he would have, had the judge actually reached his court-room.

But further than this, we hold that in view of the undeniable fact that the Justice had knowledge of the fact that the Terrys, man and wife, had sworn to punish him; that they had indulged in threats against him of the most pronounced character; that they had boarded a train on which it is probable they knew he had taken passage from one part of his circuit to another in his capacity as a magistrate; in view of the fact that Terry sought the first opportunity to approach and strike him, and that, too, when seated; and in view of the notorious fact that Terry always went armed—the man who shot Terry would have been justified in doing so had he not even been commissioned as an officer of the court.

He warned the assailant to desist, and knowing his custom to go armed, and that he had threatened the Justice, and Terry refusing to restrain his blows, it was Neagle's duty to save life, to strike down the assailant in the most effectual manner. Men who, having the ability to prevent murder, stand by and see it committed, may well be held to accountability for criminal negligence.

But in this case it is clear that murder was intended on the part of the Terrys. One of them ran for her pistol and brought it, and would have reached the other's side with it in time, had she not been detained by strong men at the door. Neagle saw this woman depart, and coupling it with the advance of Terry, knew, as a matter of course, what it meant. He had been deputed by the chief law officer of the Government—in view of previous assaults by the Terrys and their threats and display of weapons in court—to stand guard over the judges and protect them. He acted, therefore, precisely as it was proper he should do. Had he been less prompt and vigorous, all the world knows that not he but Terry would to-day be in custody, and not Terry but the venerable justice of the Supreme Court of the United States would to-day be in the coffin.

These remarks have grown too extended for any elaboration of the moral of the tragedy that culminated in the killing of David S. Terry yesterday. But we cannot allow the subject to be even temporarily dismissed without calling the thought of the reader to contemplation of the essential truth that society is bound to protect the judges of the courts of the land from violence and the threats of violence; otherwise the decisions of our courts must conform to the violence

threatened, and there will be an end of our judicial system, the third and most valuable factor in the scheme of representative government. Society cannot, therefore, punish, but must applaud the man who defends the courts of the people and the judges of those courts from such violence and threats of violence. For it must be apparent to even the dullest intellect that all such violence is an outrage upon the judicial conscience, and therefore involves and puts in peril the liberties of the people.

The New Orleans *Times-Democrat*, in one of its issues at this period, used the following language:

The judge in America who keeps his official ermine spotless, who faithfully attends to the heavy and responsible duties of his station, deserves that the people should guard the sanctity of his person with a strength stronger than armour of steel and readier than the stroke of lance or sword. Though the judges be called to pass on tens of thousands of cases, to sentence to imprisonment or to death thousands of criminals, they should be held by the people safe from the hate and vengeance of those criminals as if they were guarded by an invulnerable shield.

If Judge Field, of the Supreme Court, one of the nine highest judges under our republican government, in travelling recently over his circuit in California, had been left to the mercy of the violent man who had repeatedly threatened his life, who had proved himself ready with the deadly knife or revolver, it would have been a disgrace to American civilization; it would have been a stigma and

stain upon American manhood; it would have shown that the spirit of American liberty, which exalts and pays reverence to our judiciary, had been replaced by a public apathy that marked the beginning of the decline of patriotism.

Judge Field recognized this when, in being advised to arm himself in case his life was endangered, he uttered the noble words: "No, sir; I do not and will not carry arms, for when it is known that the judges of the court are compelled to arm themselves against assaults offered in consequence of their judicial action it will be time to dissolve the courts, consider the government a failure, and let society lapse into barbarism." That ringing sentence has gone to the remotest corner of the land, and everywhere it has gone it should fire the American heart with a proud resolve to protect forever the sanctity of our judiciary.

Had not Neagle protected the person of Judge Field from the assault of a dangerous and violent ruffian, apparently intent on murder, by his prompt and decisive action, shooting the assailant down to his death, it is certain that other brave men would have rushed quickly to his rescue; but Neagle's marvelous quickness forestalled the need of any other's action. The person of one of the very highest American judges was preserved unharmed, while death palsied the murderous hand that had sworn to take his life.

That act of Neagle's was no crime. It was a deed that any and every American should feel proud of having done. It was an act that should be applauded over the length and breadth of this great land. It should not have consigned him for one minute to

prison walls. It should have lifted him high in the esteem of all the American people. When criminals turn executioners, and judges are the victims, we might as well close our courts and hoist the red flag of anarchy over their silent halls and darkened chambers.

The New York *Herald*, in its issue of August 19, 1889, said:

The sensation of the past week is a lesson in republicanism and a eulogium on the majesty of the law.

It was not a personal controversy between Stephen J. Field and David S. Terry. It was a conflict between law and lawlessness—between a judicial officer who represented the law and a man who sought to take it into his own hands. One embodied the peaceful power of the nation, the will of the people; the other defied that power and appealed to the dagger.

Justice Field's whole course shows a conception of judicial duty that lends grandeur to a republican judiciary. It is an inspiring example to the citizens and especially to the judges of the country. He was reminded of the danger of returning to California while Judge Terry and his wife were at large. His firm answer was that it was his duty to go and he would go. He was then advised to arm himself for self-defense. His reply embodies a nobility that should make it historic: "When it comes to such a pass in this country that judges of the courts find it necessary to go armed it will be time to close the courts themselves."

This sentiment was not born of any insensibility to danger; Justice Field fully realized the peril himself. But above all feeling of personal concern arose a lofty sense of the duty imposed upon a justice of the nation's

highest court. The officer is a representative of the law—a minister of peace. He should show by his example that the law is supreme; that all must bow to its authority; that all lawlessness must yield to it. When judges who represent the law resort to violence even in self-defense, the pistol instead of the court becomes the arbiter of controversies, and the authority of the government gives way to the power of the mob.

Rather than set a precedent that might tend to such a result, that would shake popular confidence in the judiciary, that would lend any encouragement to violence, a judge, as Justice Field evidently felt, may well risk his own life for the welfare of the commonwealth. He did not even favor the proposition that a marshal be detailed to guard him.

The course of the venerable Justice is an example to all who would have the law respected. It is also a lesson to all who would take the law into their own hands.

Not less exemplary was his recognition of the supremacy of the law when the sheriff of San Joaquin appeared before him with a warrant of arrest on the grave charge of murder. The warrant was an outrage, but it was the duty of the officer to serve it, even on a justice of the United States Supreme Court. When the sheriff hesitated and began to apologize before discharging his painful duty, Justice Field promptly spoke out: "Officer, proceed with your duty. I am ready, and an officer should always do his duty." These are traits of judicial heroism worthy the admiration of the world.

The *Albany Evening Union*, in one of its issues at this time, has the following:



#### JUSTICE FIELD RELIES UPON THE LAW FOR HIS DEFENSE.

The courage of Justice Stephen J. Field in declining to carry weapons and declaring that it is time to close the courts when judges have to arm themselves, and at the same time proceeding to do his duty on the bench when his life was threatened by a desperate man, is without parallel in the history of our judiciary. We do not mean by this that he is the only judge on the bench that would be as brave as he was under the circumstances, but every phase of the affair points to the heroism of the man. He upheld the majesty of the law in a fearless manner and at the peril of his life. He would not permit the judiciary to be lowered by any fear of the personal harm that might follow a straightforward performance of his duty. His arrest for complicity in a murder was borne by the same tranquil bravery—a supreme reliance upon a due process of law. He did not want the officer to apologize to him for doing his duty. He had imprisoned Judge Terry and his wife Sarah Althea for contempt of court.\*\*\* The threats by Judge Terry did not even frighten him to carry weapons of self-defense. This illustration of upholding the majesty of the law is without precedent, and is worth more to the cause of justice than the entire United States army could be if called out to suppress a riotous band of law-breakers. Justice Field did what any justice should do under the circumstances, but how many judges would have displayed a like courage had they been in his place?

The New York *World*, in its issue of Monday evening, August 26th, has the following article:

#### A NEW LEAF TURNED.

When Judge Field, knowing that his life was threatened, went back unarmed into the State of California and about his business there, he gave wholesome rebuke to the cowardice that prompts men to carry a pistol—a cowardice that has been too long popular on the coast. He did a priceless service to the cause of progress in his State, and added grace to his ermine when he disdained to take arms in answer to the threats of assassins.

The men who have conspired to take Judge Field's life ought to need only one warning that a new day has dawned in California, and to find that warning in the doom of the bully Terry. The law will protect the ermine of its judges.

The New York *World* of August 18th treats of the arrest of Justice Field as an outrage, and speaks of it as follows:

#### THE ARREST OF FIELD AN OUTRAGE AND AN ABSURDITY.

The California magistrate who issued a warrant for Justice Field's arrest is obviously a donkey of the most precious quality. The Justice had been brutally assailed by a notorious ruffian who had publicly declared his intention to kill his enemy. Before Justice Field could even rise from his chair a neat-handed deputy United States marshal shot the ruffian. Justice Field had no more to do with the shooting than any other bystander, and even if there had been doubt on that point it was certain that a justice of the United States Supreme Court was not going to run away beyond the jurisdiction. His arrest was, therefore, as absurd as it was outrageous. It was asked for by the demented widow of the dead desperado simply as a means of subjecting the

Justice to an indignity, and no magistrate possessed of even a protoplasmic possibility of common sense and character would have lent himself in that way to such a service.

The *Kansas City Times*, in its issue at this period, uses the following language:

#### NO ONE WILL CENSURE.

*Gratitude for Judge Field's Escape the Chief Sentiment.*

Deputy Marshal Neagle acted with terrible promptitude in protecting the venerable member of the Supreme Court with whose safety he was specially charged, but few will be inclined to censure him. He had to deal with a man of fierce temper, whose readiness to use firearms was part of the best known history of California.

It is a subject for general congratulation that Justice Field escaped the violence of his assailant. The American nation would be shocked to learn that a judge of its highest tribunal could not travel without danger of assault from those whom he had been compelled to offend by administering the laws. Justice Field has the respect due his office and that deeper and more significant reverence produced by his character and abilities. Since most of the present generation were old enough to observe public affairs he has been a jurist of national reputation and a sitting member of the Supreme Court. In that capacity he has earned the gratitude of his countrymen by bold and unanswerable defense of sound constitutional interpretation on more than one occasion. In all the sad affair the most prominent feeling will be that of gratitude at his escape.

*The Army and Navy Journal*, in its issue of August 24, 1889, had the following article under the head of—

#### MARSHAL NEAGLE'S CRIME.

The public mind appears to be somewhat unsettled upon the question of the right of Neagle to kill Terry while assaulting Judge Field. His justification is as clear as is the benefit of his act to a long-suffering community. Judge Field was assaulted unexpectedly from behind, while seated at a dining-table, by a notorious assassin and ruffian, who had sworn to kill him, and who, according to the testimony of at least one witness, was armed with a long knife, had sent his wife for a pistol, and was intending to use it as soon as obtained.

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The rule is that the danger which justifies homicide in self-defense must be actual and urgent. And was it not so in this case? No one who reflects upon the features of the case—an old man without means of defense, fastened in a sitting posture by the table at which he sat and the chair he occupied, already smitten with one severe blow and about to receive another more severe from a notorious ruffian who had publicly avowed his intention to slay him—no one surely can deny that the peril threatening Judge Field was both actual and urgent in the very highest degree.

"A man may repel force by force in the defense of his person, habitation, or property, against one or many who manifestly intend and endeavor by violence or surprise to commit a known felony on either." "In such a case he is not obliged to retreat, but may pursue his adversary till he find himself out of danger; and if in a conflict between them he happens to kill, such killing is justifiable. The right of self-defense in case of this kind is founded on the law of nature, and is not, nor can be, superseded by any law

of society. Where a known felony is attempted upon the person, be it to rob or murder, the party assaulted may repel force by force; and even his servant attendant on him, or any person present, may interpose for preventing mischief, and, if death ensue, the party interposing will be justified." (Wharton Amer. Crim. Law, Vol. 2, Sec. 1019.)

This is the law, as recognized at the present day and established by centuries of precedent, and it completely exonerates Neagle—of course Judge Field needs no exoneration—from any, the least, criminality in what he did. He is acquitted of wrongdoing, not only in his character of attendant servant, but in that of bystander simply. He was as much bound to kill Terry under the circumstances as every bystander in the room was bound to kill him; and in his capacity of guard, especially appointed to defend an invaluable life against a known and imminent felony, he was so bound in a much greater degree.

"A sincere and apparently well-grounded belief that a felony is about to be perpetrated will extenuate a homicide committed in prevention of it, though the defendant be but a private citizen." (25 Ala., 15.) See Wharton, above quoted, who embodies the doctrine in his text (Vol. 2, Sec. 1039).

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Let us be grateful from our hearts that the old Mosaic law, "Whoso sheddeth man's blood by man shall his blood be shed," is shown by this memorable event to have not yet fallen altogether into innocuous desuetude; and let us give thanks to God that he has seen fit on this

occasion to preserve from death at the hands of an intolerable ruffian the life of that high-minded, pure-handed, and excellent jurist and magistrate, Stephen J. Field.

The Philadelphia *Times* of August 15th has the following:

#### ONLY ONE OPINION.

*Marshal Neagle Could Not Stand Idly By.*

The killing of Judge Terry of California is a homicide that will occasion no regret wherever the story of his stormy and wicked life is known. At the same time, the circumstances that surrounded it will be deeply lamented. This violent man, more than once a murderer, met his death while in the act of assaulting Justice Field of the Supreme Court of the United States. Had he not been killed when he was, Judge Field would probably have been another of his victims. Terry had declared his purpose of killing the Justice, and this was their first meeting since his release from deserved imprisonment.

In regard to the act of United States Marshal Neagle, there can be only one opinion. He could not stand idly by and see a judge of the Supreme Court murdered before his eyes. The contumely that Terry sought to put upon the Judge was only the insult that was to go before premeditated murder. The case has no moral except the certainty that a violent life will end in a violent death.

The Philadelphia *Inquirer* of the same date says as follows:

#### A PREMEDITATED INSULT.

*Followed Quickly by a Deserved Retribution.*

Ex-Judge Terry's violent death was a fitting germination to a stormy

life, and the incidents of his last encounter were characteristic of the man and his methods. He was one of the few lingering representatives of the old-time population of California. He was prominent there when society was organizing itself, and succeeded in holding on to life and position when many a better man succumbed to the rude justice of the period. Most of his early associates died with their boots on, a generation ago. Terry lived, assailed on all sides, despised by the better element and opposed by the law, in trouble often, but never punished as he deserved. His last act was to offer a gross, premeditated insult to the venerable Justice Field, and the retribution he had long defied followed it quickly. California will have little reason to mourn his loss.

The *Cleveland Leader*, in its issue of August 18th, speaks of the conduct of Neagle as follows:

#### THE KILLING OF TERRY.

We have already expressed the opinion in these columns that the killing of David S. Terry by Deputy Marshal Neagle at Lathrop, California, Wednesday, was entirely justifiable. In that opinion it is a pleasure to note that the press of the country concur almost unanimously. The judgment of eminent members of the legal profession, as published in our telegraph columns and elsewhere, support and bear out that view of the case. The full account of the trouble makes the necessity of some such action on the part of the deputy marshal clear. The judgment of the country is that Neagle only did his duty in defending the person of Justice Field, and in that judgment the California jury

will doubtless concur when the case is brought before it.

The *Argonaut*, a leading paper of San Francisco, not a political, but a literary paper, and edited with great ability, in its issue of August 26, 1889, used the following language:

The course of Judge Field throughout this troublesome business has been in the highest degree creditable to him. He has acted with dignity and courage, and his conduct has been characterized by most excellent taste. His answer, when requested to go armed against the assault of Terry, is worthy of preservation. And now that his assailant has been arrested in his career by death, all honest men who respect the law will breathe more freely. Judge Terry had gained a most questionable reputation, not for courage in the right direction; not for generosity which overlooked or forgave, or forgot offenses against himself or his interests. He never conceded the right to any man to hold an opinion in opposition to his prejudices, or cross the path of his passion with impunity. He could with vulgar whisper insult the judge who rendered an opinion adverse to his client, and with profane language insult the attorney who had the misfortune to be retained by a man whose cause he did not champion. He had become a terror to society and a walking menace to the social circle in which he revolved. His death was a necessity, and, except here and there a friend of blunted moral instincts, there will be found but few to mourn his death or criticise the manner of his taking off. To say that Marshal Neagle should have acted in any other manner than he did means that he was to have left Justice Field in the claws of

a tiger, and at the mercy of an infuriated, angry monster, who had never shown mercy or generosity to an enemy in his power.\*\*\*

Judge Field has survived the unhappy conflict which carried Judge Terry to his grave. He is more highly honored now than when this quarrel was thrust upon him; he has lost no friends; he has made thousands of new ones who honor him for protecting with his life the honor of the American bench, the dignity of the American law, and the credit of the American name. In the home where Judge Terry lived he went to the grave almost unattended by the friends of his social surroundings, no clergyman consenting to read the service at his burial. The Supreme Court over which he had presided as chief justice refused to adjourn in honor of his death, the press and public opinion, for a wonder, in accord over the manner of his taking off.

Indeed, the public opinion of the country, as shown by the press and declarations of prominent individuals, was substantially one in its approval of the action of the Government, the conduct of Neagle, and the bearing of Justice Field.\*

\*NOTE: Whilst there was a general concurrence of opinion as to the threats of Terry and of the fate he met at the hands of Neagle and of the bearing of Justice Field through all the proceedings, there were exceptions to this judgment. There were persons who sympathized with Terry and his associates and grieved at his fate, although he had openly avowed his intention not merely to insult judicial officers for their judicial conduct, but to kill them in case they resented the insult offered. He married Sarah Althea Hill after the United States Circuit Court had delivered its opinion, in open court, announcing its decision that she had committed forgery, perjury, and subornation of perjury, and was a woman of abandoned character. And yet a writer in the *Overland Monthly* in October, 1889, attributes his assault upon the marshal—striking him violently in the face for the execution of the order of the court to remove

The *Daily Report*, a paper of influence in San Francisco at the time, published the following article on "The Lesson of the Hour," from the pen of an eminent lawyer of California, who was in no way connected with the controversy which resulted in Judge Terry's death:

The universal acquiescence of public opinion in the justifiable character of the act which terminated the life of the late David S. Terry is to be accounted for by the peculiar nature of the offense which he had committed. It was not for a mere assault, though perpetrated under circumstances which rendered it peculiarly reprehensible, that he met his death without eliciting from the community one word of condemnation for the slayer or of sympathy with the slain.

Mr. Justice Field is an officer of high rank in the most important department of the Government of the United States, namely, that which is charged with the administration of legal justice. When David S. Terry publicly and ostentatiously slapped the face of this high official—this representative of public justice—the blow being in all probability the intended prelude to a still more atrocious offense, he committed a gross violation of the peace and dignity of the United

her from the court-room because of her gross imputation upon the judges—chiefly to his chivalric spirit to protect his wife, and declares that "the universal verdict" upon him "will be that he was possessed of *sterling integrity of purpose*, and stood out from the rest of his race as a strongly individualized character, which has been well called an anachronism in our civilization." And Gov. Penney, of Oregon, in his message to the legislature of that State, pronounced the officer appointed by the marshal under the direction of the Attorney-General to protect Justices Field and Sawyer from threatened violence and murder as a "*secret armed assassin*," who accompanied a Federal judge in California, and who shot down in cold blood an unarmed citizen of that State.



States. The echo of the blow made the blood tingle in the veins of every true American, and from every quarter, far and near, thick and fast, came denunciations of the outrage. That any man under a government created "by the people, for the people" shall assume to be a law unto himself, the sole despot in a community based on the idea of the equality of all before the law, and the willing submission and obedience of all to established rule, is simply intolerable.

In his audacious assault on "the powers that be" Terry took his life in his hand, and no lover of peace and good order can regret that, of the two lives in peril, his was extinguished. He threw down the gage of battle to the whole community, and it is well that he was vanquished in the strife.

In the early part of the war of the rebellion General Dix, of New York, was placed in charge of one of the disaffected districts. We had then hardly begun to see that war was a very stern condition of things, and that it actually involved the necessity of killing. Those familiar with the incidents of that time will remember how the General's celebrated order, "If any one attempts to haul down the American flag, shoot him on the spot," thrilled the slow pulses of the Northern heart like the blast of a bugle. Yet some adverse obstructionist might object that the punishment pronounced far exceeded the offense, which was merely the effort to detach from its position a piece of colored bunting. But it is the *animus* that characterizes the act. An insult offered to a mere symbol of authority becomes, under critical circumstances, an unpardonable crime. If the symbol, instead of being an inanimate object, be a human being—a high officer of the Government—does not such an

outrage as that committed by Terry exceed in enormity the offense denounced by General Dix? And if so, why should the punishment be less?

In every civilized community, society, acting with a keen instinct of self-preservation, has always punished with just severity those capital offenders against peace and good order who strike at the very foundation on which all government must rest.

#### Chapter XIX. The Appeal to the Supreme Court of the United States, and the Second Trial of Sarah Althea's Divorce Case.

With the discharge from arrest of the brave deputy marshal, Neagle, who had stood between Justice Field and the would-be assassin's assault, and the vindication by the Circuit Court of the right of the general government to protect its officers from personal violence, for the discharge of their duties, at the hands of disappointed litigants, the public mind, which had been greatly excited by



Joseph Hodges Choate was one of two lawyers representing Neagle. A New York Republican who spent his career battling Tammany Hall Democrats, Choate went on to argue several landmark Supreme Court cases, including *Pollock v. Farmer's Savings and Trust Co.* (1895), a decision that overruled the national income tax.

the proceedings narrated, became quieted. No apprehension was felt that there would be any reversal of the decision of the Circuit Court on the appeal which was taken to the Supreme Court. General and absolute confidence was expressed in the determination of the highest tribunal of the nation. The appeal was argued on the part of Neagle by the Attorney-General of the United States and Joseph H. Choate, Esq., of the New York bar; and the briefs of counsel in the Circuit Court were also filed.<sup>67</sup> The attorney-general of California and Mr. Zachariah Montgomery appeared upon behalf of the State, and briefs of Messrs. Shellabarger and Wilson were also filed in its behalf.<sup>68</sup>

The argument of the Attorney-General of the United States was exceedingly able. He had watched all the proceedings of the case from the outset. He had directed that protection should be extended by the marshal to Justice Field and Judge Sawyer against any threatened violence, and he believed strongly in the doctrine that the officers of the general government were entitled to receive everywhere throughout the country full protection against all violence whilst in the discharge of their duties. He believed that such protection was necessary to the efficiency and permanency of the government; and its necessity in both respects was never more ably presented.

The argument of Mr. Choate covered all the questions of law and fact in the case and was marked by that great ability and invincible logic and by that clearness and precision of statement which have rendered him one of the ablest of advocates and jurists in the country, one who all acknowledge has few peers and no superiors at the bar of the nation.\*

The argument of the attorney-general of the State consisted chiefly of a repetition of the

doctrine that, for offenses committed within its limits, the State alone has jurisdiction to try the offenders—a position which within its proper limits, and when not carried to the protection of resistance to the authority of the United States, has never been questioned.

The most striking feature of the argument on behalf of the State was presented by Zachariah Montgomery. It may interest the reader to observe the true Terry flavor introduced into his argument, and the manifest perversion of the facts into which it led him. He deeply sympathized with Terry in the grief and mortification which he suffered in being charged with having assaulted the marshal with a deadly weapon in the presence of the Circuit Court in September, 1888. He attempted to convince the Supreme Court that one of its members had deliberately made a misrecital, in the order committing Terry for contempt, and treated this as a mitigation of that individual's subsequent attack on Justice Field. He did not, however, attempt to gainsay the testimony of the numerous witnesses who swore that Terry did try to draw his knife while yet in the court-room on that occasion, and that, being temporarily prevented from doing so by force, he completed the act as soon as this force was withdrawn, and pursued the marshal with knife in hand, loudly declaring in the hearing of the court, in language too coarse and vulgar to be repeated, that he would do sundry terrible

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declined to make any charge or take any fee for his professional services in the case. The privilege of supporting this great principle before the highest tribunal of the country, where his powers would be most effectively engaged in securing its recognition, was considered by him as sufficient reward. Certainly he has that reward in the full establishment of that principle—for which, also, both he and Attorney-General Miller will receive the thanks of all who love and revere our national government and trust that its existence may be perpetuated.

Mr. James C. Carter, the distinguished advocate of New York, also took a deep interest in the questions involved, and had several consultations with Mr. Choate upon them; and his professional services were given with the same generous and noble spirit that characterized the course of Mr. Choate.

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\*NOTE.—Mr. Choate took great interest in the question involved—the right of the Government of the United States to protect its officers from violence whilst engaged in the discharge of their duties,—deeming its maintenance essential to the efficiency of the Government itself; and he

things to those who should obstruct him on his way to his wife. As she was then in the custody of the marshal and in his office, under an order of the court; and as Terry had resisted her arrest and removal from the court-room until overpowered by several strong men, and as he had instantly on being released rushed madly from the court-room, drawing and brandishing his knife as he went, the conclusion is irresistible that he was determined upon her rescue from the marshal, if, with the aid of his knife, he could accomplish it. That Mr. Montgomery allowed these facts, which constitute the offense of an assault with a deadly weapon, to go unchallenged, compels us to the charitable presumption that he did not know the law.

A reading of the decisions on this subject would have taught him that in order to constitute that offense it is not necessary that the assailant should actually stab with his knife or shoot with his pistol. The assault by Terry was commenced in the court-room, under the eyes of the judges, and was a continuing act, ending only with the wrenching of the knife from his hands. It was all committed "in the presence of the court," for the Supreme Court has decided in the *Savin* case that "the jury-room and hallway were parts of the place in which the court was required by law to hold its sessions, and that the court, at least when in session, is present in every part of the place set apart for its own use and for the use of its officers, jurors, and witnesses, and that misbehavior in such a place is misbehavior in the presence of the court. (See vol. 131, U.S. Reports, page 277, where the case is reported.)"<sup>69</sup>

Mr. Montgomery was reckless enough to contradict the record when he stated that Justice Field in his opinion in the *revivor* case "took occasion to discuss at considerable length the question of the genuineness of the aforesaid marriage document, maintaining very strenuously that it was a forgery, and that this it was that so aroused the indignation of Mrs. Terry that she sprang to her feet and charged Justice Field with having been bought."

There is not a word of truth in this statement. Justice Field, in overruling the demurrer, never discussed at all the genuineness of the marriage agreement. How, then, could it be true that words, nowhere to be found in Judge Field's opinion, "so aroused the indignation of Mrs. Terry that she sprang to her feet and charged Justice Field with having been bought"? Justice Field discussed only the legal effect of the decree already rendered by the United States Circuit Court. He said nothing to excite the woman's ire, except to state the necessary steps to be taken to enforce the decree. He had not participated in the trial of the original case, and had never been called upon to express any opinion concerning the agreement. Mr. Montgomery said in his brief that the opinion read by Justice Field, "while overruling a demurrer, assails this contract, in effect pronouncing it a forgery." This statement is totally unfounded. From it the casual reader would suppose that the demurrer was to the complaint in the original case, and that the court was forestalling evidence, whereas it was a demurrer in a proceeding to revive the suit, which had abated by the death of the party, and to give effect to the decree already rendered therein, after a full hearing of the testimony.

Mr. Montgomery said:

"The opinion also charges Mrs. Terry with perjury, after she has sworn that it was genuine."

The judgment of a court may be referred to by one of its judges, even though the rendering of the judgment convicted a party or a witness, of perjury, without furnishing the perjurer with a justification for denouncing the judge. Mr. Montgomery furthermore said that the "opinion charged her not only with forgery and perjury, but with unchastely as well; for if she had not been Sharon's wife, she had unquestionably been his kept mistress." He says:

"At the announcement of this decision from the bench in the presence of a crowded court-room; a decision which she well knew, before the

going down of another sun, would be telegraphed to the remotest corners of the civilized world, to be printed and reprinted with sensational head-lines in every newspaper, and talked over by every scandal-monger on the face of the earth; was it any wonder—not that it was right—but was it any wonder that this high-spirited, educated woman, sprung from as respectable a family as any in the great State of Missouri, proud of her ancestry, and prizing her good name above everything on this earth, when she heard herself thus adjudged in one breath to be guilty of forgery, perjury, and unchastity, and thus degraded from the exalted position of wife—to which the Supreme Court of her State had said she was entitled—down to that of a paid harlot; was it any wonder, I say, that like an enraged tigress she sprang to her feet, and in words of indignation sought to defend her wounded honor?"

Mr. Montgomery did not speak truly when he said that on this occasion such a decision was announced from the bench. The decision was announced on the 24th of December, 1885, nearly three years before. The only decision announced on this occasion was that the case did not die with the plaintiff therein—William Sharon—but that the executor of his estate had the right to act—had a right to be substituted for the deceased, and to have the decree executed just as it would have been if Mr. Sharon had lived. It was amazing effrontery and disregard of the truth on the part of Mr. Montgomery to make such a statement as he did to the Supreme Court, when the record, lying open before them, virtually contradicted what he was saying.

Towards the close of the decision Justice Field did make reference to Mrs. Terry's testimony in the Superior Court. He said that in the argument some stress had been laid upon the

fact that in a State court, where the judge had decided in Mrs. Terry's favor, the witnesses had been examined in open court, where their bearing could be observed by the judge; while in the federal court the testimony had been taken before an examiner, and the court had not the advantage of hearing and seeing the witnesses. In reply to this Justice Field called attention to the fact that Judge Sullivan, while rendering his decision in favor of Mrs. Terry, had accused her of having willfully perjured herself in several instances while testifying in her own case, and of having suborned perjury, and of having knowingly offered in evidence a forged document. But this reference to Judge Sullivan's accusations against Mrs. Terry was not reached in the reading of Justice Field's opinion until nearly an hour after Mrs. Terry had been forcibly removed from the court-room for contempt, and therefore she did not hear it. This fact appears on record in the contempt proceedings.

But the most extraordinary feature of Mr. Montgomery's brief is yet to be noticed. He says that "If the assault so made by Judge Terry was not for the purpose of then and there killing or seriously injuring the party assaulted, but for the purpose of provoking him into a duel, then the killing of the assailant for such an assault was a crime."

And again he says:

"I have said that if the purpose of Judge Terry's assault upon Field was for the purpose of killing him then and there, Neagle, and not Neagle only, but anybody else, would have been justifiable in killing Terry to save the life of Field; but that if Terry's object in assaulting Field was not then and there to kill or otherwise greatly injure him, but to draw him into a duel, then such an assault was not sufficient to justify the killing."

He then proceeds to speak of Judge Terry's duel with Senator Broderick, in which the latter was killed. He refers to many eminent citizens

who have fought duels, although he admits that dueling is a sin. He then explains that "as a rule the duelist who considers himself wronged by another, having the position and standing of a gentleman, tenders him an insult, either by a slap in the face or otherwise, in order to attract a challenge. Such undoubtedly was Terry's purpose in this case. All of Terry's threats point precisely to that."

Here Mr. Montgomery seems to be in accord with Sarah Althea Terry, who, as we have seen, stated that "Judge Terry intended to take out his satisfaction in slaps." In the same direction is the declaration of Porter Ashe,<sup>70</sup> when he said:

"Instant death is a severe punishment for slapping a man on the face. I have no suspicion that Terry meant to kill Field or to do him further harm than to humiliate him."

And also that of Mr. Baggett, one of Terry's counsel, who said:

"I have had frequent conversations with Terry about Field, and he has often told me that Field has used his court and his power as a judge to humiliate him, and that he intended to humiliate him in return to the extent of his power. 'I will slap his face,' said Terry to me, 'if I run across him, but I shall not put myself out of the way to meet him. I do not intend to kill him, but I will insult him by slapping his face, knowing that he will not resent it.'"

What knightly courage was here. If ever a new edition of the dueling code is printed, it should have for a frontispiece a cut representing the stalwart Terry dealing stealthy blows from behind upon a justice of the United States Supreme Court, 72 years of age, after having previously informed a trusted friend that he believed himself safe from any resistance by the object of his attack. It may be here also said that Justice Field, as was well known to every

one, had for many years suffered from great lameness in consequence of an injury received by him in early life, and with difficulty could walk without assistance.

Mr. Montgomery, with freezing candor, informs the Supreme Court that, in strict accordance with the chivalrous code of honor, Judge Terry administered blows upon a member of that court, to force him into a duel, because of a judicial act with which he was displeased.

He says:

"The most conclusive proof that Terry had no intention, for the time being, of seriously hurting Field, but that his sole purpose was to tender him an insult, is found in the fact that he only used his open hand, and that, too, in a mild manner."

We often hear of the "mild-mannered men" who "scuttle ships" and "cut throats," but this is the very first one whose "very mild manner" of beating a justice of the Supreme Court of the United States with his hand was ever certified to by an attorney and counselor of that court in the argument of a case before it.

It would be difficult to conceive of anything more puerile or absurd than this pretense that Terry had the slightest expectation of provoking a man of Justice Field's age, official position, and physical condition, to fight a duel with him in vindication of the right of the court over which he presided to imprison a man for contempt for beating the marshal in the face with his fist, and afterwards pursuing him with a knife, in the presence of the court, for obeying an order of the court.

Mr. Montgomery appears to have been imported into the case mainly for the purpose of reviewing the facts and giving them the Terry stamp. His ambition seems to have been to insult Justice Field and his associates in the Circuit Court by charging them with misrepresenting the facts of the occurrence, thus repeating Terry's reckless accusations





Sarah Althea Terry was committed to the insane asylum in Stockton (above), where she lived for 45 years until her death in 1937. She is pictured below in mourning clothes after her husband's death.

to that effect. For Terry he had only words of eulogy and admiration, and said he was "straightforward, candid, and incapable of concealment or treachery himself, and therefore never suspected treachery, even in an enemy."

These noble qualities Terry had illustrated by assaulting Justice Field from behind while the latter was in a position which placed him entirely at the mercy of his assailant.

Montgomery thought that not only Neagle, but the President, Attorney-General, district attorney, and Marshal Franks should be arraigned for Terry's murder.

Although Justice Field had expressly advised the marshal that it was unnecessary for anybody to accompany him to Los Angeles, and although Neagle went contrary to his wish, and only because the marshal considered himself instructed by the Attorney-General to send him, yet Mr. Montgomery especially demanded that he (Justice Field) should be tried for Terry's homicide. This, too, in the face of the fact that under instructions from the attorney-general of the State of California, aroused to his duty by the Governor, the false, malicious, and infamous charge made against



Justice Field by Sarah Althea Terry was dismissed by the magistrate who had entertained it, on the ground that it was manifestly destitute of the shadow of a foundation, and that any

further proceedings against him would be "a burning disgrace to the State."

The decision of the Circuit Court discharging Neagle from the custody of the sheriff of San Joaquin county was affirmed by the Supreme Court of the United States on the 14th of April, 1890. Justice Field did not sit at the hearing of the case, and took no part in its decision, nor did he remain in the conference room with his associate justices at any time while it was being considered or on the bench when it was delivered. The opinion of the Court was delivered by Justice Miller. Dissenting opinions were filed by Chief Justice Fuller and Justice Lamar. Justice Miller's opinion concludes as follows:

"We have thus given, in this case, a most attentive consideration to all the questions of law and fact which we have thought to be properly involved in it. We have felt it to be our duty to examine into the facts with a completeness justified by the importance of the case, as well as from the duty imposed upon us by the statute, which we think requires of us to place ourselves, as far as possible, in the place of the Circuit Court and to examine the testimony and the arguments in it, and to dispose of the party as law and justice require.

"The result at which we have arrived upon this examination is, that in the protection of the person and the life of Mr. Justice Field, while in the discharge of his official duties, Neagle was authorized to resist the attack of Terry upon him; that Neagle was correct in the belief that without prompt action on his part the assault of Terry upon the Judge would have ended in the death of the latter; that such being his well-founded belief, he was justified in taking the life of Terry, as the only means of preventing the death of the man who was in-

tended to be his victim; that in taking the life of Terry, under the circumstances, he was acting under the authority of the law of the United States, and was justified in doing so; and that he is not liable to answer in the courts of California on account of his part in that transaction.

"We therefore affirm the judgment of the Circuit Court authorizing his discharge from the custody of the sheriff of San Joaquin county."

## Chapter XX. Concluding Observations.

Thus ends the history of a struggle between brutal violence and the judicial authority of the United States. Commencing in a mercenary raid upon a rich man's estate, relying wholly for success on forgery, perjury, and the personal fear of judges, and progressing through more than six years of litigation in both the Federal and the State courts, it eventuated in a vindication by the Supreme Court of the United States of the constitutional power of the Federal Government, through its Executive Department, to protect the judges of the United States courts from the revengeful and murderous assaults of defeated litigants, without subjecting its appointed agents to malicious prosecutions for their fidelity to duty, by petty State officials, in league with the assailants.

The dignity and the courage of Justice Field, who made the stand against brute force, and who, refusing either to avoid a great personal danger or to carry a weapon for his defense, trusted his life to that great power which the Constitution has placed behind the judicial department for its support, was above all praise.

The admirable conduct of the faithful deputy marshal, Neagle, in whose small frame the power of a nation dwelt at the moment when, like a modern David, he slew a new Goliath, illustrated what one frail mortal can do, who scorns danger when it crosses the path of duty.

The prompt action of the Executive Department, through its Attorney-General, in directing the marshal to afford all necessary protection against threatened danger, undoubtedly saved a justice of the Supreme Court from assassination, and the Government from the disgrace of having pusillanimously looked on while the deed was done.

The skill and learning of the lawyers who presented the case of *Neagle* in the lower and in the appellate courts reflected honor on the legal profession.

The exhaustive and convincing opinion of Circuit Judge Sawyer, when ordering the release of *Neagle*, seemed to have made further argument unnecessary.

The grand opinion of Justice Miller, in announcing the decision of the Supreme Court affirming the order of the Circuit Court, was the fitting climax of all. Its statement of the facts is the most graphic and vivid of the many that have been written. Its vindication of the constitutional right of the Federal Government to exist, and to preserve itself alive in all its powers, and on every foot of its territory, without leave of, or hindrance by, any other authority, makes it one of the most important of all the utterances of that great tribunal.

Its power is made the more apparent by the dissent, which rests rather upon the assertion that Congress had not legislated in exact terms for the case under consideration, than upon any denial of the power of the Federal Government to protect its courts from violence. The plausibility of this ground is dissipated by the citations in the majority opinion of the California statute concerning sheriffs, and of the federal statute concerning marshals, by which the latter are invested with all the powers of the sheriffs in the States wherein they reside, thus showing clearly that marshals possess the authority to protect officers of the United States which sheriffs possess to protect officers of the State against criminal assaults of every kind and degree.

During the argument in the *Neagle* case, as well as in the public discussions of the sub-

ject, much stress was laid by the friends of Terry upon the power and duty of the State to afford full protection to all persons within its borders, including the judges of the courts of the United States. They could not see why it was necessary for the Attorney-General of the United States to extend the arm of the Federal Government. They held that the police powers of the State were sufficient for all purposes, and that they were the sole lawful refuge for all whose lives were in danger. But they did not explain why it was that the State never did afford protection to Judges Field and Sawyer, threatened as they notoriously were by two desperate persons.

The laws of the State made it the duty of every sheriff to preserve the peace of the State, but the Terrys were permitted, undisturbed and unchecked, to proclaim their intention to break the peace. If they had announced their intention, for nearly a year, to assassinate the judges of the Supreme Court of the State, would they have been permitted to take their lives, before being made to feel the power of the State? Would an organized banditti be permitted to unseat State judges by violence, and only feel the strong halter of the law after they had accomplished their purpose? Can no preventive measures be taken under the police powers of the State, when ruffians give notice that they are about to obstruct the administration of justice by the murder of high judicial officers? It was not so much to insure the punishment of Terry and his wife if they should murder Justice Field, as to prevent the murder, that the executive branch of the United States Government surrounded him with the necessary safeguards. How can justice be administered under the federal statutes if the federal judges must fight their way, while going from district to district, to overcome armed and vindictive litigants who differ with them concerning the judgments they have rendered?

But it was said Judge Terry could have been held to bail to keep the peace. The highest bail that can be required in such cases under the law of the State is five thousand dollars.

What restraint would that have been upon Terry, who was so filled with malice and so reckless of consequences that he finally braved the gallows by attempting the murder of the object of his hate? But even this weak protection never was afforded. Shall it be said that Justice Field ought to have gone to the nearest justice of the peace and obsequiously begged to have Terry placed under bonds? But this he could not have done until he reached the State, and he was in peril from the moment that he reached the State line. The dust had not been brushed from his clothing before some of the papers which announced his arrival eagerly inquired what Terry would do and when he would do it. Some of them seemed most anxious for the sensation that a murder would produce.

The State was active enough when Terry had been prevented from doing his bloody work upon Justice Field. The constable who had been telegraphed for before the train reached Lathrop on the fatal day, but who could not be found, and was not at the station to aid in preserving the peace, was quick enough to *arrest Neagle without a warrant, for an act not committed in his presence*, and therefore known only to him by hearsay. Against the remonstrances of a supreme justice of the United States, who had also been chief justice of California, and who might have been supposed to know the laws as well at least as a constable, the protection placed over him by the Executive branch of the Federal Government was unlawfully taken from him and the protector incarcerated in jail. The constable doubtless did only what he was told and what he believed to be his duty. Neagle declined to make any issue with him of a technical character and went with him uncomplainingly. If Neagle's pistol had missed fire, or his aim had been false, he might have been arrested on the spot for his attempt to protect Justice Field, while Terry would have been left free at the same time to finish his murderous work then, or to have pursued Justice Field into the car and, free from all interference by Neagle, have dispatched him there. The State officials were

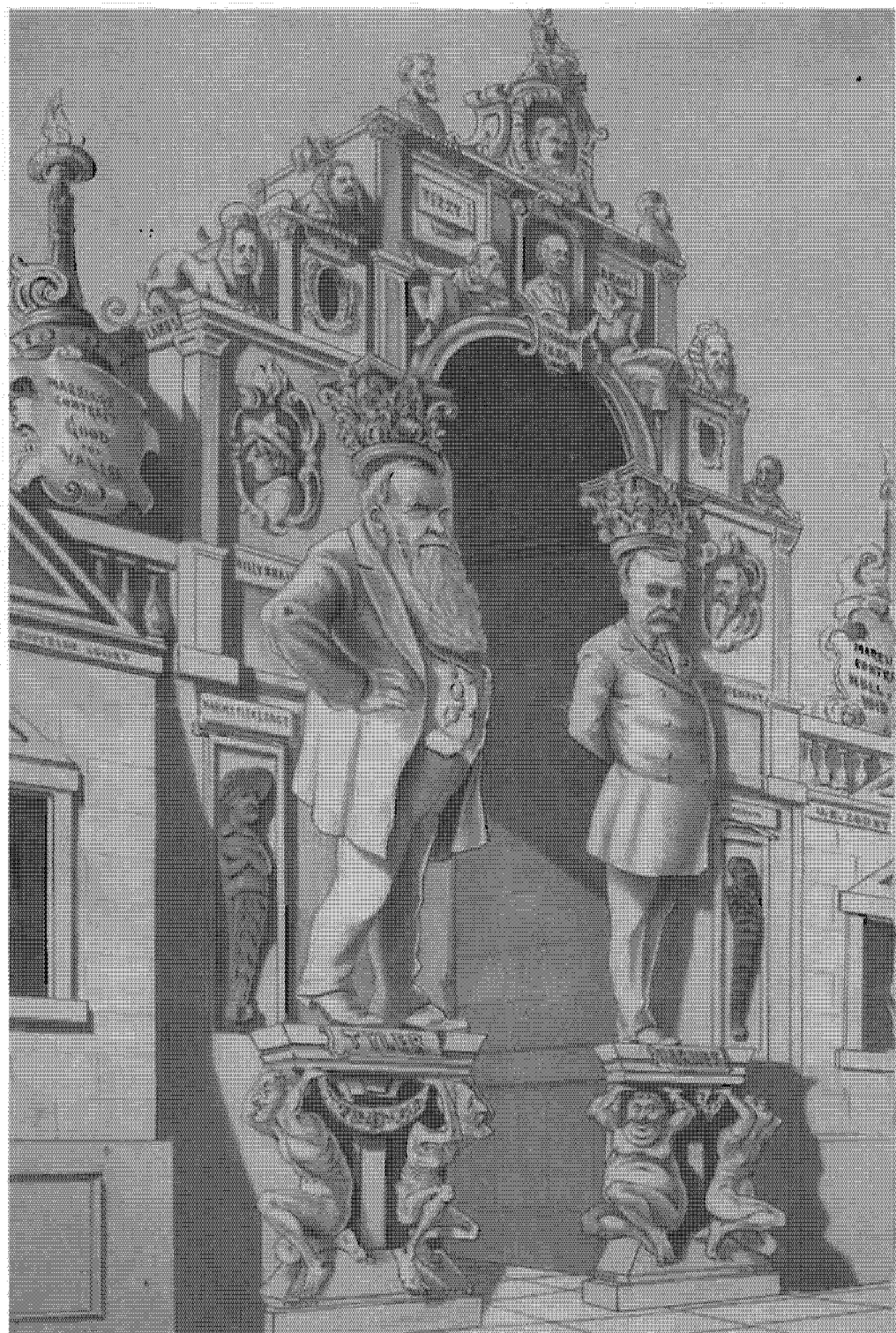
all activity to protect the would-be murderer, but seemed never to have been ruffled in the least degree over the probable assassination of a justice of the Supreme Court of the United States. The Terrys were never thought to be in any danger. The general belief was that Judges Field and Sawyer were in great danger from them.

The death of Terry displeased three classes: first, all who were willing to see Justice Field murdered; second, all who naturally sympathize with the tiger in his hunt for prey, and who thought it a pity that so good a fighter as Terry should lose his life in seeking that of another; and, third, all who preferred to see Sarah Althea enjoy the property of the Sharon estate in place of its lawful heirs.

It is plain from the foregoing review that the State authorities of California presented no obstruction to Terry and his wife as they moved towards the accomplishment of their deadly purpose against Justice Field. It was the Executive arm of the nation operating through the deputy United States marshal, under orders from the Department of Justice, that prevented the assassination of Justice Field by David S. Terry.

It only remains to state the result of the second trial of the case between Sarah Althea Hill, now Mrs. Terry, and the executor of William Sharon before the Superior Court of the city of San Francisco. It will be remembered that on the first trial in that court, presided over by Judge Sullivan, a judgment was entered declaring that Miss Hill and William Sharon had intermarried on the 25th of August, 1880, and had at the time executed a written contract of marriage under the laws of California, and had assumed marital relations and subsequently lived together as husband and wife. From the judgment rendered an appeal was taken to the Supreme Court of the State. A motion was also made for a new trial in that case, and from the order denying the new trial an appeal was also taken to the Supreme Court. The decision on the appeal from the judgment





This cartoon pokes fun at the Sharon/Terry scandal. Various actors in the saga are pictured, including Mammy Pleasant, here spelled "Pleasant," the notorious San Francisco madam who allegedly introduced Sarah Althea and Sharon.



resulted in its affirmance. The result of the appeal from the order denying a new trial was its reversal, with a direction for a new trial. The effect of that reversal was to open the whole case.<sup>71</sup> In the meantime William Sharon had died and Miss Hill had married David S. Terry. The executor of William Sharon, Frederick W. Sharon, appeared as his representative in the suit, and filed a supplemental answer. The case was tried in the Superior Court, before Judge Shafter, in July, 1890, and on the 4th of August following the Judge filed his findings and conclusions of law, which were, briefly, as follows:

That the plaintiff and William Sharon, deceased, did not, on the 25th of August, 1880, or at any other time, consent to intermarry or become, by mutual agreement or otherwise, husband and wife; nor did they, thereafter, or at any time, live or cohabit together as husband and wife, or mutually or otherwise assume marital duties, rights, or obligations; that they did not, on that day or at any other time, in the city and county of San Francisco, or elsewhere, jointly or otherwise, make or sign a declaration of marriage in writing or otherwise; and that the declaration of marriage mentioned in the complaint was false, counterfeited, fabricated, forged, and fraudulent, and, therefore, null and void. The conclusion of the court was that the plaintiff and William Sharon were not, on August 25, 1880, and never had been husband and wife, and that the plaintiff had no right or claim, legal or equitable, to any property or share in any property, real or personal, of which William Sharon was the owner or in possession, or which was then or might thereafter be held by the executor of his last will and testament, the defendant, Frederick W. Sharon. Accordingly, judgment was entered for the defendant. An appeal

was taken from that judgment to the Supreme Court of California, and on the 5th of August, 1892, Sarah Althea Terry having become insane pending the appeal, and P. P. Ashe, Esq., having been appointed and qualified as the general guardian of her person and estate, it was ordered that he be substituted in the case, and that she subsequently appear by him as her guardian. In October following, the appeal was dismissed.<sup>72</sup>

Thus ended the legal controversy initiated by this adventuress to obtain a part of the estate of the deceased millionaire.

### ENDNOTES

Abbreviations for common footnotes:

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| ANB Online | John H. Garraty and Mark C. Carnes, eds., <b>American National Biography</b> , 24 vols. (New York: Oxford University Press, 1999). I have used the extremely useful online version at <a href="http://www.anb.org/articles/home.html">http://www.anb.org/articles/home.html</a> (last accessed Mar. 30, 2005), which can be searched by the subject's name. Some subjects found in the online version are not in the print version. |
| Buchanan   | A. Russell Buchanan, <b>David S. Terry of California: Dueling Judge</b> (San Marino, Ca.: The Huntington Library, 1956).  |
| Bancroft   | Hubert Howe Bancroft, <b>The Works of Hubert Howe Bancroft</b> , 7 vols. (San Francisco: The History Company, Publishers, 1890).  |
| Hittell    | Theodore H. Hittell, <b>History of California</b> , 4 vols. (San Francisco: N.J. Stone & Company, 1898).  |
| Kroninger  | Robert H. Kroninger, <b>Sarah &amp; the Senator</b> (Berkeley, Ca.: Howell-North, 1964).  |
| Swisher    | Carl Brent Swisher, <b>Stephen J. Field: Craftsman of the Law</b> (1930 rpt., Hamden, Conn: Archon Books, 1963).  |
| Wagstaff   | A.E. Wagstaff, <b>The Life of David Terry</b> (1892 rpt., South Hackensack, N.J.: Rothman Reprints, Inc. 1971).   |

<sup>71</sup>Like Field and Terry, William Sharon was a California pioneer, having arrived from Ohio in 1849. Sharon was an organizer and officer of the Vigilance Committee of 1856 and therefore must have had earlier conflict with Terry. He became an officer of the Bank of California and, partnered with financier William C. Ralston, used

the Bank's resources to gain control of most of the major mining operations in the Comstock Lode. Sharon's power there earned him the unofficial title "King of the Comstock." He also developed business interests and owned a substantial amount of property in California, including the prestigious Palace Hotel. In 1875 he became the United States Senator for Nevada and served until 1881. See Hittell, III 634-35, IV 552-57; Kroninger, 15-19.

<sup>2</sup>Although Gorham will cast Sarah Althea in an unfavorable light, Terry's biographers claim she was from a prominent family in Cape Girardeau, Missouri. Wagstaff reports that she went to California after breaking off her engagement to a young man. There, he says, Sarah Althea lived with an uncle and his wife. Because she was unable to get along with the wife, the uncle was said to have given Sarah Althea a suite in a hotel. It was there that she met Sharon. Wagstaff, 308-310; Buchanan, 196.

<sup>3</sup>Gorham is referring to Mammy Pleasant, who testified at trial as Mary E. Pleasant. Neither Bancroft nor Hittell mention her. Kroninger describes her as a mysterious owner of boarding houses involved in shady business ventures. Kroninger, 74. Buchanan describes her as "financially successful in the operation of boarding houses of unsavory reputation." Buchanan, 198.

<sup>4</sup>Neither Bancroft nor Hittell mention Tyler. Kroninger, who unfortunately does not provide footnotes, says Tyler was a pioneer who arrived in California in 1849. He then went back east to earn a law degree, returned to California, and went into private practice specializing in criminal cases. Kroninger, 23-24. All accounts seem to agree that he was aggressive and volatile. See Buchanan, 195-96.

<sup>5</sup>Little is known about Neilson's background. Kroninger, 19-43, 101-03, describes his involvement in more detail.

<sup>6</sup>It may have been difficult for the general public to understand this claim because Sharon was a prominent member of California society.

<sup>7</sup>These documents were entered into the record of the trial in the divorce case of *Sharon v. Sharon* in the California Superior Court on November 8, 1883. Kroninger, 29-30 and illustrations between 48-49.

<sup>8</sup>Sarah Althea did not claim that she had rejected the money, but she did try to establish that she had invested \$7,500 with the Senator and the money represented a return of that investment. Kroninger, 58-61.

<sup>9</sup>Although the federal court ruled that the marriage contract was a forgery, on December 24, 1884 the state trial court ruled that it was genuine and issued a preliminary order giving Sarah Althea \$2,500 in alimony and \$60,000 in attorney fees. Two months later, the state court granted a divorce.

<sup>10</sup>All references to Sullivan in materials dealing with this case refer to J.F. Sullivan. Although I have not found supplementary data on J.F. Sullivan, Hittell reports that Jeremiah F. Sullivan was nominated in 1886 for justice

of the Supreme Court of California by the Democratic party on a platform that reflected the beliefs of the anti-monopoly faction of the party. Hittell, IV, 701-02.

<sup>11</sup>According to Buchanan, Judge Sullivan issued the divorce decree on February 19, 1884. Buchanan, 201; see also Kroninger, 159.

<sup>12</sup>A demurrer is a formal legal pleading by which one party claims that, even if the facts the other side claims were true, there are no legal grounds to support the other side's claim.

<sup>13</sup>Gorham adds the footnote "Senator Stewart, who was one of the counsel against her in the suit." William Stewart was an interesting Gold Rush era character in his own right. The Ohio native settled in Nevada City, California in 1848. One historian describes him as an old friend of Field's from early days in Marysville. Swisher, 326, n. 6. In the early years he held positions as district attorney and acting state attorney general. He quickly became a formidable mining attorney, usually working for powerful mining interests and against independent prospectors. It was in this role that he had an earlier relationship with David Terry. Using what even he admitted to be heavy-handed tactics, he defeated Terry in a tense and potentially violent dispute over mining rights in Nevada. Although Terry lost, the two appeared to have had an amicable relationship at the time. Buchanan, 116-20. In his early political career, Stewart was active in the Democratic and Know Nothing parties. A staunch supporter of the Union, he joined the Republican party on the eve of the Civil War. In 1864 Stewart became the United States Senator from the new state of Nevada. In 1874, he withdrew from the senatorial race in favor of William Sharon. When Sharon vacated the seat in 1877, Stewart ran again and, with support of the Southern Pacific Railroad, became a U.S. Senator for the second time. He held the office until 1905. Alan Lessoff, "Stewart, William Morris," *ANB Online*.

<sup>14</sup>R.W. Piper was a handwriting expert who worked for the newspaper the *Daily Alta* and later for William Sharon. He testified that Sharon's signature on the marriage contract was a forgery. Kroninger, 157, 159, 167, 176-77.

<sup>15</sup>Field heard the case with Judge Lorenzo Sawyer.

<sup>16</sup>Kroninger describes Evans as "a good trial lawyer with the tenacity of a bulldog and the nose of a blooded bird dog." Kroninger, 60.

<sup>17</sup>Gorham quotes the decision correctly, but Sarah Althea Hill's attorney was George Washington Tyler. Tyler, who was known for his rough courtroom tactics, had been practicing law in San Francisco for about twenty years. He was Sarah Althea's primary attorney at trial. Although Tyler's son also participated in the trial, I do not believe the reference is to him. See *Sharon v. Hill*, 24 F. 726, 727, 11 Sawyer 122 (C.C.D. Cal. August 5, 1885).

<sup>18</sup>*Id.*

<sup>19</sup>Gorham is mistaken about the date. The case is *Sharon v. Hill*, 26 F. 337, 11 Sawyer 290 (C.C.D. Cal. December 26, 1885). This opinion, written by Judge Matthew Deady,

along with a separate opinion by Judge Lorenzo Sawyer, provides an interesting read in itself.

<sup>20</sup>"Nunc pro tunc" is an order with retroactive effect.

<sup>21</sup>Matthew Paul Deady, United States District Judge for the District of Oregon. He was born in Maryland and practiced law in Ohio before moving to Oregon in 1849. Active in Democratic politics, he was elected to the territory assembly in 1850. In 1853, President Franklin Pierce appointed him to the territorial supreme court. When Oregon became a state, James Buchanan appointed him federal district judge. He remained in that position until his death in 1893. Ralph J. Mooney, "Deady, Matthew Paul," *ANB Online*, <http://www.anb.org/articles/11/1100207.html>; see also, Ralph J. Mooney, "Matthew Deady and the Federal Judicial Response to Racism in the Early West," *Oregon Law Review* 63 (1984): 561-637; Ralph J. Mooney, "Matthew Deady and Federal Public Land Law in the Early West," *Washington Law Review* 63 (1988): 317-70; Malcolm Clark, Jr., ed. "My Dear Judge: Excerpts from the Letters of Justice Stephen Field to Matthew P. Deady," *Western Legal History* 1 (1988): 79-97.

<sup>22</sup>Lorenzo Sawyer was the circuit judge for the Ninth Circuit. Born in New York, he moved to Ohio as a young man, where he read law with future Supreme Court Justice Noah H. Swayne. He came to California in 1850 and developed a profitable law practice in San Francisco. He was one of the organizers of the Republican party in California and was elected chief justice of the California supreme court, on which he served from January 1868 to January 1870. In 1870, after Congress had created circuit judgeships for each of the nine circuits, President Grant appointed Sawyer the circuit judge for the Ninth Circuit. He served in that capacity until his death in 1891. Bancroft, VII, pp. 235-36; Hubert Howe Bancroft, *History of the Life of Lorenzo Sawyer: A Character Study* (San Francisco: History Co., 1891); Linda Przybyszewski, "Judge Lorenzo Sawyer and the Chinese: Civil Rights Decisions in the Ninth Circuit," *Western Legal History* (1998): 233-56.

<sup>23</sup>Elisha W. McKinstry sat on the California supreme court from January 1874 to October 1888. He had a long history in California politics, having served in the first session of the California legislature in 1848. He had been a district judge since at least 1857. In 1864, the "Fusion Democrats," who opposed the "war against secession" nominated McKinstry as their candidate for state attorney general. The first time he won his seat on the Supreme Court, it was as a candidate of the People's Independence party, which included in its platform opposition to railroad power. Hittell, III, 646-47; Hittell, IV, 353, 643-45; Bancroft II, 236, 409.

<sup>24</sup>Niles Searles was chief justice of the California supreme court from April 1887 to January 1889. Although Bancroft and Hittell's books contain little record of him, he was a significant enough political figure to have received one

vote for U.S. Senator from the 1885 California legislature. Hittell, IV, 690.

<sup>25</sup>A. Van R. Paterson was associate justice of the California supreme court from January 1887 to April 1894. Paterson came to California in 1869 and was just thirty-two years old when he was elected to the state supreme court on a Republican ticket. He had been a district attorney and a superior judge in San Joaquin County, which includes Stockton. His name is variously spelled Paterson or Patterson. Hittell, IV, 701, 704-05; Bancroft, VII, 434.

<sup>26</sup>Jackson Temple served as associate justice of the California supreme court from January 1870 to January 1872, from December 1886 to June 1889, and then again from January 1895 to December 1902. In 1864, he was nominated to run for Congress as a Democrat in opposition to Lincoln and the Republican party. He later sat with Stephen Field on a special committee to revise the California codes that Field claimed responsibility for having written. The committee reported that the codes were perfect. Hittell, IV, 388, 527; Bancroft, VI, 434.

<sup>27</sup>James D. Thorton was associate justice of the California supreme court from January 1880 to January 1891. He had a history with David Terry going back to the Vigilance Committee of 1856. Thorton served as an intermediary in securing Terry's release from the custody of the Vigilance Committee. He was elected to the supreme court in 1880 as a Democrat. Hittell, III, 535-39, 580; Hittell, IV, 645; Bancroft, VII, 409, 735.

<sup>28</sup>John R. Sharpstein sat on the California supreme court from January 1880 to December 1892. He was elected as a candidate of the Workingman's party. Hittell, IV, 645.

<sup>29</sup>Thomas B. McFarland was associate justice of the California supreme court from January 1887 to September 1908. McFarland was a native of New York, where he studied law with his uncle. He came to California in 1850 and settled in Nevada City. He was a district judge from 1861 to 1863. He later moved to Stockton and was appointed superior judge by Governor Perkins. McFarland was a delegate to the Constitutional Convention of 1879, where he was best known as the chief advocate for women's suffrage. Hittell, IV, 625, 638, 704-05; Bancroft, VII, 434.

<sup>30</sup>George Myron Sabin was a relative latecomer to the West Coast. Born in Ohio, he practiced law in Wisconsin until just before the Civil War. He served in the Union Army, reaching the rank of colonel, and was judge advocate for the military district of Vicksburg from 1863 to 1866. After his military service, he returned to Wisconsin, but moved to Nevada in 1868. In 1882, President Chester Arthur nominated him for the position of U.S. district judge for the District of Nevada. The Senate confirmed the nomination, and Sabin took his seat on July 26, 1882. He remained on the federal bench until his death on May 20, 1890. Federal Judicial Center, Federal Judges Biographical Database, <http://air.fjc.gov/public/home.nsf/hisj>.

<sup>31</sup>Although nobody disputes that Sarah Althea assaulted Sawyer in some manner, accounts of the incident differ. David Terry later said that his wife had merely raked the back of Judge Sawyer's head as she passed. Buchanan, 210.

<sup>32</sup>Francis Griffith Newlands was a well-connected San Francisco lawyer and a member of William Sharon's legal team. More significantly, he was Sharon's son-in-law. Originally from Mississippi, Newlands grew up in Chicago, attended Yale, then studied law in Washington, D.C. In 1870, he moved to California, where he met and married Sharon's daughter, Clara. When Sharon died in 1885, Newlands became the trustee of his estate. Along with Sharon's son, Fredrick, he continued the battle against Sarah Althea. Newlands later served as the lone congressman from the state of Nevada. In 1903, he became a U.S. Senator, and he remained in office until his death in 1917. William D. Rowley, "Newlands, Francis Griffith," *ANB Online*, <http://www.anb.org/articles/05/05-00564.html>.

<sup>33</sup>David Neagle was born in San Francisco in the late 1850s, but made a reputation as a rough-and-tumble law enforcement officer in Tombstone, Arizona. At the time of this incident, he was running an errand for his employer, the San Francisco Collector's Office. As you will read, Neagle was later appointed a deputy U.S. marshal and assigned to protect Justice Field. In that capacity, he shot and killed David Terry. Paul Kens, "David Neagle: Trigger Man for a Tragedy," in Melvin I. Urofsky, ed., *100 Americans Making Constitutional History: A Biographical History* (Washington, D.C.: CQ Press, 2004), 141–44.

<sup>34</sup>I found no reference to J.H. O'Brien or Thomas T. Williams in either Bancroft or Hittell.

<sup>35</sup>P.D. Wigginton, a Democrat, was elected to the U.S. Congress in 1875. In his race for re-election in 1877, Wigginton actually lost the election by one vote. He contested the result, however, and eventually took a seat in Congress for another term. In 1886 the American (Know Nothing) party nominated Wigginton for governor. He came in a distant fourth out of five candidates. Hittell, IV, pp. 566, 577, 704. I found no reference to J.M. Shannon.

<sup>36</sup>Wagstaff claims that Field imposed an excessive sentence on Terry to get even for Terry's refusal to support his presidential aspirations. He also claims that Terry made no direct threats against Field and that Field used the incident as an excuse to have the Terrys shadowed by detectives. Wagstaff, 396–403. For other versions of this event, see Buchanan, 212–15; Kroninger, 202–07.

<sup>37</sup>*In re Terry*, 35 F. 419, 13 Sawyer 440 (C.C.N.D. Cal. September 17, 1888); See Swisher, 335–43.

<sup>38</sup>Solomon Heydenfeldt was associate justice of the Supreme Court of California from January 1850 to January 1857. During that time, he served with both Field and Terry. Bancroft, VII, 220–21.

<sup>39</sup>*Ex parte Terry*, 128 U.S. 289 (November 1, 1888).

<sup>40</sup>Terry's friends continued to insist that Heydenfeldt made the statements and attribute his later denial to a "willingness to do homage to a living power, or suffering by softening of the brain." Wagstaff, 397.

<sup>41</sup>Dr. R. Porter Ashe was a longtime friend of Terry's, having served with him in the Texas Rangers. After moving to California, Ashe became sheriff of Stockton in 1850. He supported Terry in an unsuccessful bid to be elected mayor of that city. He moved to San Francisco in 1853 to become attaché for the port. There, he was involved with Terry in the incident that led to Terry's arrest by the Vigilance Committee of 1856. Buchanan, 13, 37–41; Paul Kens, "Introduction: Incident at Lathrop Station," *Journal of Supreme Court History*, this issue. Ashe was also present during the courtroom incident that led to Terry's imprisonment for contempt. At the time, he took possession of Sarah Althea's satchel. Marshal J. C. Franks later testified that Ashe refused at first to give up the satchel. When he eventually did hand it over, Franks found a loaded revolver. Swisher, 334–35 (citing *In re Neagle*, 135 U.S. 1, transcript of the record, pp. 22–23, Library of Congress).

<sup>42</sup>For a description of the Terry-Broderick duel and accompanying references see the introduction in this issue, Paul Kens, "Introduction: Incident at Lathrop Station," *Journal of Supreme Court History*.

<sup>43</sup>*In re Neagle*, 39 F. 833 (C.C.N.D. Cal. 1889), affirmed in *Cunningham v. Neagle*, 135 U.S. 1 (1890). Note that *Cunningham v. Neagle* is often referred to as *In re Neagle* as well. Gorham does not identify the records to which he refers; Swisher used a transcript of the hearings that appears to be part of the record of the case before the Supreme Court. The transcript is held in the Library of Congress.

<sup>44</sup>J. C. Franks was the United States Marshal stationed in San Francisco. See Kroninger, 213; Swisher, 232.

<sup>45</sup>William Henry Harrison Miller was Attorney General of the United States from March 5, 1889 to March 6, 1893. After graduating from Hamilton College in 1861, Miller studied law in the office of future Chief Justice Morrison R. Waite. He then practiced law in Indiana. In the campaign of 1888, Miller was a confidential advisor to candidate Benjamin Harrison. After Harrison became president, he appointed Miller as his Attorney General. United States Department of Justice, "Attorneys General of the United States," <http://www.justice.gov/jmd/ls/agbiographies.htm#miller>.

<sup>46</sup>The special deputy was David Neagle.

<sup>47</sup>Field did not say when or why he rode across the Sierra Nevada Mountains in a buggy. It may be appropriate to point out here that his circuit-riding duties covered California, Oregon, and Nevada. At the time of this conflict, he could probably reach everything by rail. However, Field was appointed to the supreme court in 1863. It is possible that his ride across the Sierra was related to riding circuit in earlier years.



<sup>48</sup>This was probably either Sheriff R. B. Purvis, who had boarded the train at Modesto, or Constable Walker of San Joaquin County, who arrived after the shooting. Wagstaff, 408, 412.

<sup>49</sup>Terry's biographers provide a different interpretation of what took place in Lathrop station. Emphasizing that Terry hit Field only lightly on the cheek, Buchanan theorizes that the best interpretation for Terry's actions was that he was attempting to humiliate Field. Buchanan, 222–24. Wagstaff adds a conspiratorial tone. Agreeing that Terry only lightly struck Field, he implies that Field's friends were trying to put Terry in jeopardy. To support this contention, he says that there was no evidence that Terry had intended to assault Field, that Terry was not told that Field would have a bodyguard, and that the bodyguard, Neagle, had a reputation as a "tough" in Arizona and San Francisco. Wagstaff concludes that "those who had the power preferred to meet the emergency in a manner to remove [Terry] forever from the face of the earth, and so planned and arranged, as the sequel proved." Wagstaff, 405–07, 430.

<sup>50</sup>The reference is to H. V. J. Swain, of Stockton. Wagstaff, 432.

<sup>51</sup>The district attorney was Avery C. White. Wagstaff, 433.

<sup>52</sup>Stockton was David Terry's home and the base of his political support.

<sup>53</sup>The attorneys for both Field and Neagle naturally believed that their clients would be safer under federal authority. With respect to the charges against Field, the writ of *habeas corpus*, which ordered the sheriff to turn custody of Field over to the federal authorities, was quickly and easily secured. As the reader will see, achieving the same for Neagle would be more complicated.

<sup>54</sup>Thomas Cunningham would eventually lend his name to a U.S. Supreme Court opinion. Acting as sheriff of San Joaquin, he appealed the Federal District Court's decision to grant Neagle's petition for habeas corpus. Buchanan, 229. *In re Neagle*, 39 F. 833 (C.C.N.D. Cal. 1889), affirmed in *Cunningham v. Neagle*, 135 U.S. 1 (1890).

<sup>55</sup>A traverse is a form of pleading that is the same as a denial.

<sup>56</sup>A. G. Johnston was the attorney general of California. Swisher, 354.

<sup>57</sup>Wagstaff describes James L. Crittenden as "an able attorney of San Francisco and an old and close friend of Judge Terry." Wagstaff, 434.

<sup>58</sup>W. T. Baggett was Terry's attorney. He expressed the opinion that Terry did not intend to harm Field at Lathrop station. "'I will slap his face,' Terry said to me, 'If I do run across him, but I shall not put myself out to meet him. I do not intend to kill him, but I shall insult him by slapping his face, knowing that he will not resent it as he is a coward.'" Buchanan, 222, citing *The Daily Examiner* (San Francisco), August 15, 1889.

<sup>59</sup>William H. Beatty was elected chief justice of the California supreme court in 1888. He began his term in January 1889 and would soon be among the majority who overruled the superior court decision granting Sarah Althea's divorce. Chief Justice Beatty remained on the court until August 1914. See Kroninger, 207–12.

<sup>60</sup>Wagstaff maintains that the court's refusal to honor Terry was justly criticized. He notes that the bar association of San Joaquin County passed a resolution honoring Terry. Wagstaff, 432–39.

<sup>61</sup>All three of these lawyers were involved in every aspect of the conflict, representing the Sharon interests in the early stages and both Field and Neagle later. Swisher describes them as follows: "Richard S. Mesick was noted for the huge fees which he was accustomed to win. Samuel M. Wilson was one of the shrewdest of the railroad lawyers. William I. Herrin was a brilliant young man who in later years was to appear at the head of the Southern Pacific organization." Swisher, 331.

<sup>62</sup>Elected lieutenant governor in 1886, R. W. Waterman became Governor of California in September 1887 upon the death of Governor Washington A. Bartlett. Bancroft, VII, 434, 737; Hittell, IV, 704–05, 718.

<sup>63</sup>Attorneys for the state were Attorney General G. A. Johnson, J. P. Langhorne, and Avery C. White, District Attorney for San Joaquin County. Attorneys for Neagle were U.S. District Attorney John T. Cary, Richard Mesick, Samuel Wilson, William F. Herrin, W. L. Dudley, C. L. Ackerman, J. C. Campbell, and H. C. McPike. *In re Neagle*, 39 F. at 841–42.

<sup>64</sup>This reference is probably to Thomas Francis Bayard, a former U.S. Senator, Secretary of State, and ambassador to Great Britain. Bayard was one of Field's opponents in the run for the 1880 Democratic presidential nomination. Michael J. Devine, "Bayard, Thomas Francis," *ANB Online*, <http://www.anb.org/articles/05/05.00057>.

<sup>65</sup>*Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824).

<sup>66</sup>There was considerable public sentiment that Neagle should have been brought to trial in the state courts. Swisher, 355–61; Wagstaff, 514–522. The power of the states to control prosecution of crimes and the immunity of federal officials who are accused of violating state law thus became the key issues in the *Neagle* case. The decision established the doctrine that federal officials, acting within the scope of their duty, are immune from prosecution in state court for violating state law. *In re Neagle*, 39 F. 833 (C.C.N.D. Cal. 1889), affirmed in *Cunningham v. Neagle*, 135 U.S. 1 (1890). It should be noted that Chief Justice Melville Fuller and Justice Joseph Lamar dissented from the Supreme Court's decision on the ground that Neagle's appointment as deputy marshal had been informal and that he was not carrying out a duty explicitly created by federal law.



<sup>67</sup>The United States Attorney General was William H. Miller. Two of the most famous attorneys in America joined in Neagle's defense. Joseph Hodges Choate, a graduate of Harvard Law School, argued some of the era's most famous constitutional cases. Perhaps the most significant was *Pollock v. Farmer's Savings and Trust Co.* 157 U.S. 429 (1895), in which the Supreme Court overruled the national income tax. A New York Republican, Choate spent his career battling Tammany Hall Democrats. In 1899, President William McKinley appointed Choate as ambassador to Great Britain. Paul Morino, "Choate, Joseph Hodges," *ANB Online*, <http://www.anb.org/articles/11/11-1100162.html>. James Coolidge Carter also gained notoriety fighting Tammany Hall. Interestingly, he was twice cast against Justice Field's brother, David Dudley Field, in important legal and political battles. When Carter represented the state in *People v. Tweed* (1876), David Dudley Field was one of Boss Tweed's attorneys. Carter also campaigned against David Dudley's proudest accomplishment, the campaign to codify New York law. Like Choate, Carter fought against the income tax in *Pollock*. Donna Grear Parker, "Carter, James Coolidge," *ANB Online*, <http://www.anb.org/articles/11/11-00144.html>.

<sup>68</sup>G. A. Johnson was the California attorney general. He was joined by S. Shellabarger, J. M. Wilson, and Zachariah Montgomery. Hittell mentions a Zachariah Montgomery as the publisher of a pro-secession newspaper. Hittell, IV, 392. I found no other mention of the latter three in Bancroft or Hittell.

<sup>69</sup>*Ex parte Savin*, 131 U.S. 267 (1889).

<sup>70</sup>See note 41 for a description of Porter Ashe. Others expressed the same sentiment as Ashe regarding the shooting. See Wagstaff, 448–53.

<sup>71</sup>See *Sharon v. Sharon*, 84 Cal. 424, 23 p. 1100 (1890); *Sharon v. Sharon*, 84 Cal. 433, 23 p. 1102 (1890). A significant aspect of these cases was that the California supreme court deferred to the federal court's decision that the marriage contract was a fraud and to its injunction prohibiting Sarah Althea from using it. This rule may have made a forgone conclusion of the superior court's decision that there was not a marriage. See Kroninger, 231–36.

<sup>72</sup>Sarah Althea Terry lived in obscurity at the California State Hospital in Stockton for forty-five more years. She died there on February 13 or 14, 1937. Buchanan, 230–31; Kroninger, 239–46.

## Contributors

**Paul Kens** is a professor of political science and history at Southwest Texas State University in San Marcos. He is the author of **Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age** (University Press of Kansas, 1997).

**George C. Gorham** (1832–1909) was Stephen Field's lifelong friend. After serving as Field's clerk in Marysville, he worked as a journal-

ist. Gorham became clerk of the U.S. Circuit Court in 1863 and the following year was made private secretary to California Governor Frederick F. Low. Gorham ran unsuccessfully for governor of California on the Republican ticket in 1867, but was named Secretary of the U.S. Senate in 1868. He served in that capacity until the Democrats gained control of the Senate in 1879. In retirement, Gorham wrote an authoritative biography of Secretary of War Edwin Stanton.

## Correction

The image on page 21 of *Journal of Supreme Court History* 2005, vol. 30, no. 1 was incorrectly identified as Associate Justice John A. Campbell. It is a photograph of John W. Campbell, Judge of the United States District Court for the District of Ohio.

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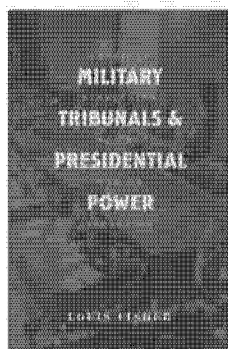
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**Cover:** U.S. Marshal David Neagle shot disgruntled former judge David Terry at the train station in Lathrop, California during breakfast in 1889. He was protecting Justice Stephen Field. Source: A. E. Wagstaff, *Life of Terry*.



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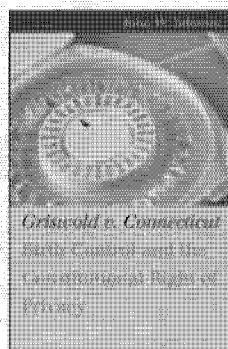
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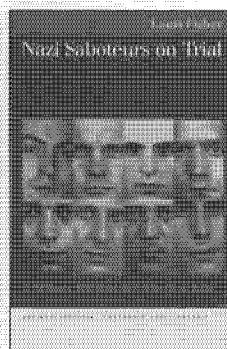
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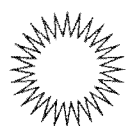


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