Preface

Melvin I. Urofsky

Two years ago, the Publications Committee gave its approval to a rather unique proposal: namely, that we devote an entire issue to the memoirs of Malvina Shanklin Harlan, the wife of Justice John Marshall Harlan. We did so for several reasons. Most importantly, the memoirs were unique in shedding light not only upon the life of Justice Harlan, but upon his family and the milieu in which the Harlans moved in the fifty years following the end of the Civil War.

Very few Justices have written autobiographies. The most famous, of course, are the several volumes penned by William O. Douglas, of which the best known is **Go East, Young Man** (1974). Such books, despite the occasional lapses of memory or distortions of the record, are of interest to students of the Court because they allow us a glimpse at the personal rather than the institutional side of the nation's highest tribunal. Even when the material itself refers to non-Court matters, or even the years before a person went onto the bench, memoirs provide information that is useful in evaluating that person's work on the Court.

Unfortunately, we only have a few such resources, but it is our intention to make them available both to the membership of the Society and, through the *Journal*, to a wider audience as well. This issue contains the first part of the memoirs of Stephen J. Field, one of the most important jurists in late nineteenth-century America. He had a very unique life before Abraham Lincoln appointed him to the bench, having arrived in California in the Gold Rush days and stayed on to become an important lawyer and judge, eventually serving on the new state's supreme court.

Once we had decided to print the memoir (only the first part appears in this issue; part two will appear at a later time), we needed a scholar to edit the memoir, annotate it where necessary, and provide an introduction to Field's life and the work that is now in your hands. That choice proved quite simple. Paul Kens, a professor of political science and history at Texas State University-San Marcos, had

published the well-received **Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age** in 1997, and I was very familiar with his other work as well, especially his writings on the *Lochner* case. We approached him, and were delighted when he said he would undertake the task.

As noted, there are very few memoirs by Justices of the Supreme Court, and those we do have are indeed priceless tools in helping us understand the people who have served on the Court. The editors of the *Journal* consider it both an honor and a service to be able to bring you this issue.

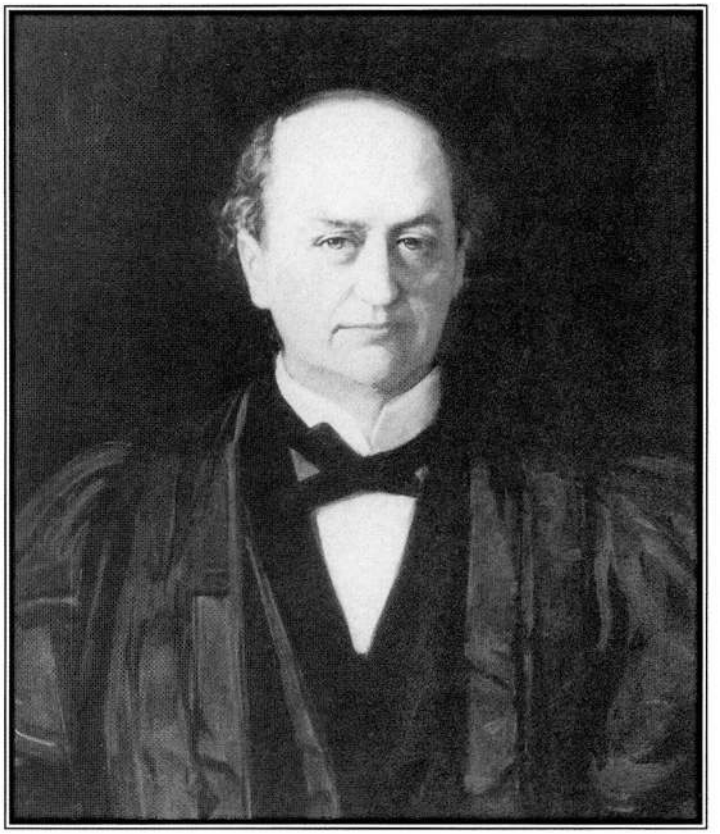
Introduction

PAUL KENS[1]

Justice Stephen J. Field sat on the Supreme Court of the United States for thirty-four years—from 1863 to 1897. Field was undoubtedly one of the most colorful personalities ever to occupy a seat on the High Court and, perhaps, one of the most controversial. His strong-willed, persistent, tenacious character incited intense feelings in both friends and foes. We can observe this, in part, from the language of his opinions. Field is most well known for stinging, sometimes sarcastic dissents in case like the *Slaughter-House* cases or *Munn v. Illinois*. We also find it in the tenor of numerous newspaper articles and pamphlets that were published in connection with the controversies that seemed to follow him. We can glean it from biographies such as Carl Brent Swisher's **Stephen J. Field: Craftsman of the Law** and Robert McCloskey's **American Conservatism in the Age of Enterprise**.[2]

Field left very little first-hand record of his life, however. He left no diary and only a few personal letters scattered among manuscript collections of friends and acquaintances. The one personal record Field did leave was a memoir that he dictated to a stenographer in 1877. This memoir, **Personal Reminiscences of Early Days in California with Other Sketches**, recalls the beginning of his career in California along with some U.S. Supreme Court cases concerning reconstruction of the Union following the Civil War.[3] It is reprinted in the pages that follow and, as you will soon see, it is filled with both the color and the controversy that engulfed Field's life.

Before turning to the introduction of **Personal Reminiscences**, it may be helpful to provide some basic biographical information. Stephen Johnson Field was born in 1816 in Haddam, Connecticut, one of nine children of Congregational minister David Dudley Field, Sr. and Submit Dickinson. During Field's youth, the family moved to Stockbridge, a small town nestled in the Berkshire Hills of western Massachusetts. Field claimed to be from a family of modest means. But it was also a family that traced its roots back to the Revolution. And it was a family whose children attained amazing success. Brother Cyrus was an entrepreneur who financed and directed the laying of the first transatlantic cable. David Dudley (who Field usually calls Dudley) was a distinguished lawyer noted for his attempts to codify civil and criminal law in the United



Stephen J. Field came from a family of modest means but whose children were very successful. In addition to his brothers David Dudley, a prominent New York attorney and abolitionist, and Cyrus, an entrepreneur who financed the laying of the first transatlantic cable, there was his nephew, David Brewer (pictured). The son of Field's sister Emilia, David Brewer was appointed to the U.S. Supreme Court in 1890 and shared the bench with his uncle Stephen for seven years.

States. He was also a political figure and abolitionist who was close to the Lincoln administration. Interestingly, David Dudley argued a number of cases before the Supreme Court while Stephen sat on the Bench. These included *Ex parte Milligan* and *Cummings v. Missouri,* cases that Field discusses at some length in **Personal Reminiscences**. Brother Matthew was an engineer. Brother Henry was a writer who later assumed the role of official family historian. One other member of the Field family worthy of mention is Justice David Brewer. Brewer, the son of Field's sister Emilia, was appointed to the Supreme Court of the United States in 1890 and sat alongside his uncle on the High Court for seven years.[4]

Stephen gradated in 1837 from Williams College in Massachusetts, then studied law in New York with his brother David Dudley and in the office of state Attorney General John Van Buren. After being admitted to the bar in 1841, he joined his brother's practice. Drawn by the Gold Rush, he left New York for California in 1849.

Personal Reminiscences begins with the voyage to California. Field recounts his passage via the Isthmus of Panama and his early days in San Francisco. He was one of the pioneers of Marysville, a budding supply center on the edge of the gold fields. He arrived in California during the heat of the Gold Rush. Indeed, some of the stories he tells of his life on the frontier are the stuff of western novels. You will find him staring down Judge William R. Turner, who threatens to "cut off his ear and shoot him down on the spot." He challenges a fellow legislator to a duel, is saved from an attack in a saloon, and is bushwhacked while unarmed. Field describes some of these personal rivalries with language that reflects a curious blend of frontier ruggedness and eastern gentility. He calls Judge Turner "a man of depraved

tastes, of vulgar habits, of ungovernable temper, reckless of truth when his passion is excited, and grossly incompetent to discharge the duties of his office." He does not tell us that Turner returned the compliment by characterizing Field's life as, "a series of little-minded meanness, of braggadocio pusillanimity and contemptible vanity."[5]

Personal Reminiscences is not just a story of personal rivalries, however. In its first pages, Field explains why he decided to go to California. "There was a smack of adventure to it," he writes. "The going to a country comparatively unknown and taking part of fashioning its institutions, was an attractive subject of contemplation." From almost the time he arrived, Field had a hand in shaping California's institutions. In January 1850, still operating under the Mexican form of government, Marysville residents chose Field as their first *alcalde*, an office that combined duties of judge and mayor. He held that position until June 1850, when the American style of government was installed. He then practiced law in Marysville. Active in the Democratic party, he served one term in the state assembly and, in 1857, won election to the California Supreme Court. In 1858, he was elevated to chief justice. He served in that position until President Lincoln appointed him to the Supreme Court of the United States in 1863.

For Field and the tens of thousands of Americans who poured into California in 1849 and 1850, the phrase "country comparatively unknown" was an understatement. Ignoring the native population and borrowing what they desired from the remnants of Mexican rule, they set out to build a society almost from scratch. Field's account of landing in San Francisco and settling in Marysville, the stories of his days as alcalde, his dispute with Judge Turner, and his service in the state legislature give a good sense of what it was like to build the foundations of a society.

The process of going to a country comparatively unknown and fashioning its institutions was bound to have both immediate and long-term consequences. In the short term, those institutions would help determine who would profit from the boom times in the early years

As a judge on the Supreme Court of California, Field decided numerous cases involving land claims. The Lick House property in San Francisco (pictured), which became the subject of a land dispute case, was worth a million dollars but had been purchased for less than twenty.

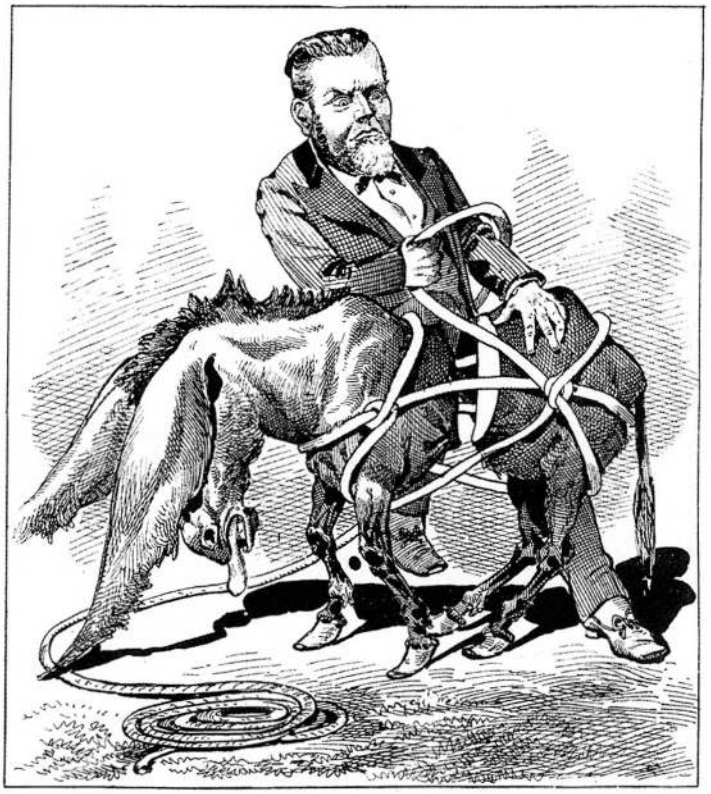
of settlement. Disputes over land ownership provided the most graphic example. In San Francisco, Sacramento, and even Marysville, these battles wound their way through the legislature and ultimately, into the courts. A great deal was at stake. As Field points out, "for the lot occupied by the Lick House, and worth now nearly a million, only a few dollars, less I believe than twenty, were paid." When the ownership of these lots was finally settled, some people obtained incredible wealth. Others were destroyed.

In the longer term, conflict over land was not only a matter of personal wealth. It became a clash between competing ideologies. The growth of California occurred during the peak of the homestead movement in America. The homestead ideal favored distributing public land in small parcels to actual settlers who would cultivate and occupy it. In California, this ideal clashed with the American promise, in the 1848 treaty that ended the War with Mexico, to respect existing Mexican land grants. These grants, most of which gave large blocks of land to a single individual, threatened to remove millions of acres of the state's choicest land from the public domain available for settlement. The existence of gold and other minerals intensified the problem. In the eyes of miners and settlers, Mexican land grants raised the specter of a state dominated by a landed monopoly. How many of the grants would be recognized, and how much land would thus be removed from the public domain, would ultimately be determined by the courts.

The transatlantic railroad added another element to the ideological conflict. The transatlantic line more firmly linked the California economy to the East. It likely had economic benefit for many Westerners, at least initially. But it also produced great wealth and political and economic power for a few. Gradually, the Central Pacific Railroad and its successor, the Southern Pacific, gained near-monopolistic control of transportation on the west coast. Many Californians came to see the "octopus" as the greatest threat to their well-being. Farmers and small businesses complained about fares, laborers about wages and the use of Chinese labor, cities and towns about being strong-armed into providing bonds and other incentives for a line to pass through. By the time Field wrote **Personal Reminiscences**, a strong sentiment had grown in California to regulate corporations in general and the railroads in specific. This sentiment, captured by the Antimonopoly Movement, became a major force in California's political landscape in the late 1880s and early 1890s. The Antimonopolists were the major faction in Field's own Democratic party.

As a state assemblyman, state judge, federal judge, and the highest judicial authority in the state, Field was intimately involved in shaping both personal fortunes and the ideological backdrop in California. Admirers claim that he brought order to the law in California. If this is so, he became a lighting rod for controversy. It is not my purpose here to analyze Field's politics or jurisprudence, only to provide a sense of his sentiment—and those of his rivals—in these matters. To that end, it may be enough to say that, justified or not, homesteaders, independent miners, and the Antimonopoly Movement counted Field among their worst of enemies.

Understandably, Field tells each tale in **Personal Reminiscences** from his own perspective. Just as understandably, some of Field's contemporaries subscribed to competing versions of many of these stories. But these are Field's memoirs. We want to allow the leeway for him to tell his story uninterrupted. In order to avoid cluttering the memoirs with my comments or the alternative views of detractors, I have included footnotes in the memoir itself only to identify or describe personalities whom Field mentions or to clarify places and events. Of course it is unreasonable to ask historians to edit memoirs without allowing them to add their own opinions and observations. That is the function of this introduction. My intention here is to set the stories in context,



A HOPELESS TASK: BEN HILL'S ATTEMPT TO REUNITE THE DEMOCRATIC DONKEY.

This cartoon satirizes attempts to reunite the Democratic party in 1879, the year Field made a concerted run for the presidential nomination. He wrote this memoir two years earlier, probably as campaign propaganda. His party had been torn apart by the 1876 election, in which Samuel Tilden won the popular vote but a special commission awarded the electoral-college majority to Rutherford B. Hayes.

alert you to some of the sources of controversy, and allow you to consider what may have been Field's motives in writing what he did.

As Field recounts his experiences, it may be valuable to consider the circumstances under which **Personal Reminiscences** was written. In 1879, two years after he dictated these memoirs, Field began a concerted run for the presidential nomination of the Democratic party.[6] Although Field maintains that **Personal Reminiscences** was published for the benefit of a few friends, it has all the makings of a campaign biography. In it, he takes pains to address several potential blots on his public record, to explain some of his unpopular positions, and to emphasize his judicial record in cases that tested the Radical Republican plan for reconstruction. Another factor indicating that **Personal Reminiscences** was intended to be, or evolved into, a campaign biography is that Field included a number of letters and testimonials from friends and supporters. These appear in appendices to the memoirs. We have chosen to leave most of them out.[7]

The election of 1880 was to be the next presidential campaign after the Hayes-Tilden disputed election. In that 1876 race, Samuel Tilden won the popular vote, but the Democrats lost the presidency when a special commission awarded disputed electoral college votes to Republican Rutherford B. Hayes. Some Democrats blamed Tilden for the loss, believing that he had failed to stand up under pressure. Part of Field's campaign strategy was to present himself as a man of unquestioned courage—a candidate who would not let the presidency slip away when it was in his grasp. Field's campaign also promised that he was satisfactory to the South and could deliver the votes in the West. The problem with this last promise was that the support he could actually count on from his home state was shaky at best. It was so weak that at the Democratic National Convention in Cincinnati, Field received

Emigrants pouring into California found the land largely uninhabited, but in fact much of it had been granted as ranchos under Mexican rule and was not public domain.

only six of California's twelve votes for the nomination.

In large measure, Field's lack of support in California stemmed from his decisions in land cases, which he discusses at length in **Personal Reminiscences**, and in cases involving the Chinese and railroads, which he does not. His involvement in these controversies, especially the land disputes, began during the time he sat on the California Supreme Court.

The root of many of these California land disputes lay in the 1848 Treaty of Guadalupe Hidalgo, in which the United States promised Mexico that "property of every kind now established [in the ceded territory], shall be inviolably respected."[8] In theory, this provision seemed fairly straightforward. Land granted to individuals under Mexican rule would remain the property of those individuals. All other land would become part of the public domain of the United States, much of which would be open to settlers under homestead and pre-emption laws. Conflict over land ownership in California usually involved determining into which category a given parcel fell.

Several factors complicated land disputes and caused them to become as much a matter of ideology as of personal property. Most ranchos granted under Mexican rule were huge. Mission de San Fernando in Los Angeles County, one of the larger, was 115,000 acres. Together, the ranchos in California accounted for between 13 and 14 million acres of the state's total territory.[9] While it is tempting to think of the Treaty of Guadalupe Hidalgo's guarantee as a means of protecting the property rights of Mexican nationals who remained in California after it was ceded to the United States, the fact is that American Anglos controlled many—if not most—of the disputed ranchos. Of the 813 grants that eventually came before the U.S. Land Commission, 155 originated in 1845 and 1846, the last two years of Mexican rule. In his last seven months as Mexican governor of the Territory, Pio Pico approved fifty-six grants totaling 1,756,000 acres.[10] Maps describing grant boundaries were crude, records were poor, and few of the Mexican grants complied 100 percent with Mexican law. As a result, the possibilities for fraud were innumerable.

The thousands of land-seeking immigrants who came to California in the 1850s and 1860s found much of this land uninhabited.

Whether it was public domain or part of an untested Mexican grant was difficult to determine and may have mattered little to some. Many believed in the ideal behind the homestead movement that "[w]hile every man has a right to as much land as he can properly use, no man has a right to any more."[11] They equated ranchos with monopoly and privilege. Even if they recognized the obligations under the Treaty of Guadalupe Hidalgo, they believed that the federal government had a duty to protect the nation's public domain and keep as much as possible available for homesteading.

Congress attempted to sort out the problem with the California Land Act of 1851.[12] Over objections of grant-holders, who would have preferred a plan that allowed them to simply register their claim and presume its validity, the California Land Act required grant-holders to appear before a commission to prove their claims. By placing the burden of proof on people who claimed title under Mexican grants, the new law seemed to create a presumption that favored designating as much land as possible as public domain that would then be available for settlement.

That changed with the U.S. Supreme Court's decision in *Frémont v. United States* (1854).[13] In 1847, John C. Frémont, the famous explorer and politician, purchased the rights to a rancho called Las Mariposas from Juan B. Alvarado. The Mexican government's original grant to Alvarado in 1844 was generous. It was a floating grant that gave Alvarado

In 1854, the U.S. Supreme Court held that John C. Frémont's land claim to a rancho called Las Mariposas was valid, although neither Fremont nor the man from whom he had purchased the land in 1847 had met any of the conditions set forth by Mexican law in order for the grant to be legal, such as inhabiting and surveying the property. This 1856 campaign banner shows Republican presidential candidate Frémont as a courageous explorer.

the exclusive right to lay out a rancho of ten square leagues (approximately 44,784 acres, or seventy square miles) from within a larger specified area estimated to be as much as 900 square miles. But the grant also included a number of explicit conditions. Alvarado was forbidden to sell the property, and he was required to inhabit it within a year, survey it, and place landmarks. Mexican law required that Alvarado obtain a patent from the local alcalde and file a crude map, called a *diseño*, with the supreme government. At the time Frémont presented his claim to the United States land commission in 1852 neither he nor Alvarado had done anything to meet these conditions. All arguments aside, it is fair to say that the letter of the Mexican law had not been followed with respect to this grant.

Nevertheless, the U.S. Supreme Court ruled that Frémont's claim to the grant was valid. In an opinion written by Chief Justice Roger Taney, the Court applied informal "Mexican customs and usages" and "the common or unwritten law of every civilized country" to hold for Frémont. The Mexican government had granted the land outright, Taney reasoned. It had conveyed a present and immediate interest, and the conditions imposed on Alvarado were only "conditions subsequent."[14] Failure to comply with them did not automatically invalidate the grant. *Frémont* set the tone for future decisions in the courts. It reversed the presumption built into the California Land Act of 1851 and created a presumption of law that tended to favor distribution of land in the western territories to corporate land companies, land speculators, and other holders of large blocks of land.

Frémont occurred long before Field joined the Supreme Court of the United States. But Field had ample opportunity to rule on land cases when he sat on the California Supreme Court. In disputes between settlers who claimed small parcels of land as homestead and people who claimed ownership of large estates under Mexican land grants, Field tended to rule in favor of those claiming title under Mexican grants.[15]

Perhaps the case that best illustrates Field's sentiment was *Biddle Boggs v. Merced Mining Company* (1859).[16] This case, an indirect continuation of the dispute in *Frémont*, involved a dispute over the mineral and mining rights on Las Mariposas. As part of its *Frémont* decision, the federal court ordered Frémont to resurvey his claim. The new survey changed the boundaries so that much of Las Mariposas ran into the foothills of the Sierra Nevada Mountains and now included some of the richest gold fields in California. Independent prospectors and small mining companies had been working the region for several years. However, although the *Frémont* decision and new survey threatened their right to continue, they had some cause for hope. Under Mexican law, land grants did not include mineral rights, which were reserved by the state.

In *Biddle Boggs*, the California Supreme Court, which was at the time an elected three-member body, addressed this theory. In its first ruling, the court agreed with the prospectors and small mining companies. Writing for a 2–1 majority, Justice Peter Hart Burnett reasoned that the only rights that passed to Frémont under the Treaty of Guadalupe Hidalgo were those granted under Mexican law. Mexican law reserved to the state all title to minerals. Therefore, the minerals lying under Las Mariposas belonged to the U.S. government. The government had a right to enter the land and mine those minerals, he continued, and by implication, it transferred that right to independent miners and prospectors. Justice David Terry agreed. Field dissented without comment.

This decision in the spring of 1858 did not end the legal wrangling. Frémont's forces quickly filed a motion for rehearing. The motion lay dormant for about a year. Meanwhile, political events began to shape the course of the dispute. The following November, voters

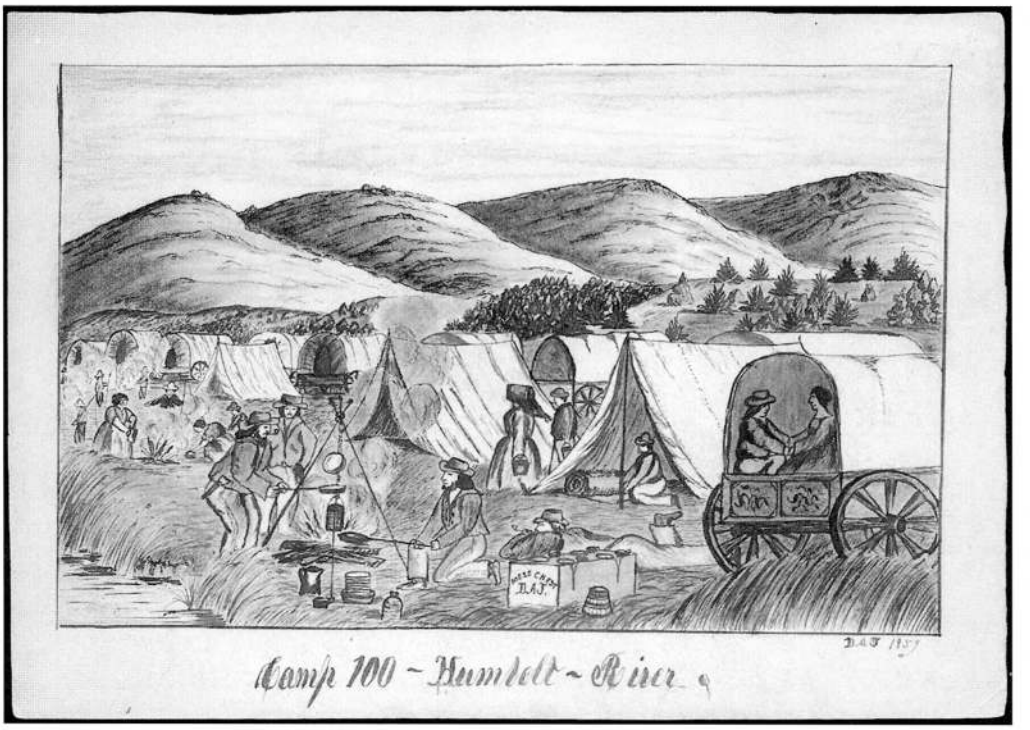
Because land grants did not include mineral rights, the Supreme Court of California ruled that the minerals lying under Las Mariposas belonged to the U.S. government. Judge Field dissented, but independent prospectors (pictured) and mining companies were heartened by the decision. One year later the court, with a new judge who allied with Field, effectively reversed itself.

elected Joseph Baldwin to replace Burnett on the court. Baldwin had been a lead attorney for the Frémont group in the *Biddle Boggs* case. There was little doubt how he would vote in a rehearing. But even under the relaxed ethical standards of the day, it would have been difficult for Baldwin to participate in a rehearing of the case. As a result, the remaining two justices, Field and Terry, canceled each other out.

Events soon changed the balance, however. In September 1859, Terry killed Senator David Broderick in a duel and soon thereafter resigned from his seat on the court. The Broderick-Terry duel is a famous event in California history and will be covered more thoroughly in the next half of Field's memoirs. What is important now is that Terry's resignation allowed the governor to appoint a new justice, W. W. Cope, to the bench.[17] With the addition of Cope, Baldwin did not need to participate. Cope joined Field, who wrote an opinion overruling the original *Biddle Boggs* decision.

In the second *Biddle Boggs* case, Field did not determine who owned the minerals. Rather, he overruled the original decision that the U.S. government had given independent miners an implied license to take minerals from the land. One year later, in the combined cases of *Moore v. Smaw* and *Frémont v. Fowler*, he did rule that the right to minerals passed to the holder of a Mexican land grant once that landowner received a patent from the U.S. government.[18] These cases gave Frémont's Mariposa Mining Company control of around seventy square miles of California's richest mineral wealth.[19]

The onset of the Civil War split the Democratic party in California and opened the door for a Republican landslide in 1861. Field's term on the state supreme court was to end in 1863. He had remained loyal to the Union, but as a



In cases involving homesteaders and settlers, Field, appointed to the Supreme Court of the United States in 1863, tended to deny their land claims and interpreted homestead and pre-emption laws narrowly.

Democrat he was not likely to be re-elected. All signs seemed to be pointing to the end of his career as a judge.

President Abraham Lincoln altered that fate when he appointed Field to the Supreme Court of the United States. Lincoln believed that putting a Westerner on the U.S. Supreme Court would further secure California's loyalty, and he pressed Congress to increase the size of the Court to ten members. On February 23, 1863, he appointed Field to the existing U.S. circuit judgeship for California. Less than two weeks later, when Congress enlarged the Supreme Court, Field became the tenth Justice. He was appointed on March 6, 1863, confirmed on March 10, and sworn in on May 20. As chief justice of the California Supreme Court, Field was a reasonable candidate for the new seat on the federal bench. According to family lore, however, brother David Dudley had a significant impact on Field's appointment. This certainly seems likely. David Dudley Field's links to the antislavery movement were old and deep, and he undoubtedly had influence in the Lincoln administration.[20]

Like other Justices at the time, Field served in a dual capacity—as a member of the Supreme Court in Washington, DC and as the circuit judge for his region.[21] His duty to "ride circuit" required him to travel to California every year for most of his career, first via Panama and later by rail. Although arduous, this task made him the highest judicial authority in California and allowed him to keep a finger on the pulse of California politics.

In his first decade on the federal court, Field seemed to serve as the residing expert on land-dispute cases. Expanding on his California decisions, he demonstrated a desire to smooth the process in land-dispute cases and make it as favorable as possible for people claiming Mexican grants. Where fraud was clear, Field did not hesitate to rule against

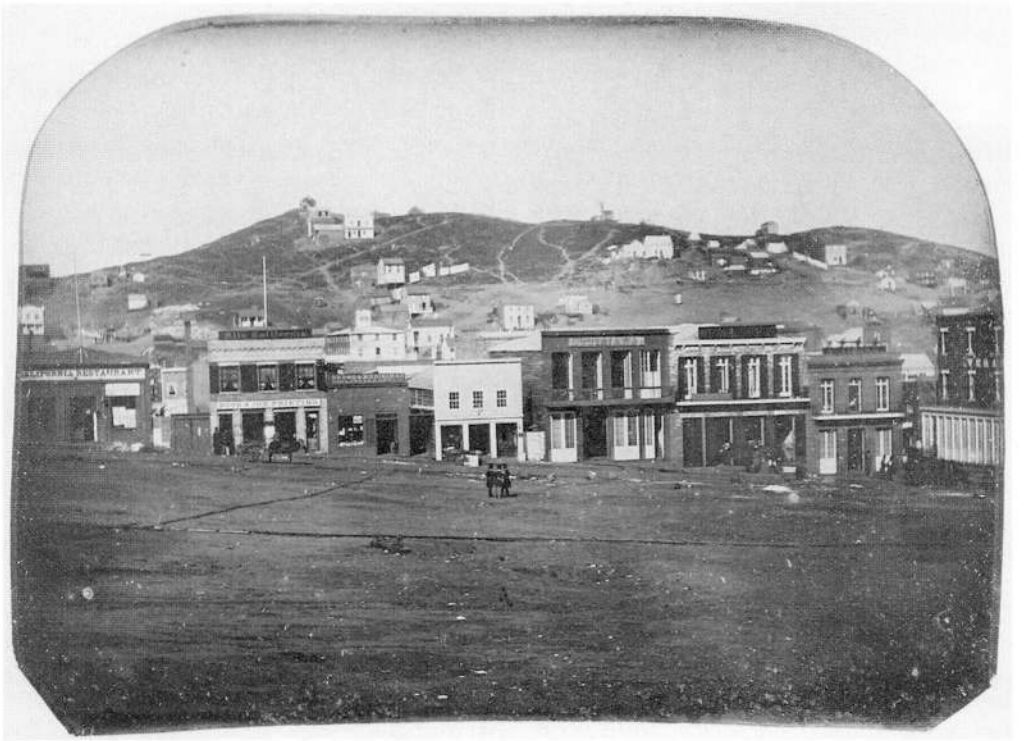
claimants. But he tended to give them the benefit of the doubt, ruling, for example that the words "five leagues more or less" supported a claimant's claim to an eleven-league grant.[22] Field sought to enhance the stability of land titles by establishing a presumption in favor of people claiming under Mexican grants. This was especially true once the federal government officially recognized the validity of a grant and issued a federal patent to the land. Thus, in *Malarin v. United States*, Field validated a grant of two leagues even though the original document had been altered, changing it from one league to two.[23] In another decision, he validated a grant even though it was dated after the time the Mexican government had stopped issuing grants.[24]

Field's desire for stability did not lead him to apply the same presumptions in cases involving homesteader and settlers. On the contrary, his strict interpretation of homestead and preemption law made it more difficult for settlers and homesteaders to perfect their claims to public lands. In *Frisbie v. Whitney* (1869), he joined the Court in ruling that settlers must comply with all the technicalities of the law before they obtained any interest in the land they settled.[25] The dispute was the result of an earlier court decision. In 1862, the U.S. Supreme Court declared John Frisbie's claim to a grant called the Suscol Ranch to be invalid.[26] Assuming that the Supreme Court decision meant that the land was public domain, settlers streamed into the area and staked claims. A year later, Congress complicated matters when it passed a law giving former claimants under the Suscol grant the right to claim "as much land as had been reduced to their possession" prior to the Supreme Court's decision invalidating that grant. Taking advantage of Congress's enactment, Frisbie secured a federal patent—and thus formal title—to a large block of the former Suscol lands.

During the time between the Supreme Court decision and Congress's action, Whitney had settled on land within the block Frisbie claimed. In accordance with the Preemption Act of 1841, Whitney erected a house, occupied it with his family, cultivated crops, improved the land, and filed an application in the general land office. The grant office had not yet accepted the application or charged Whitney the fee required by law. Nevertheless, Whitney argued that, because he had followed the steps required by the Preemption Act, he was a "bona fide settler" who had a "vested right" to the lands. The Supreme Court rejected Whitney's claim, awarding the land to Frisbie.[27]

Three years later, in the *Yosemite Valley Case* (1872), Field expanded on the *Frisbie v. Whitney* opinion.[28] The act of occupying and cultivating land, he said, did not give a homesteader either a vested or an equitable interest in the claim. These two cases brought Field into direct conflict with homestead reformer George Julian. He addresses these cases and his conflict with Julian in a portion of **Personal Reminiscences** he calls "The Hastings Malignity."

Not all land disputes involved such a graphic clash of ideologies. The San Francisco land cases, a dispute among investors and speculators, provide one example. In the 1850s, chain of title to land in the city was a hopeless mess. One resident reported knowing as many as six claimants for one lot. They came in all forms, from bold schemers to simple squatters. Roughly speaking, however, competing claimants traced their title to one of three sources. Some traced title to "pueblo grants," claiming San Francisco had been a pueblo under Mexican law and thus owned four square leagues of land. American alcaldes, governing during the transition to American rule, gave some of this land to individual settlers. Others claimed that land in the city was the public domain of the United States and could thus be settled under pre-emption laws. Still others traced ownership to so-called Peter Smith deeds, which came into existence in 1852 when the city sold off land to pay debts.[29] Included in the Peter Smith sales were lots that some earlier investors claimed. There was a great



San Francisco land cases involving disputes among investors, speculators, and squatters were as complicated as the stakes were high. Pictured is the city's Portsmouth Square in 1851.

deal at stake here. Lots originally purchased for small sums became incredibly valuable as the city grew. The key question in determining who owned the property was whether the city had ever been a pueblo. If so, title traced to the pueblo grants to early settlers would be secure, as would the Peter Smith deeds. But title traced to early investors' claims based on pre-emption would be in jeopardy.

Older investors prevailed on the city to pass the Van Ness Ordinance, recognizing the title of those who had been in actual possession of property on January 1, 1855. This rule had the effect of freezing out holders of Peter Smith deeds. The ordinance came before the California Supreme Court while Field sat as chief justice. In *Hart v. Burnett,* written by Field's friend Joseph Baldwin, the court ruled that San Francisco had indeed been a pueblo.[30] Baldwin's conclusion would seem to have required recognizing the validity of the Peter Smith grants, but he nimbly avoided that result. The city, he said, had not been granted an absolute property right. Rather, it held the land as a "public trust" for the benefit of the entire community.[31] Sale of the property to promote the growth of the city and the comfort and convenience of its inhabitants was consistent with that trust. Sale to satisfy debt was not. Under this doctrine, the Peter Smith deeds were invalid. Older titles—those linked to pueblo grants as well as those traced to pre-emption claims—were secure.

Although Field clearly relates the story of the San Francisco land cases in **Personal Reminiscences**, he does not quite emphasize the degree to which he had his hand in the final outcome.[32] As might be expected, the state supreme court's ruling did not end the matter. Hart (the loser in the case) filed a motion for writ of error to the U.S. Supreme Court. The Court granted the motion. But Field, still chief justice of the California Supreme Court, refused to send the case to the federal

court.[33] Meanwhile the federal Board of Land Commissioners ruled that, although it was a pueblo, the city had a right to only three square leagues of land. The city appealed to the federal district court, where the case lingered until after Field was appointed to the federal bench in 1863. Field then prevailed upon his friend, Senator John Conness, to introduce legislation that would transfer jurisdiction of the case to his circuit court. After two attempts the legislation passed and, in *San Francisco v. United States*, Field overturned the decision of the Board of Land Commissioners and reaffirmed the ruling of *Hart v. Burnett*.[34] Later, acting on the motion of one of the attorneys, the U.S. Supreme Court issued a writ of mandamus and ordered that the case be sent up on appeal.[35] Before the Court could act, however, Field once again prevailed upon Senator Conness. The episode finally ended when Congress passed legislation conceding title to the land within the city and expressly confirming Field's ruling in the circuit court.[36]

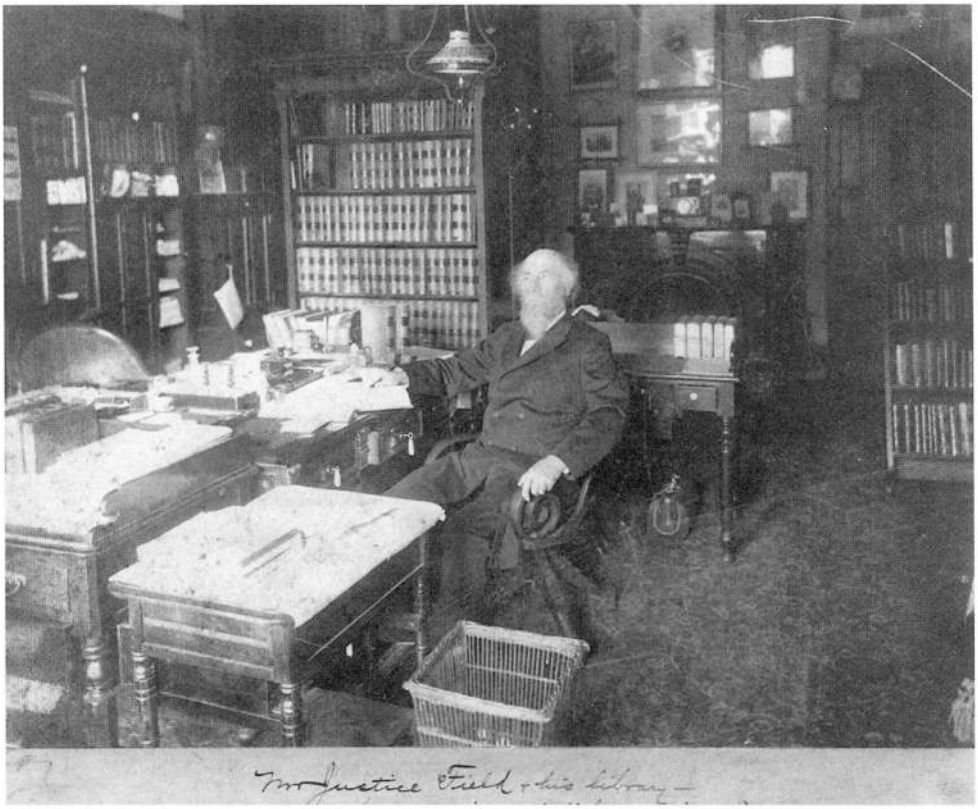
Field points to the San Francisco land cases as the motive for an attempt on his life in October 1865. No doubt the result of these cases caused "a great deal of irritation," as he put it. What may have irritated his opponents most, however, was the degree to which Field was willing to manipulate the legal and political process to achieve his preferred outcome.

If I am correct that **Personal Reminiscences** was intended to serve as a campaign biography, it is easy to see why he writes about the land cases. He would have wanted to convince easterners that his decisions were popular in California and westerners that his solution was the best solution to the problems. As you read his memoirs, it will be obvious that Field was not defensive about his record. In 1884, some seven years after he dictated these memoirs, he told his friend Matthew Deady, "The good people of California generally are furious the first year at my decisions and about the third year afterwards begin to approve of them."[37]

In one of the later sections of **Personal Reminiscences** Field turns his attention to "Hostility to the Supreme Court After the Civil War." Here he discusses his role in a group of cases involving suspension of the writ of habeas corpus and loyalty test oaths. Field's votes and opinions in these cases reflected his sincere commitment to individual liberty. They also support his second strategy for winning the Democratic nomination—approval of the southern states.

The first of these cases, *Ex parte Milligan* (1866), involved President Lincoln's order suspending the writ of habeas corpus and directing that people accused of disloyalty be tried by military tribunals.[38] Lambdin Milligan was a member of the Sons of Liberty, a group of Confederate sympathizers who had developed an elaborate plan to encourage insurrection in midwestern states. Just as the war ended, Milligan was arrested in Indiana, tried by a military tribunal, and convicted of treason. Article I, section 9 of the Constitution provides for suspension of the writ "when, in cases of rebellion or invasion, the public safety may require it." Nevertheless, Milligan's attorneys argued that suspension of the writ of habeas corpus was inconsistent with liberty and illegal wherever civil courts were functioning. A unanimous Court agreed and overturned Milligan's conviction.

Although some quarters hailed the Court's decision in *Ex parte Milligan* as a victory for civil liberties, Radical Republicans viewed it as a threat to the congressional plan for Reconstruction. The implication of the case—that the Court might overrule the legislative strategy for dealing with former rebels—caused Radical Republican legislators to question the legitimacy and degree of judicial power. This tension between Congress and the Court reached a breaking point in *Ex parte McCardle* (1869).[39] Under the Reconstruction Acts of 1867, most of the former Confederate states remained under military rule and the practice of trial by military tribunal continued. Mississippi newspaper editor William McCardle was arrested



Field's votes in cases involving the suspension of the writ of habeas corpus during the Civil War and loyalty-test oaths for former Confederates in the war's aftermath reflected both a sincere commitment to individual liberty and a need to win approval from southerners for his bid to win the Democratic nomination in 1880. Justice Field is shown here in his library.

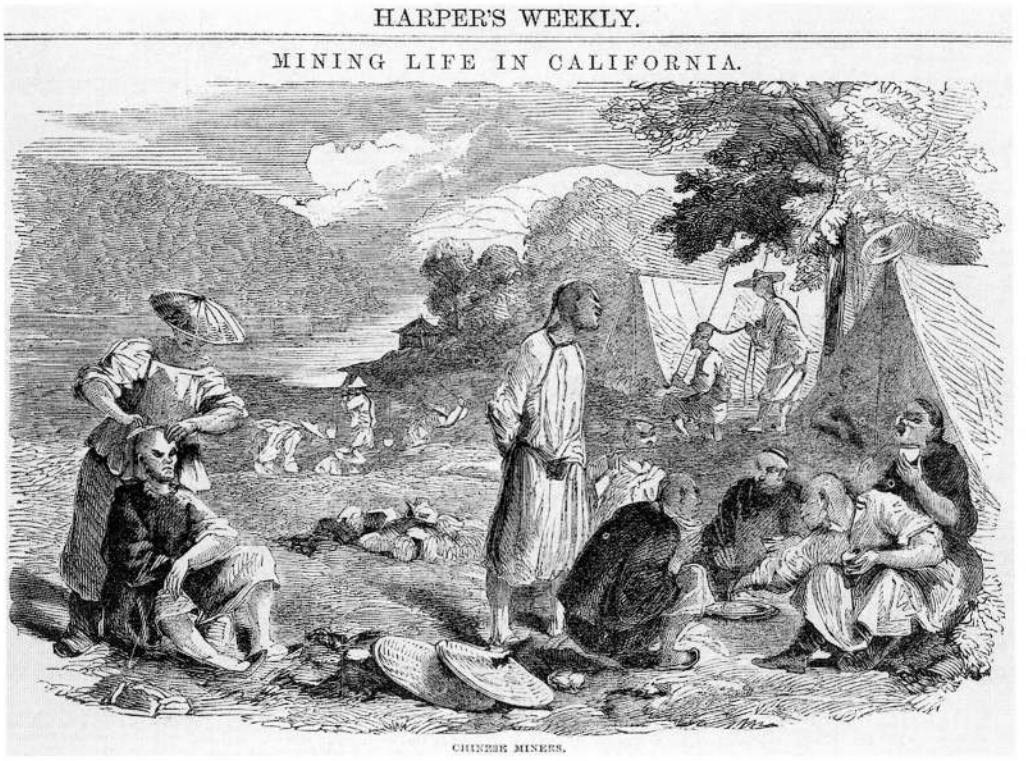
for publishing articles critical of the government's policy and held for trial before a military tribunal. In accordance with the Habeas Corpus Act of 1867, he petitioned the circuit court and, when it was denied, appealed to the U.S. Supreme Court. The Court accepted the case and heard oral arguments. But it never reached a decision in the case. While *McCardle* was pending, Congress passed a law repealing the Supreme Court's jurisdiction in habeas corpus appeals. The majority of the Supreme Court agreed that this act of Congress made McCardle's case moot, but dissenting in *Ex parte McCardle*, Field joined Justice Robert C. Grier in strenuously objecting to what they saw as congressional interference with the Court's duty to protect individual liberty.

In the same year, Field wrote *Cummings v. Missouri* (1867) and *Ex parte Garland* (1867), popularly known as the *Test Oath* cases.[40] These opinions overruled state and federal test oath laws, which required people seeking government jobs and practicing certain professions to take an oath promising to be loyal to the Union and swearing that they had never been disloyal. Test oaths were especially odious to Democrats and southerners. There may have been good reason after the Civil War to initiate rules to assure that only people loyal to the union obtain high office. Some may have thought that test oaths served this purpose. But they were also a convenient way to hobble the Democratic party and to help assure that Republicans would continue in power.

Field argued in part that, because these laws deprived individuals of previously enjoyed civil and political rights, they constituted a form of punishment. They thus violated the Constitution's prohibition against ex post facto laws and bills of attainder. Among those rights which had been denied to Cummings and Garland was the right of property, Field reasoned, including "those estates which one might acquire in professions." The *Test Oath* cases, especially *Garland*, may have struck a deep cord in Field. *Garland* involved a statute that required that attorneys sign a test oath in order to practice before the federal courts. As you will read in **Personal Reminiscences**, Field's own right to practice his profession in frontier Marysville was threatened when he fell into a dispute with the local judge, William R. Turner.

When Field dictated **Personal Reminiscences** in, 1877 he was less than half way through his judicial career. In his total of thirty-four years on the Bench he produced many more opinions than can possibly be discussed here. Several that he wrote between 1877 and the Democratic National Convention in 1880 may also have affected his chances for the nomination. *Strauder v. West Virginia, Ex parte Virginia*, and *Virginia v. Rives* involved southern state policies to exclude blacks from jury service.[41] Part of the Radical Republican plan for Reconstruction was a statute that allowed people who were denied their civil rights to have their case "removed" or transferred from state courts to federal courts. In his votes and opinion in these three cases, Field adopted a strong states' rights posture. This removal statute, he wrote, represented an unauthorized increase in the power of the federal courts and an unwarranted interference with the states' authority to enforce their own criminal laws. His separate opinion in *Virginia v. Rives* also helped lay the foundation of the "state action doctrine" that would be employed in the *Civil Rights* cases to limit the impact of the Civil Rights Act of 1875. Field's opinions in these cases were popular among southern Democrats.[42] However, others he wrote during the same few years weakened even further his popularity in California.

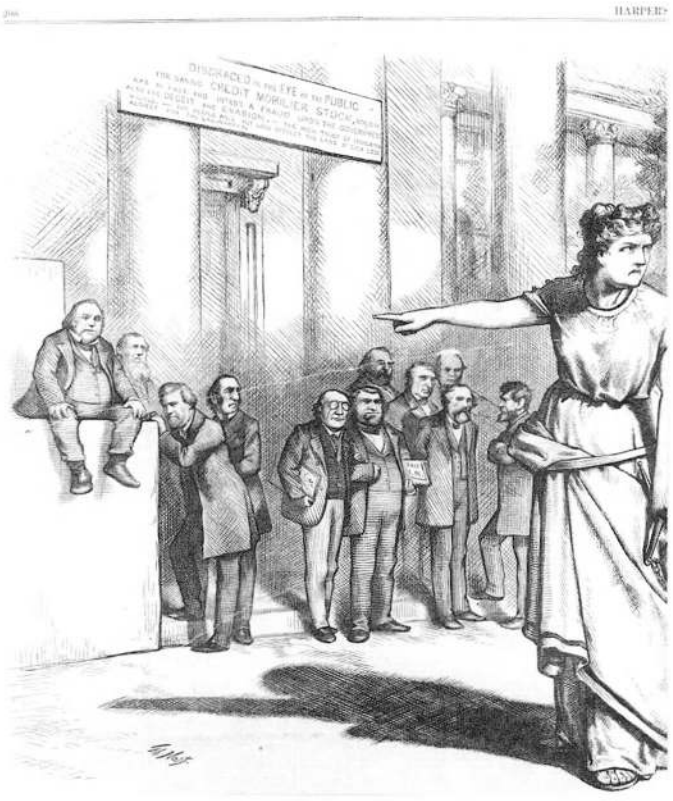
To a significant number of California Democrats, especially those who subscribed to the Antimonopoly movement, the Chinese and the Railroad represented twin threats to the security of workers and farmers. They succeeded in writing into both the California Constitution of 1879 and state statutory law a variety of regulations that expressly discriminated against Chinese. *Ah Kow v. Nunan* (1879) tested two San Francisco ordinances that were obviously designed to harass Chinese.[43] One provided that anyone found sleeping in a house that provided less than 500 cubic of feet per inhabitant could be fined up to fifty dollars or imprisoned. The other gave the *Ah Kow* case its informal name—the *Queue Case*. It directed jailers to crop the hair of every male prisoner to a uniform length of one inch, thus cutting off the queue Chinese men traditionally wore. Ho Ah Kow was convicted of violating the cubic air statute and sent to jail, where the sheriff cut off his queue. Relying on a federal civil right law, he sued the sheriff. Field, riding circuit, overruled the city ordinance. First, he said, this harassment of Chinese interfered with the federal government's authority to enter into treaties with foreign nations. Second, it was a form of discrimination by the state against a class of persons, and thus violated the Fourteenth Amendment. Field had previously overruled anti-Chinese statutes and a year later would acquiesce when the federal district court overruled a provision of the California Constitution that prohibited corporations from hiring Chinese in any capacity.[44] However, in pamphlets entitled "History of the Queue-Cutting Ordinance" and "A Possible Solution to the Chinese Problem," he maintained that he was not in favor of Chinese immigration. Indeed, in cases interpreting later federal statutes that restricted immigration, Field displayed much less sympathy to the Chinese.[45]



California Democrats succeeded in passing regulations that expressly discriminated against Chinese immigrants, such as the miners pictured above. Although Field, riding circuit, overruled a city ordinance directing jailers to cut off the traditional queue of Chinese male prisoners, as a judge he was generally unsympathetic to Chinese immigrants.

Gold Rush California was the quintessential land of opportunity. By the 1870s, however, many Californians, like farmers and small merchants in other parts of the country, feared that they were losing control of their own lives and destiny to the power of great corporations. The greatest of these corporations, the symbol of the economic and political power they wielded, were the railroads. The one issue that overshadowed all others in California politics was the power, real or imagined, of the Southern Pacific Railroad.[46] The Southern Pacific was the successor of the Central Pacific Railroad, which, along with the Union Pacific Railroad in the East, received federal grants in 1862 to build the transatlantic railroad. The project was funded in part by government bonds that were, in essence, loans to the railroads payable at 6 percent simple interest thirty years after the date they were issued. Congress reserved the right to alter, amend, or repeal the grant, and it did so in 1864, giving more favorable terms to the railroads.

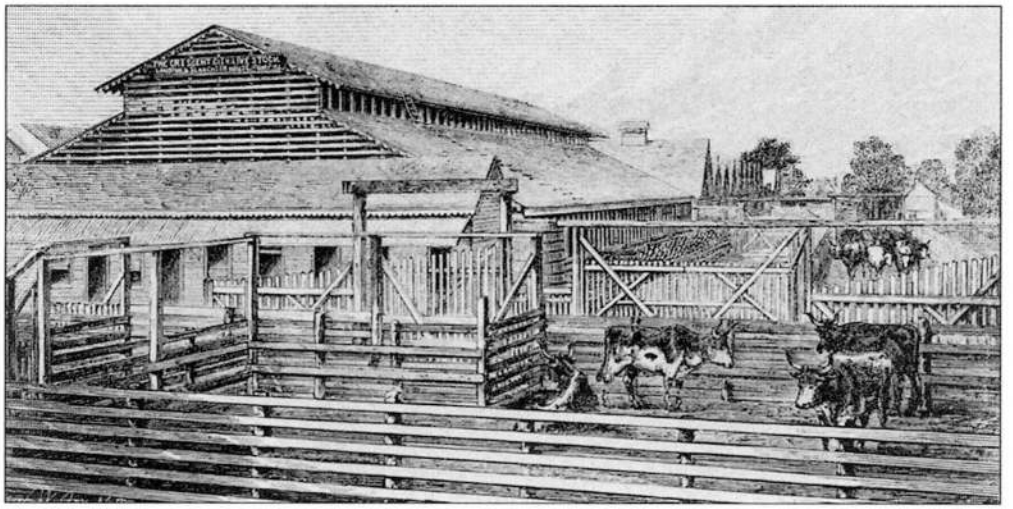
Congress's treatment of the railroads changed in 1871 when it became known that a company called Crédit Mobilier had contributed shares of stock to influential government officials. The Crédit Mobilier Corporation was part of a scheme in which the key directors of the Union Pacific set up Crédit Mobilier as a separate corporation that they owned. The Union Pacific, controlled by these same key directors, then gave contracts to Crédit Mobilier paying exorbitant prices to build portions of the road or provide other services. In this way, profit was siphoned from the railroad to the service corporation. Key directors of the Central Pacific created a similar service corporation named the Contract and Finance Company. These schemes cheated the



Congress's favorable treatment of the railroads changed in the wake of the Crédit Mobilier scandal, which erupted after key directors of the Union Pacific set up a separate company called Crédit Mobilier to siphon off profits, enrich themselves, and cheat shareholders. This 1873 cartoon shows Lady Justice admonishing the press not to "cast the first stone," as she points to men under a sign reading "disgraced in the eye of the public for owning Crédit Mobilier stock."

railroad companies' other shareholders. They also raised concern in Congress that the railroads would not be able to pay off their debt to the government.

Congress responded with the Crédit Mobilier Act of 1873. This law directed the Secretary of the Treasury to withhold all payments the government owed to the railroads for transporting troops and mail or for other services. That money was then to be applied to the current interest the railroads owed on their debt. In two cases, the Supreme Court, with Field joining the majority in both, ruled that the most important provisions of the Crédit Mobilier Act were invalid.[47] In the meantime, Congress revised its plan to assure repayment of the railroads' debt by passing the Thurman Act in 1878. This law amended the 1864 grants to the railroads. The 1864 grant provided that one-half of the money the railroads earned by providing services to the government would be applied to their outstanding debt. The Thurman Act required that all the money the railroads earned by providing services to the government would be withheld from payment. One-half would be applied directly to outstanding debt. One-half would be put into a sinking fund to assure future payments on the debt. The railroads challenged the Thurman Act as they had done the Crédit Mobilier Act. This time, in the *Sinking Fund* cases, the Supreme Court upheld the statute.[48] A key factor in the Court's decision to uphold the Thurman Act was that original grants to the railroads specifically allowed Congress to amend, revise, or repeal the grants and that it had done so before to the benefit of the railroads. Nevertheless, Field dissented from the majority opinion. Congress's act of amending the original grant was unconstitutional, he reasoned, because it violated the sanctity of contract that is essential to individual liberty. Field's opponents in



Field's most famous opinion is the dissent he wrote in the *Slaughter-House* cases (1873), arguing that a Louisiana law requiring New Orleans butchers to practice their trade in a central slaughterhouse interfered with their right to pursue their chosen profession.

California frequently charged that he was a servant of the railroads. His opinion in the *Sinking Fund* cases did nothing to dispel that image. He reinforced it even more when, sitting as circuit judge in *San Mateo v. Southern Pacific Railroad Company* (1882) and *Santa Clara v. Southern Pacific Railroad Company* (1883), he invalidated a state plan that assessed and taxed railroad property by a different method than individual property. The state plan, he reasoned, denied the railroad equal protection of the law and illegally changed the terms of the state's charter creating the railroad.[49]

Of course, Field's jurisprudence was complex and he wrote on a wide variety of topics. Nevertheless, much of his legacy lies in promoting a doctrine of entrepreneurial liberty that would significantly limit government's power to regulate the economy. Although he does not mention it in **Personal Reminiscences**, the beginning of this doctrine is found in opinions he wrote before dictating his memoirs. Field's dissent in the *Slaughter-House* cases (1873) is one of his most famous opinions. There he argued that a Louisiana law requiring New Orleans butchers to practice their trade in a central slaughterhouse interfered with the butchers' right to pursue a lawful calling.[50] That the Constitution does not expressly guarantee such a right did not concern Field. He argued that it was a natural and inalienable right belonging to the citizens of all free governments and reflected in the Declaration of Independence. The Fourteenth Amendment provided a vehicle for its constitutional status. The immediate objective of this post–Civil War amendment was to guarantee civil and political rights for newly freed slaves. But its language was broad. For Field, its prohibition that no state shall deny due process of law, equal protection of the law, or the rights of citizenship of the United States guaranteed such natural rights as the "right to pursue a lawful calling,"

Field was in the minority in the *Slaughter-House* cases. Nevertheless, his innovative dissent contained the embryo of a doctrine of liberty of contract. Justice Joseph P. Bradley's dissent in the same case advanced the idea of substantive due process. These two related theories of constitutional law would have a substantial impact on the direction of American constitutional doctrine. Both focus on the Due Process Clause of the Fourteenth Amendment. Expanding on Field's idea of a right to pursue a lawful profession, they suggested that

the Fourteenth Amendment's protection of liberty and property established a constitutional right to enter into virtually any contract one might desire. Throughout the 1880s and early 1890s, state courts, lower federal courts, and legal scholars used liberty-of-contract doctrine to attack a wide variety of state economic regulations. The majority of the Supreme Court, however, did not sanction the theory until *Allgeyer v. Louisiana* (1897), shortly before Field retired.[51] By 1905, when *Lochner v. New York* overturned a New York law regulating bakers' hours, liberty of contract had become an established doctrine.[52] It dominated constitutional jurisprudence until *Lochner* was overruled in 1937.[53]

Another of Field's well-known opinions was in *Munn v. Illinois* (1877), where he dissented from the majority ruling that government may regulate business if that business is one "affected with public interest."[54] Field worried that this test simply meant that business could be regulated if government had an interest in it. "If this be sound law," he warned, "all business and all property in the State are held at the mercy of a majority of its legislature."[55] This did not mean that Field opposed all government regulation. He was willing to uphold regulation if it fell within the narrow boundaries of government authority described as the legitimate police powers of the states. He defined this as the power that affects the peace, good order, morals, and health of the community. In Field's hands, this would allow only a limited range of government regulation. Laws designed to facilitate trade, such as regulation of railroad crossings, or those, such as Sunday closing laws, that imposed Victorian morality might meet the test.[56] In Field's view, however, the Court had final authority to determine which laws were legitimate.

Historians have debated about what factors shaped Field's jurisprudence. Some argue that he was influenced by nineteenth-century laissez-faire economic theory. More recently, some have claimed that his opinions reflect the ideas of Jacksonian democracy and free labor that dominated the politics of his youth.[57] It is not unreasonable to assume, however, that Field was strongly influenced by his experiences in Gold Rush California. He tells us about those experiences in the pages that follow.

ENDNOTES

[1]Parts of this introduction are adapted from my book **Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age** (Lawrence: University Press of Kansas, 1997). I have footnoted my own work only where I think a reference might be of interest to the reader.

[2]Carl Brent Swisher, **Stephen J. Field: Craftsman of the Law** (Hamden, Conn: Archon Books, 1963); Robert Green McCloskey, **American Conservatism in the Age of Enterprise 1865–1910** (Cambridge, Mass.: Harvard University Press, 1973).

[3]In 1893, **"Personal Reminiscences"** and another episode in Field's life, "The Story of the Attempted Assassination of Justice Field by a Former Associate on the Supreme Bench of California," were published together as one book. "Personal Reminiscences of Early Days in California with Other Sketches" is a conventional memoir. Field dictated this account in 1877. "The Story of the Attempted Assassination of Justice Field by a Former Associate on the Supreme Bench of California," which will be reproduced in a future issue of the *Journal of Supreme Court History*, relates events that occurred in the 1890s. It was written long after "Personal Reminiscences" by Field's friend George C. Gorham.

[4]The best account of Field's family and early life is found in Swisher, **Stephen J. Field.**

[5]William Turner, **Documents in Relation to Charges Preferred by Stephen Field and Others Before the House of Assembly of the State of California Against Wm. R. Turner**, 2nd ed. (San Francisco: Whittin Towne and Company, 1856), 24, 26.

[6]I discuss Field's run for the nomination in more detail in Kens, **Justice Stephen Field**, 169–235.

[7]The appendices can be found in the Da Capo Press 1968 reprint of Field's memoirs. **Stephen J. Field, Personal Reminiscences of Early Days in California** (1893; reprinted New York: Da Capo Press, 1968).

[8]See Richard Griswold del Castillo, **The Treaty of Guadalupe Hidalgo: A Legacy of Conflict** (Norman: University of Oklahoma Press, 1990), 180, 182, 190; Charles I. Bevans, ed., **Treaties and Other International Agreements, 1776–1949** (Washington, DC: Department of State, 1972), 9: 791–806.

[9]Paul Wallace Gates, et al., **Four Persistent Issues: Essays on California's Land Ownership Concentration,**

Water Deficits, Sub-State Regionalism, and Congressional Leadership (Institute of Governmental Studies, Berkeley: University of California Press, 1978), 7.

[10]W. W. Robinson, **Land in California** (Berkeley: University of California Press, 1948), 31.

[11]Henry George, **Our Land and Land Policy** (1871; reprinted New York: Doubleday and McClure, 1902), 99.

[12]An Act to Ascertain and Settle Private Land Claims in the State of California, 9 Stat. 631 (March 3, 1851).

[13]58 U.S. (17 How.) 542 (1854).

[14]*Id.* at 558. Although the California Land Act allowed the commission and the courts to consider Mexican usages and customs to help determine the validity of a grant, the Court in Frémont used them to a much greater end. The decision created a revised general guideline that significantly reduced the burden of proof and made it much easier for those claiming large estates to prove that their claims were valid.

[15]For example, in *Ferris v. Coover*, 10 Cal. 588 (1858), despite settlers' fears that oral testimony regarding grants left the door wide open for fraud, Field ruled that the oral testimony of the grant-holder and surveyor could be used to establish the boundaries of an estate. In *Lathrop v. Mills*, 19 Cal. 513 (1861), he joined the court in overruling a California statute that protected homesteaders by creating a two-year statute of limitations for ejectment suits. When the legislature passed a new statute of limitations, he wrote a decision watering down that rule as well. *Johnson v. Van Dyke*, 20 Cal. 225 (1862).

[16]*Biddle Boggs v. Merced Mining Company I* and *Biddle Boggs v. Merced Mining Company II* are reported together at 14 Cal. 279 (1859).

[17]Terry's term was due to end in 1860 in any case. But his resignation not only allowed the governor to appoint a successor but also allowed the change to be made earlier.

[18]17 Cal. 199 (1861).

[19]For a more detailed account of these events see, Lewis Grossman, "John C. Frémont, Mariposa, and the Collision of Mexican and American Law." *Western Legal History* 6 (Winter/Spring 1993): 17–50. I have also covered the events in Kens, **Justice Stephen Field**, 70–93.

[20]Swisher, Stephen J. Field, 115–18 discusses the circumstances of Field's appointment to the federal bench. Henry M. Field, **The Life of David Dudley Field** (New York: Charles Scribner's Sons, 1892), 195–96 tells of David Dudley's role in Stephen's nomination.

[21]In 1869 Congress passed a law returning the Court to nine members; Field's circuit, covering California and the West Coast, became the Ninth Circuit.

[22]*United States v. D'Aquirre*, 68 U.S. (1 Wall.) 311 (1863).

[23]68 U.S. (1 Wall.) 282 (1863).

[24]*United States v. Yorba*, 68 U.S. (1 Wall.) 412 (1863).

[25]76 U.S. (9 Wall.) 187 (1869).

[26]*United States v. Valejo*, 66 U.S. 541 (1862).

[27]*Frisbie v. Whitney*, 76 U.S. 187. Paul W. Gates, **Land Law in California: Essays on Land Policies** (Ames: Iowa State University Press, 1991) 212–28 discusses this case in more detail.

[28]*Yosemite Valley Case* (*Hutchings v. Low*), 82 U.S. (15 Wall.) 77 (1872).

[29]An excellent discussion of the San Francisco land cases can be found in Christian G. Fritz, **Federal Justice in California: The Court of Ogden Hoffman, 1851–1891** (Lincoln: University of Nebraska Press, 1991) 180–93. I have also addressed the cases in more detail in Kens, **Stephen J. Field**, 100–5.

[30]15 Cal. 530 (1860).

[31]For more of the significance of the public trust doctrine see, Molly Selvin, **This Tender and Delicate Business: Public Trust Doctrine in American Law and Economic Policy, 1789–1920** (New York: Garland, 1987).

[32]Field's treatment of the San Francisco land cases is found in his chapter entitled "Rosy Views of Judicial Life Gradually Vanishing.—Unsettled Land Titles of the State.—Asserted ownership by the State of Gold and Silver found in the Soil.—Present of a Torpedo."

[33]*Hart v. Burnett*, 20 Cal. 169 (1862). Field reasoned that the case had been remanded and was, therefore, not final.

[34]21 Fed. Cas. (Cir. Ct. N.D. Cal., 1864).

[35]*United States v. Circuit Judges*, 70 U.S. (3 Wall.) 673 (1865).

[36]An Act to Quiet Title to Certain Lands Within the Corporate Limits of the City of San Francisco, 14 Stat. 4 (March 8, 1866).

[37]Field to Matthew Deady, May 15, 1884, Matthew Deady Collection (Portland, Oregon: Oregon Historical Society).

[38]71 U.S. (4 Wall.) 2 (1866).

[39]73 U.S. (6 Wall.) 318 (1867).

[40]*Cummings v. Missouri*, 71 U.S. (4 Wall) 277 (1867): *Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867).

[41]*Strauder v. West Virginia*, 100 U.S. 303 (1880); *Ex parte Virginia*, 100 U.S. 339 (1880); *Virginia v. Rives*, 100 U.S. 313 (1880).

[42]*Civil Rights Cases*, 109 U.S. 3 (1883).

[43]*Ah Kow v. Nunan*, 12 F. Cas. 252 (C.C.C. Cal., 1879).

[44]*In re Ah Fong*, 1 F. Cas. 213 (C.C.C.Cal., 1874); *In re Tiburcio Parrott*, 1 Fed. 481 (C.C.D. Cal., 1880).

[45]*See Chew Heong v. United States*, 112 U.S. 536 (1884); *Chae Chan Ping v. United States*, 130 U.S. 581 (1889). For treatment of Chinese generally, *see* Charles J. McClain, **In Search of Equality: The Chinese Struggle Against Discrimination in Nineteenth-Century America** (Berkeley: University of California Press, 1994); Lucy E. Sayler, **Law Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law** (Chapel Hill: University of North Carolina Press, 1995).

[46]R. Hal Williams, **Democratic Party in California Politics, 1880–1896** (Stanford, Calif.: Stanford University Press, 1973), 206–7 points out that there was an element of myth to this belief.

[47]*United States v. Union Pacific R.R.*, 91 U.S. 72 (1875); *United States v. Union Pacific R.R.*, 98 U.S. 569 (1879).

[48]99 U.S. 700 (1878).

[49]13 Fed. 722(1882); 18 Fed. 385 (1883). On appeal to the United States Supreme Court, the Santa Clara case became known for having established a rule that corporations are persons for purposes of the Fourteenth Amendment. *Santa Clara v. Southern Pacific Railroad Co.*, 118 U.S. 394,396 (1886).

[50]83 U.S. (16 Wall.) 36 (1873).

[51]165 U.S. 578 (1897).

[52]198 U.S. 45 (1905).

[53]*West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

[54]94 U.S. 113 (1877).

[55]I describe this in more detail in Kens, **Justice Stephen Field**, 246–56.

[56]94 U.S. 140 (Field dissenting).

[57]The group that links Field to laissez-faire theory includes Swisher, **Stephen J. Field**; McCloskey, **American Conservatism in the Age of Enterprise**. Several articles by Charles W. McCurdy trace Field's jurisprudence to free labor theory and **Jacksonian Democracy**; *see* McCurdy, "Justice Field and the Jurisprudence of Government—Business Relations: Some Parameters of Laissez-Faire Constitutionalism, 1863–1897," *Journal of American History* 61 (March 1975) 970–1005; "The Roots of Liberty of Contract Reconsidered: Major Premises in the Law of Unemployment 1867–1937," *Yearbook of the Supreme Court Historical Society* (1984): 20–33. I have taken the position that, even if it is possible to trace Field's jurisprudence to free labor and Jacksonian ideals, it still reflects laissez-faire economic theory. The debate has recently been revisited in "Forum: Once More Unto the Breach: Late Nineteenth-Century Jurisprudence Revisited," 20 *Law and History Review* (Fall 2002), which includes the following. Manuel Cachán, "Justice Stephen Field and 'Free Soil, Free Labor Constitutionalism': Reconsidering Revisionism," 20 *Law and History Review* (Fall 2002): 541–77; Lewis A. Grossman, "James Coolidge Carter and Mugwump Jurisprudence," 20 *Law and History Review* (Fall 2002): 577–631; Stephen A. Siegel, "Comment: The Revision Thickens," 20 *Law and History Review* (Fall 2002): 631–39; and Lewis A. Grossman, "Response, Extending the Revisionist Project," 20 *Law and History Review* (Fall 2002): 639.

Personal Reminiscences of Early Days in California, With Other Sketches

STEPHEN J. FIELD

To Which Is Added the Story of His Attempted Assassination by a Former Associate on the Supreme Bench of the State

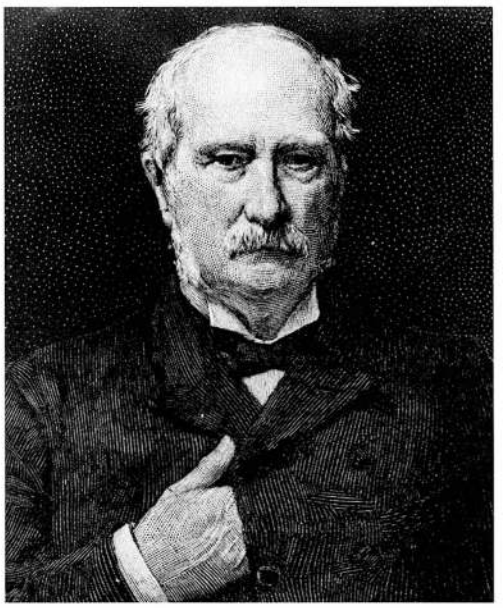
BY HON. GEORGE C. GORHAM

The following sketches were taken down by a stenographer in the summer of 1877, at San Francisco, from the narrative of Judge Field. They are printed at the request of a few friends, to whom they have an interest which they could not excite in others.

INDEX

Why and How I Came to California

Some months previous to the Mexican War, my brother David Dudley Field, of New York City, wrote two articles for the *Democratic Review* upon the subject of the Northwestern Boundary between the territory of the United States and the British Possessions. One of these appeared in the June, and the other in the November number of the *Review* for 1845.[2] While writing these articles he had occasion to examine several works on Oregon and California, and, among others, that of Greenhow, then recently published, and thus became familiar with the geography and political history of the Pacific Coast.[3] The next Spring, and soon after the war broke out, in the course of a conversation upon its probable results, he remarked, that if he were a young man, he would go to San Francisco; that he was satisfied peace would never be concluded without our acquiring the harbor upon which it was situated; that there was no other good harbor on the coast, and that, in his opinion, that town would, at no distant day, become a great city. He also remarked that if I would go he would furnish the means, not only for the journey, but also for the purchase of land at San Francisco and in its vicinity. This conversation was the first germ of my project of coming to California.



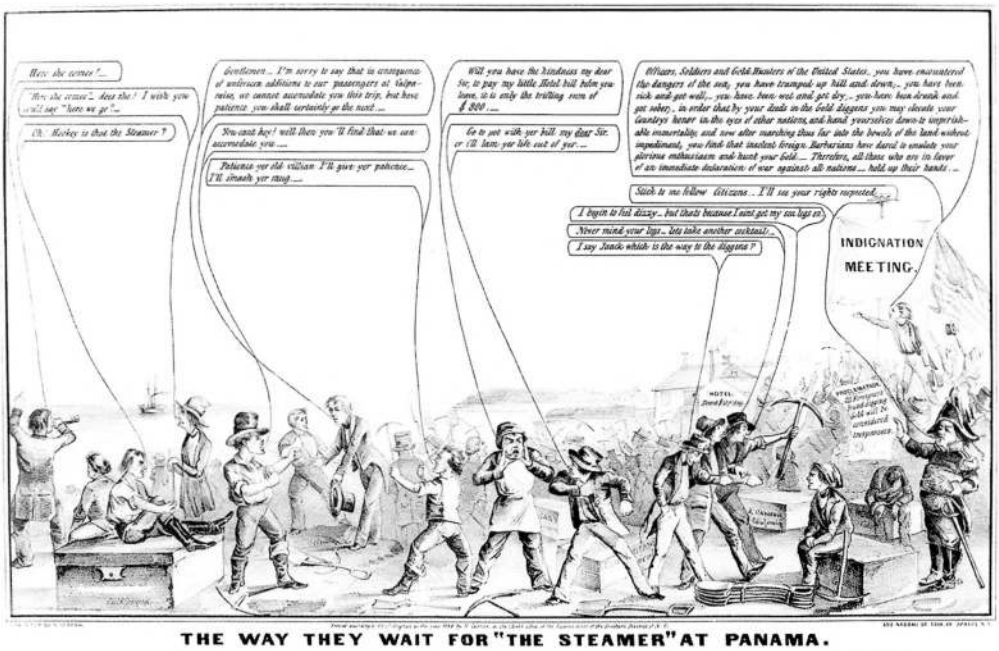
In 1846, David Dudley Field, a prominent New York lawyer, offered to pay for his brother Stephen's journey to San Francisco. Known as Dudley, David Field had become interested in the West Coast port while writing about strategic U.S. interests in the Mexican War, and he predicted that the town would one day become a great city.

Some months afterwards, and while Col. Stevenson's regiment was preparing to start from New York for California, my brother again referred to the same subject and suggested the idea of my going out with the regiment.[4] We had at that time a clerk in the office by the name of Sluyter, for whom I had great regard. With him I talked the matter over, it being my intention, if I should go at all, to induce him if possible to accompany me. But he wished to get married, and I wished to go to Europe. The result of our conference was, that the California project was deferred, with the understanding, however, that after my return from Europe we should give it further consideration. But the idea of going to California thus suggested made a powerful impression upon my mind. It pleased me. There was a smack of adventure in it. The going to a country comparatively unknown and taking a part in fashioning its institutions, was an attractive subject of contemplation. I had always thought that the most desirable fame a man could acquire was that of being the founder of a State, or of exerting a powerful influence for good upon its destinies; and the more I thought of the new territory about to fall into our hands beyond the Sierra Nevada, the more I was fascinated with the idea of settling there and growing up with it.

But I was anxious first to visit, or rather to revisit, Europe. I was not able, however, to make the necessary arrangements to do so until the summer of 1848. On the first of May of that year, I dissolved partnership with my brother, and in June started for Europe. In the following December, while at Galignani's News Room in Paris, I read in the *New York Herald* the

message of President Polk, which confirmed previous reports, that gold had been discovered in California, then recently acquired.[5] It is difficult to describe the effect which that message produced upon my mind. I read and re-read it, and the suggestion of my brother to go to that country recurred to me, and I felt some regret that I had not followed it. I remained in Europe, however, and carried out my original plan of seeing its most interesting cities, and returned to the United States in 1849, arriving at New York on the 1st of October of that year.

There was already at that early period a steamer leaving that city once or twice every month for Chagres. It went crowded every trip. The impulse which had been started in me by my brother in 1846, strengthened by the message of President Polk, had now become irresistible. I joined the throng, and on November 13th, 1849, took passage on the "Crescent City;" and in about a week's time, in company with many others, I found myself at the little old Spanish- American town of Chagres on the Isthmus of Panama. There we took small boats and were poled up the river by Indians to Cruces, at which place we mounted mules and rode over the mountain to Panama. There I found a crowd of persons in every degree of excitement, waiting for passage to California. There were thousands of them. Those who came on the "Crescent City" had engaged passage on the Pacific side also; but such was the demand among the multitude at Panama for the means of transportation, that some of the steerage passengers sold their tickets from that place to San Francisco for $750 apiece and took their chances of getting on cheaper. These sales, notwithstanding they appeared at the time to be great bargains, proved, in most cases, to be very unfortunate transactions; for the poor fellows who thus sold their tickets, besides losing their time, exposed themselves to the malaria of an unhealthy coast. There was in a good deal of sickness



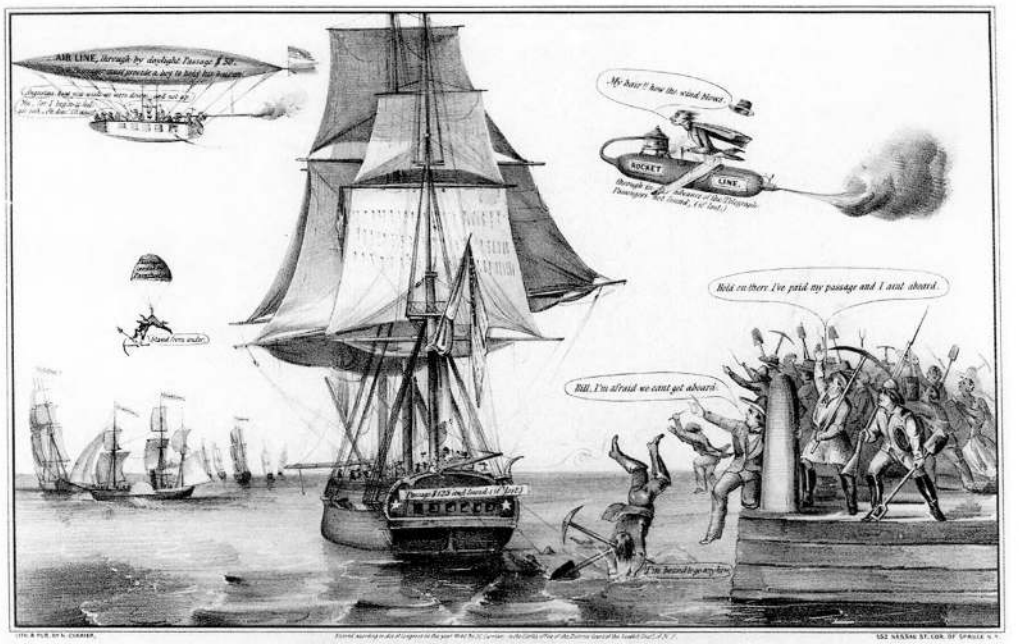
THE WAY THEY WAIT FOR "THE STEAMER" AT PANAMA.

After landing on the Isthmus of Panama, Stephen Field and his fellow passengers were poled by Indians up a river in small boats before crossing the mountains on mules. There they found that the West Coast steamers had not made it around the Horn in time and that, like the desperate passengers in this cartoon, they were stranded. Those who did not get passage to California right away increased their risk of contracting malaria, an illness that spread quickly in the crowded conditions on steamships.

already among those on the Isthmus, and many deaths afterwards occurred; and among those who survived there was much suffering before they could get away.[6]

The vessel that conveyed us, and by "us" I mean the passengers of the "Crescent City," and as many as could by any possibility procure passage from Panama to San Francisco, was the old steamer "California." She was about one thousand tons burden; but probably no ship of two thousand ever carried a greater number of passengers on a long voyage. When we came to get under way, there did not seem to be any spare space from stem to stern. There were over twelve hundred persons on board, as I was informed.[7] Unfortunately many of them carried with them the seeds of disease. The infection contracted under a tropical sun, being aggravated by hardships, insufficient food, and the crowded condition of the steamer, developed as the voyage proceeded. Panama fever in its worst form broke out; and it was not long before the main deck was literally covered with the sick.[8] There was a physician attached to the ship but unfortunately he was also prostrated. The condition of things was very sad and painful.

Among the passengers taken sick were two by the name of Gregory Yale and Stephen Smith; and I turned myself into a nurse and took care of them. Mr. Yale, a gentleman of high attainments, and who afterwards occupied a prominent place at the bar of the State, was for a portion of the time dangerously ill, and I believe that for my attentions he would have died. He himself was of this opinion, and afterwards expressed his appreciation of my attention in every way he could. In the many years I knew him he never failed to do me a kindness whenever an opportunity presented. Finally, on the evening of December 28, 1849, after a passage of twenty-two days from Panama, we reached



THE WAY THEY GO TO CALIFORNIA.

This 1849 Gold Rush cartoon shows men with picks and shovels trying to board by foot, by airship, by rocket, and by parachute a ship departing from Panama to California. Field took passage on the *Crescent City* to Panama, where he and his fellow passengers boarded the *California,* an old steamer crammed with people from bow to stern.

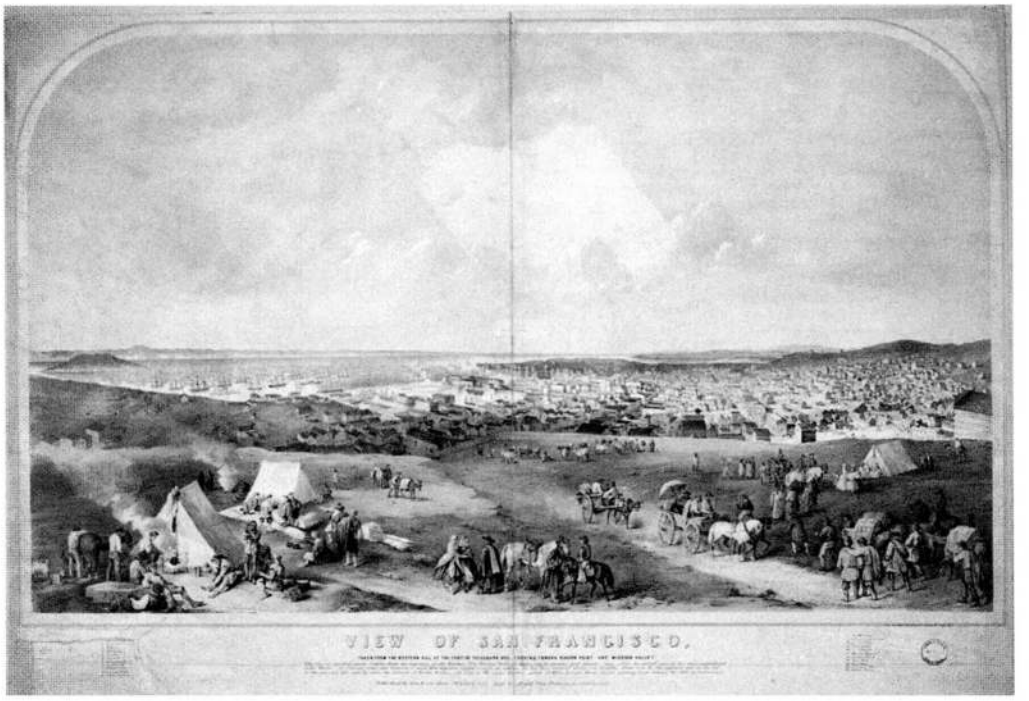
San Francisco, and landed between eight and nine o' clock that night.

First Experiences in San Francisco

Upon landing from the steamer, my baggage consisted of two trunks, and I had only the sum of ten dollars in my pocket. I might, perhaps, have carried one trunk, but I could not manage two; so I was compelled to pay out seven of my ten dollars to have them taken to a room in an old adobe building on the west side of what is now known as Portsmouth Square. This room was about ten feet long by eight feet wide, and had a bed in it. For its occupation the sum of $35 a week was charged. Two of my fellow passengers and myself engaged it. They took the bed, and I took the floor. I do not think they had much the advantage on the score of comfort.

The next morning I started out early with three dollars in my pocket. I hunted up a restaurant and ordered the cheapest breakfast I could get. It cost me two dollars. A solitary dollar was, therefore, all the money in the world I had left, but I was in no respect despondent over my financial condition. It was a beautiful day, much like an Indian Summer day in the East, but finer. There was something exhilarating and exciting in the atmosphere which made every-body cheerful and buoyant. As I walked along the streets, I met a great many persons I had known in New York, and they all seemed to be in the highest spirits. Every one in greeting me, said "It is a glorious country," or "Isn't it a glorious country?" or "Did you ever see a more glorious country?," or something to that effect. In every case the word "glorious" was sure to come out. There was something infectious in the use of the word, or rather in the feeling, which made its use natural. I had not been out many hours that morning before I caught the infection; and though I had but a single dollar in my pocket and no business whatever, and did not know where I was to get the next meal, I found myself saying to everybody I met, "It is a glorious country."

The city presented an appearance which, to me, who had witnessed some curious scenes in the course of my travels, was singularly strange and wild. The Bay then washed what is now the east side of Montgomery street, between Jackson and Sacramento streets; and the sides of the hills sloping back from the water were covered with buildings of various kinds, some just begun, a few completed,—all, however, of the rudest sort, the greater number being merely canvas sheds. The locality then called Happy Valley, where Mission and Howard streets now are, between Market and Folsom streets, was occupied in a similar way.[9] The streets were filled with people, it seemed to me, from every nation under Heaven, all wearing their peculiar costumes. The majority of them were from the States; and each State had furnished specimens of every type within its borders. Every country of Europe had its representatives; and wanderers without a country were there in great numbers. There were also Chilians, Sonorians, Kanaku from the Sandwich Islands, and Chinese from Canton and Hong Kong. All seemed, in hurrying to and fro, to be busily occupied and in a state of pleasurable excitement. Everything needed for their wants; food, clothing, and lodging-quarters, and everything required for transportation and mining, were in urgent demand and obtained extravagant prices. Yet no one seemed to complain of the charges made. There was an apparent disdain of all attempts to cheapen articles and reduce prices. News from the East was eagerly sought from all new comers. Newspapers from New York were sold at a dollar apiece. I had a bundle of them, and seeing the price paid for such papers, I gave them to a fellow-passenger, telling him he might have half he could get for them. There were sixty-four numbers, if I recollect aright, and the third day after our arrival, to my astonishment he handed me thirty-two dollars, saying that he had sold them all at a dollar

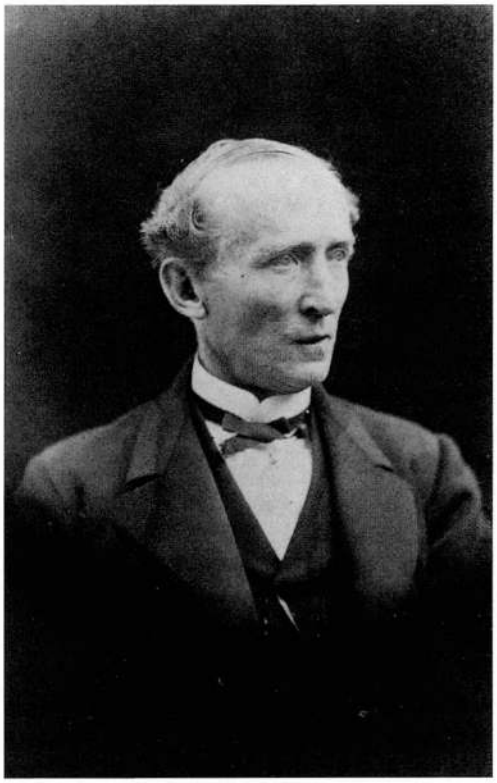


Arriving in San Francisco, Field was struck by the high prices of goods and by the variety of people of different nationalities, both European and Asian, whom he saw bustling about the streets in their native costumes. Field set up a law practice at the corner of Montgomery and Clay streets, but attracted little business.

apiece. Nearly everything else brought a similarly extravagant price. And this reminds me of an experience of my own with some chamois skins. Before I left New York I purchased a lot of stationery and the usual accompaniment of a writing-table, as I intended to practice my profession in California. The stationer, learning from some remark made by my brother Cyrus,[10] who was with me at the time, that I intended to go to California, said that I ought to buy some chamois skins in which to wrap the stationery, as they would be needed there to make bags for carrying gold-dust. Upon this suggestion, I bought a dozen skins for ten dollars. On unpacking my trunk, in Marysville, these chamois skins were of course exposed, and a gentleman calling at the tent, which I then occupied, asked me what I would take for them. I answered by inquiring what he would give for them. He replied at once, an ounce apiece. My astonishment nearly choked me, for an ounce was taken for sixteen dollars; at the mint, it often yielded eighteen or nineteen dollars in coin. I, of course, let the skins go, and blessed the hunter who brought the chamois down. The purchaser made bags of the skins, and the profit to him from their sale amounted to two ounces on each skin. From this transaction, the story arose that I had sold portemonnaies in Marysville before practising law, which is reported in the interesting book of Messrs. Barry and Patten, entitled "Men and Memories of San Francisco in the Spring of 1850." The story has no other foundation.[11]

But I am digressing from the narrative of my first experience in San Francisco. After taking my breakfast, as already started, the first thing I noticed was a small building in the Plaza, near which a crowd was gathered. Upon inquiry, I was told it was the courthouse. I at once started for the building, and on entering it, found that Judge Almond, of the San Francisco District, was holding what was known as the Court of First Instance, and that a

case was on trial. To my astonishment I saw two of my fellow-passengers, who had landed the night before, sitting on the jury. This seemed so strange that I waited till the case was over, and then inquired how it happened they were there. They said that they had been attracted to the building by the crowd, just as I had been, and that while looking on the proceedings of the court the sheriff had summoned them. They replied to the summons, that they had only just arrived in the country. But he said that fact made no difference; nobody had been in the country three months. They added that they had received eight dollars each for their services. At this piece of news I thought of my solitary dollar, and wondered if similar good fortune might not happen to me. So I lingered in the court-room, placing myself near the sheriff in the hope that on another jury he might summon me. But it was not my good luck. So I left the temple of justice and strolled around the busy city, enjoying myself with the novelty of everything. Passing down Clay Street and near Kearney Street, my attention was attracted by a sign in large letters, "Jonathan D. Stevenson, Gold Dust Bought and Sold Here." As I saw this inscription I exclaimed, "Hallo, here is good luck," for I suddenly recollected that when I left New York my brother Dudley had handed me a note against Stevenson for $350 or $400; stating that he understood the Colonel had become rich in California, and telling me, that if such were the case, to ask him to pay the note.[12] I had put the paper in my pocket book and thought no more of it until the sight of the sign brought it to my recollection, and also reminded me of my solitary dollar. Of course I immediately entered the office to see the Colonel. He had known me very well in New York, and was apparently delighted to see me, for he gave me a most cordial greeting. After some inquiries about friends in New York, he commenced talking about the country. "Ah," he continued, "It is a glorious country. I have made two hundred thousand dollars." This was more than I could stand. I had already given him a long shake of the hand but I could not resist the impulse to shake his hand again, thinking all the time of my financial condition. So I seized his hand again and shook it vigorously, assuring him that I was delighted to hear of his good luck. We talked over the matter, and in my enthusiasm I shook his hand a third time, expressing my satisfaction at his good fortune. We passed a long time together, he dilating all the while upon the fine country it was in which to make money. At length I pulled out the note and presented it to him. I shall never forget the sudden change, from wreaths of smiles to an elongation of physiognomy, expressive of mingled surprise and disgust, which came over his features on seeing that note. He took it in his hands and examined it carefully; he turned it over and looked at its



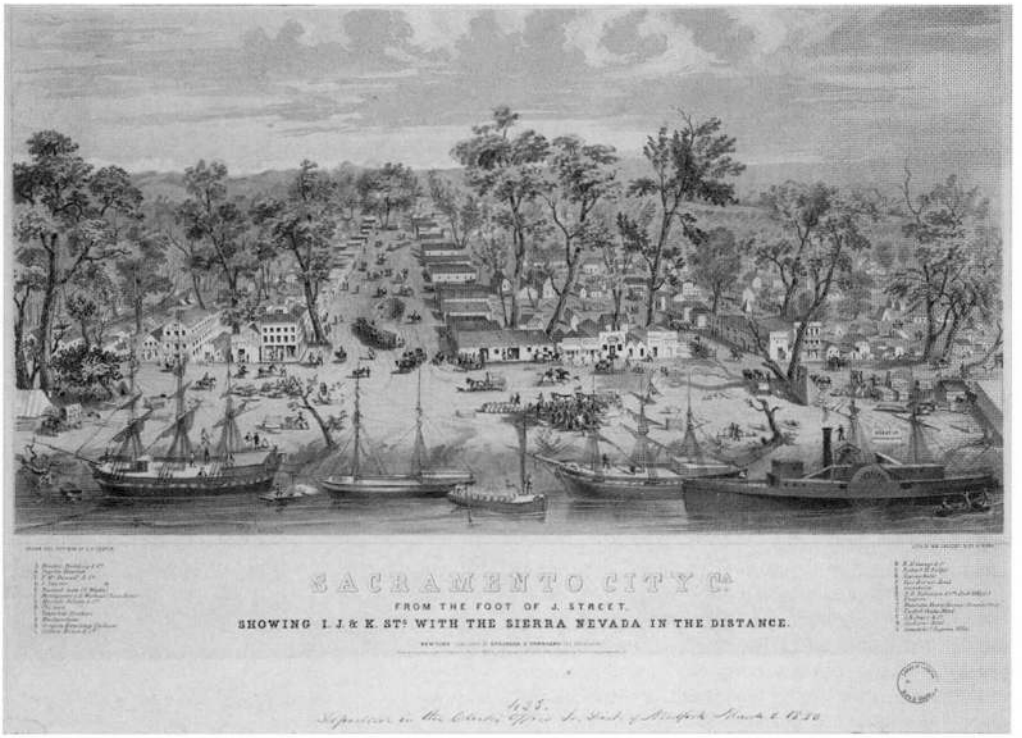
Colonel Jonathan D. Stevenson (pictured) commanded a regiment of New York volunteers during the War with Mexico and stayed in California to make his fortune. Field, who had known him in New York, collected a debt Stevenson owed his brother, Dudley, greatly expanding Field's riches—from $1 to $441.

back, and then at its face again, and then, as it were, at both sides at once. At last he said in a sharp tone, "That's my signature," and began to calculate the interest; that ascertained, he paid me the full amount due. If I remember rightly he paid me $440 in Spanish doubloons, but some of it may have been in gold dust. If it had not been for this lucky incident, I should have been penniless before night.

The good fortune which the Colonel then enjoyed has not always attended him since. The greater part of his property he lost some years afterwards, but he has always retained, and now in his seventy-eighth year still retains, great energy and vigor of mind, and a manly independence of character, which have made him warm friends. In all the changes of my life his name is pleasantly associated with the payment of the note, and the timely assistance which he thus gave me. His career as commander of the well-known regiment of New York volunteers which arrived in California in March, 1847, and subsequently in the State, are matters of public history.

As soon as I found myself in funds I hired a room as an office at the corner of Montgomery and Clay streets for one month for $300, payable in advance. It was a small room, about fifteen feet by twenty. I then put out my shingle as attorney and counsellor-at-law, and waited for clients; but none came. One day a fellow-passenger requested me to draw a deed, for which I charged him an ounce. He thought that too much, so I compromised and took half an ounce. For two weeks this was the only call I had upon my professional abilities. But I was in no way discouraged. To tell the truth I was hardly fit for business. I was too much excited by the stirring life around me. There was so much to hear and see that I spent half my time in the streets and saloons talking with people from the mines, in which I was greatly interested. I felt sure that there would soon be occasion in that quarter for my services.

Whilst I was excited over the news which was daily brought from the mines in the interior of the State, and particularly from the northern part, an incident occurred which determined my future career in California. I had brought from New York several letters of introduction to persons who had preceded me to the new country, and among them one to the mercantile of Simmons, Hutchinson & Co., of San Francisco, upon whom I called. They received me cordially, and inquired particularly of my intentions as to residence and business. They stated that there was a town at the head of river navigation, at the junction of Sacramento and Feather Rivers, which offered inducements to a young lawyer. They called it Vernon, and said they owned some lots in it which they would sell to me.[13] I replied that I had no money. That made no difference, they said; they would let me have them on credit; they desired to build up the town and would let the lots go cheap to encourage its Settlement. They added that they owned the steamer "McKim," going the next day to Sacramento, and they offered me a ticket in her for that place, which they represented to be not far from Vernon. Accordingly I took the ticket, and on January 12th, 1850, left for Sacramento, where I arrived the next morning. It was the time of the great flood of that year, and the entire upper country seemed to be under water. Upon reaching the landing place at Sacramento, we took a small boat and rowed to the hotel. There I found a great crowd of earnest and enthusiastic people, all talking about California; and in the highest spirits. In fact I did not meet with any one who did not speak in glowing terms of the country and anticipate a sudden acquisition of fortune. I had already caught the infection myself, and these new crowds and their enthusiasm increased my excitement. The exuberance of my spirits was marvelous. The next day I took the little steamer "Lawrence," for Vernon, which was so heavily laden as to be only eighteen inches out of water; and the passengers, who amounted to a large number, were requested not to move about the deck, but to keep as quiet as possible. In three or four hours after leaving Sacramento, the Captain suddenly cried out



Field passed through Sacramento (pictured circa 1850) on his way north to Vernon, a small "town" where he had been offered land in return for settling down as a lawyer. Vernon turned out to be a swamp with only a single house.

with great energy, "Stop her! stop her!;" and with some difficulty the boat escaped running into what seemed to be a solitary house standing in a vast lake of water. I asked what place that was, and was answered, "Vernon,"—the town where I had been and advised to settle as affording a good opening for a young lawyer. I turned to the Captain and said, I believed I would not put out my shingle at Vernon just yet, but would go further on. The next place we stopped at was Nicolaus, and the following day we arrived at a place called Nye's Ranch, near the junction of Feather and Yuba Rivers.

No sooner had the vessel struck the landing at Nye's Ranch than all the passengers, some forty or fifty in number, as if moved by common impulse, started for an old adobe building, which stood upon the bank of the river, and near which were numerous tents. Judging by the number of the tents, there must have been from five hundred to a thousand people there. When we reached the adobe and entered the principal room, we saw a map spread out upon the counter, containing the plan of a town, which was called "Yubaville," and a man standing behind it, crying out, "Gentlemen, put your names down; put your names down, all you that want lots." He seemed to address himself to me, and I asked the price of the lots. He answered, "Two hundred and fifty dollars each for lots 80 by 160 feet." I replied, "But, suppose a man puts his name down and afterwards don't want the lots?" He rejoined, "Oh, you need not take them if you don't want them: put your name down, gentlemen, you that want lots." I took him at his word and wrote my name down for sixty-five lots, aggregating in all $16,250. This produced a great sensation. To the best of my recollection I had only about twenty dollars left of what Col. Stevenson had paid me; but it was immediately noised about

Field continued on to Yubaville, a gold mining town consisting of several hundred tents at the confluence of the Feather and Yuba rivers. He put his name down for 65 lots worth $16,250, although he only had twenty dollars in his pocket. The land deed belonged to Captain John A. Sutter (pictured), a Swiss immigrant who had been among the first to find gold.

that a great capitalist had come up from San Francisco to invest in lots in the rising town. The consequence was that the proprietors of the place waited upon me and showed me great attention.

Two of the proprietors were French gentlemen named Covillaud and Sicard. They were delighted when they found I could speak French and insisted on showing me the town site. It was a beautiful spot, covered with live-oak parks that reminded me of the oak parks in England, and the neighborhood was lovely. I saw at once that the place from its position at the head of practical river navigation, was destined to become an important depot for the neighboring mines, and that its beauty and salubrity would render it a pleasant place for residence. In return for the civilities shown me by Mr. Covillaud and learning that he read English, I handed him some New York papers I had with me and among them a copy of the New York "Evening Post" of November 13th, 1849, which happened to contain a notice of my departure for California with an expression of good wishes for my success. The next day Mr. Covillaud came to me and in an excited manner said: "Ah, Monsieur, are you the Monsieur Field, the lawyer from New York, mentioned in this paper?" I took the paper and looked at the notice with apparent surprise that it was marked, though I had myself drawn a pencil line around it, and replied, meekly and modestly, that I believed I was. "Well, then," he said, "we must have a deed drawn for our land." Upon making inquiries I found that the proprietors had purchased the tract upon which the town was laid out, and several leagues of land adjoining, of General—then Captain—John A. Sutter, but had not yet received a conveyance of property. I answered that I would draw the necessary deed; and they immediately dispatched a couple of vaqueros for Captain Sutter, who lived at Hock Farm, six miles below, on Feather River.[14] When he arrived the deed was ready for signature. It was for some leagues of land; a considerably larger tract than I had ever before put into a conveyance. But when it was signed there was no officer to take the acknowledgment of the grantor, nor an office in which it could be recorded, nearer than Sacramento.

I suggested to those present on the occasion, that in a place of such fine prospects, and where there was likely in a short time to be much business and many transactions in real property, there ought to be an officer to take acknowledgments and record deeds, and a magistrate for the presentation of order and the settlement of disputes. It happened that a new house, the frame of which was brought in the steamer, was put up that day; and it was suggested by Mr. Covillaud that we should meet there that evening and celebrate the execution of the deed, and take into consideration the subject of organizing a town by the election of magistrates. When evening came the house was filled. It is true it had no floor, but the sides were boarded up and a roof overhead,

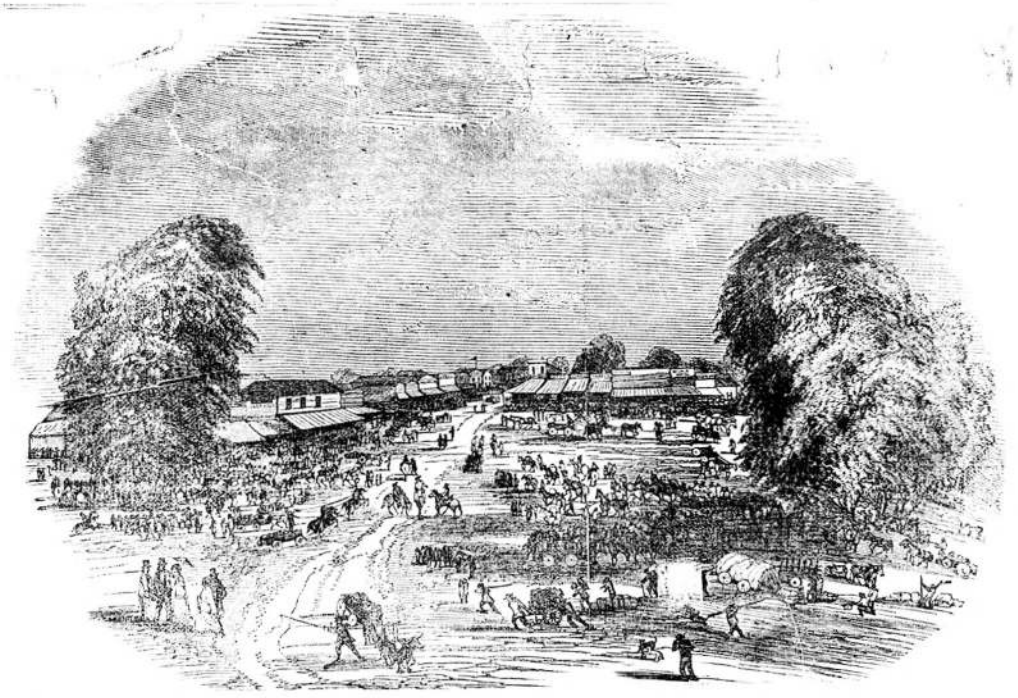
and we improvised seats out of spare planks. The proprietors sent around to the tents for something to give cheer to the meeting, and, strange as it may seem, they found two buckets of champagne. These they secured, and their contents were joyously disposed of. When the wine passed around, I was called upon and made a speech. I started out by predicting in glowing colors the prosperity of the new town, and spoke of its advantageous situation on the Feather and Yuba Rivers; how it was the most accessible point for vessels coming up from the cities of San Francisco and Sacramento, and must in time become the depot for all the trade with the northern mines. I pronounced the auriferous region lying east of the Feather River and north of the Yuba the finest and richest in the country; and I felt certain that its commerce must concentrate at the junction of rivers. But, said I, to avail ourselves of all these advantages we must organize and establish a government, and the first thing to be done is to call an election and choose magistrates and a town council. These remarks met with general favor, and it was resolved that a public meeting should be held in front of the Adobe house the next morning, and if it approved of the project, that an election should be held at once.

Accordingly, on the following morning, which was the 18th of January, 1850, a public meeting of citizens was there held, and it was resolved that a town council should be established and that there should be elected an Ayuntamiento or town council, a first and second Alcalde, (the latter to act in the absence or sickness of the former,) and a Marshal.[15] The Alcalde was a judicial officer under the Spanish and Mexican laws, having a jurisdiction something like that of a Justice of the Peace; but in the anomalous condition of affairs in California at that time, he, as a matter of necessity, assumed and exercised very great powers. The election ordered took place in the afternoon of the same day. I had modestly whispered to different people at the meeting in the new house the night before, that my name was mentioned by my friends for the office of Alcalde; and my nomination followed. But I was not to have the office without a struggle; an opposition candidate appeared, and an exciting election ensued. The main objection urged against me was that I was a newcomer. I had been there only three days; my opponent had been there six. I beat him, however, by nine votes.

On the evening of the election, there was a general gathering of people at the Adobe house, the principal building of the place, to hear the official announcement of the result of the election. When this was made, some one proposed that a name should be adopted for the new town. One man suggested "Yubafield," because of its situation on the Yuba River; and another, "Yubaville" for the same reason. A third, urged the name "Circumdoro," (surrounded with gold, as he translated the word,) because there were mines in every direction round about. But there was a fourth, a solid and substantial old man evidently of kindly domestic affections, who had come out to California to better his fortunes. He now rose and remarked that there was an American lady in the place, the wife of one of the proprietors; that her name was Mary; and that, in his opinion, her name ought to be given to the town, and it should be called, in her honor, "Marysville." No sooner had he made the suggestion, than the meeting broke out into loud hurrahs; every hat made a circle around its owner's head, and we christened the new town "Marysville," without a dissenting voice. For a few days afterwards, the town was called both Yubaville and Marysville, but the latter name was soon generally adopted, and the place is now called to this day. The lady, in whose honor it was named was Mrs. Covillaud. She was one of the survivors of the Donner party, which suffered so frightfully while crossing the Sierra Nevadas in the winter of 1846–7, and had been living in the country ever since that terrible time.[16]

With my notions of law, I did not attach much importance to the election, but I had a certificate of election made out and signed by the Inspectors, stating that at a meeting of the residents of the District of Yubaville, on the day named, an election for officers had been held, and designating the Inspectors who were appointed, the number of votes that had been cast for the office of Alcalde, and the number received by myself, and the number received by my opponent, and that as I had received a majority of all the votes cast, I was elected to that office. It was made out with all possible formality, and when completed, was sent to the Prefect of the District. This officer, a Mr. E. O. Crosby, afterwards Minister to one of the South American Republics, wrote back approving my election, and advising me to act. His advice, under the circumstances, was a matter of some moment.[17] The new Constitution of the State had gone into effect, though it was still uncertain whether it would be recognized by Congress. Mr. Crosby, therefore, thought it best for me to procure, in addition to my commission as Alcalde, an appointment as Justice of the Peace; and through his kind offices, I obtained from Governor Burnett the proper document bearing his official seal.[18] After my election, I went to Sacramento, and on the 22d of January, 1850, was sworn into office as first Alcalde of Yubaville, by the Judge of the Court of First Instance, as that was the name of the district in the certificate of election; but I was always designated, after the name of the town had been adopted, as First Alcalde of Marysville.

Captain Sutter, whose deed I had drawn, was a remarkable character. He was about five feet nine inches in height, and was thick-set. He had a large head and an open, manly face, somewhat hardened and bronzed by his life in the open air. His hair was thin and light, and



Field was elected *alcalde* of Marysville (pictured in 1852), a position with very limited powers under Mexican law. Under the American occupation of California, however, it meant that Field had virtually limitless powers as a magistrate. He also acted as the town's supervisor, settling disputes and drawing up proper deeds for the sale of land.

he wore a mustache. He had the appearance of an old officer of the French army, with a dignified and military bearing. I subsequently became well acquainted with him, and learned both to respect and to pity him. I respected him for his intrepid courage, his gentle manners, his large heart, and his unbounded benevolence. I pitied him for his simplicity, which, while suspecting nothing wrong in others, led him to trust all who had a kind word on their lips, and made him the victim of every sharper in the country. He was a native of Switzerland and was an officer in the Swiss Guards, in the service of the King of France, in 1823, and for some years afterwards. In 1834, he emigrated [sic] to America, and had varied and strange adventures among the Indians at the West; in the Sandwich Islands, at Fort Vancouver, in Alaska, and along the Pacific Coast. In July, 1839, the vessel which he was aboard of, was stranded in the harbor of San Francisco. He then penetrated into the interior of California and founded the first white settlement in the valley of the Sacramento on the river of that name, at the mouth of the American River, which settlement he named Helvetia. He built a fort there and gathered around it a large number of native Indians and some white settlers. In 1841, the Mexican government granted to him a tract of land eleven square leagues in extent; and, subsequently, a still larger concession was made to him by the Governor of the Department. But the Governor being afterwards expelled from the country, the concession was held to be invalid. The emigrants arriving in the country after the discovery of gold proved the ruin of his fortunes. They squatted upon his land, denied the validity of his title, cut down his timber, and drove away his cattle. Sharpers robbed him of what the squatters did not take, until at last he was stripped of everything; and, finally, he left the State, and for some years has been living with relatives in Pennsylvania. Even the stipend of $2,500, which the State of California for some years allowed him, has been withdrawn, and now in his advanced years, he is almost destitute. Yet, in his days of prosperity, he was always ready to assist others. His fort was always open to the stranger, and food, to the value of many thousand dollars, was, every year, so long as he had the means, lent out by him for the relief of emigrants crossing the plains. It is a reproach to California that she leaves the pioneer and hero destitute in his old age.[19]

Experiences as Alcalde

Under the Mexican law, Alcaldes had, as already stated, a very limited jurisdiction. But in the anomalous condition of affairs under the American occupation, they exercised almost unlimited powers. They were, in fact, regarded as magistrates elected by the people for the sake of preserving public order and settling disputes of all kinds. In my own case, and with the approval of the community, I took jurisdiction of every case brought before me. I knew nothing of Mexican laws; did not pretend to know anything of them; but I knew that the people had elected me to act as a magistrate and looked to me for the preservation of order and the settlement of disputes; and I did my best that they should not be disappointed. I let it be known that my election had been approved by the highest authority.

The first case I tried was in the street. Two men came up to me, one of them leading a horse. He said, "Mr. Alcalde, we both claim this horse, and we want you to decide which of us is entitled to it." I turned to the man who had the horse, administered an oath to him, and then examined him as to where he got the horse, of whom and when, whether he had a bill of sale, whether there was any mark or brand on the animal, and, in short, put all those questions which would naturally be asked in such a case to elicit the truth. I then administered an oath to the other man and put him through a similar examination, paying careful attention to what each said. When the examination was completed I at once decided the case. "It is very plain, gentlemen," I said, "that the horse

belongs to this man [pointing to one of them] and the other must give him up." "But," said the man who had lost and who held the horse, "the bridle certainly belongs to me, he does not take the bridle, does he?" I said "Oh no, the bridle is another matter." As soon as I said this the owner of the bridle turned to his adversary and said, "What will you take for the horse?" "Two hundred and fifty dollars," was the instant reply. "Agreed," retorted the first, and then turning to me, he continued: "And now, Mr. Alcalde, I want you to draw me up a bill of sale for this horse which will stick." I, of course, did as he desired. I charged an ounce for trying the case and an ounce for the bill of sale; charges which were promptly paid. Both parties went off perfectly satisfied. I was also well pleased with my first judicial experience.

Soon after my election I went to San Francisco to get my effects; and while there I purchased, on credit a frame house and several zinc houses, which were at once shipped to Marysville. As soon as the frame house was put up I opened my office in it, and exercised not only the functions of a magistrate and justice, but also of a supervisor of the town. I opened books for the record of deeds and kept a registry of conveyances in the district. I had the banks of the river graded so as to facilitate the landing from vessels. The marshal of my court, elected at the same time with myself, having refused to act, I appointed an active and courageous person in his place, R. B. Buchanan by name, and directed him to see that peace was preserved, and for that purpose to appoint as many deputies as might be necessary. He did so, and order and peace were preserved throughout the district, not only in Marysville, but for miles around. As a judicial officer, I tried many cases, both civil and criminal, and I dictated the form of process suited to the exigency. Thus, when a complaint was made to me by the owner of a river boat, that the steamer, which plied between Marysville and Sacramento, had run down his boat, by which a part of its cargo was lost, I at once dictated process to the marshal, in which the alleged injury was recited, and he was directed to seize the steamer, and hold it until further orders, unless the captain or owner gave security to appear in the action commenced by the owner of the boat, and pay any judgment that might be recovered therein. Upon service of the process the captain appeared, gave the required security, and the case was immediately tried. Judgment was rendered and paid within five hours after the commission of the injury.

In civil cases, I always called a jury, if the parties desired one; and in criminal cases, when the offence was of a high grade, I went through the form of calling a grand jury, and having an indictment found; and in all cases I appointed an attorney to represent the people, and also the accused, when necessary. The Americans in the country had a general notion of what was required for the preservation of order and the due administration of justice; and as I endeavored to administrate justice promptly, but upon a due consideration of the rights of every one, and not rashly, I was sustained with great unanimity by the community.

I have reported a civil case tried before me as Alcalde. I will now give a few criminal prosecutions and their circumstances. One morning, about five o'clock, a man tapped at my window, and cried, "Alcalde, Alcalde, there has been a robbery, and you are wanted." I got up at once, and while I was dressing he told his story. Nearly every one in those days lived in a tent and had his gold dust with him. The man, who proved to be Gildersleeve, the famous runner, upon going to bed the previous evening had placed several pounds of gold dust in his trunk, which was not locked.[20] In the night some one had cut through his tent and taken the gold dust. I asked him if he suspected anybody; and he named two men, and gave such reasons for his suspicion that I immediately dictated a warrant for their arrest; and in a short time the

two men were arrested and brought before me. The gold dust was found on one of them. I immediately called a grand jury, by whom he was indicted. I then called a petit jury, and assigned counsel for the prisoner. He was immediately placed upon his trial, and was convicted. The whole proceeding occupied only a part of the day. There was a great crowd and much excitement, and some talk of lynching. Curiously enough, my real trouble did not commence until after the conviction. What was to be done with the prisoner? How was he to be punished? Imposing a fine would not answer; and, if he had been discharged, the crowd would have immediately hung him. When at San Francisco, Mayor Geary, of that place, told me if I would send my convicts to him, with money enough to pay for a ball and chain for each one, he would put them in the chain-gang.[21] But at that time the price of passage by steamer from Marysville to San Francisco was fifty dollars which, with the expense of an officer to accompany the prisoner, and the price of a ball and chain, would have amounted to a much larger sum than the prosecution could afford; so it was clearly impractical to think of sending him to San Francisco. Nor is it at all likely that the people would have consented to his removal. Under these circumstances there was but one course to pursue, and, however repugnant it was to my feelings to adopt it, I believe it was the only thing that saved the man's life. I ordered him to be publicly whipped with fifty lashes, and added that if he were found, within the next two years in the vicinity of Marysville, he should be again whipped. I, however, privately ordered a physician to be present so as to see that no unnecessary severity was practiced. In accordance with this sentence, the fellow was immediately taken out and flogged; and that was the last seen of him in that region. He went off and never came back. The latter part of the sentence, however, was supererogatory; for there was something so degrading in a public whipping, that I have never known a man thus whipped who would stay longer than he could help, or ever desire to return. However this may have been, the sense of justice of the community was satisfied. No blood had been shed; there had been no hanging; yet a severe public example had been given.

On another occasion a complaint was made that a man had stolen fifteen hundred dollars from a woman. He was arrested, brought before me, indicted, tried, and convicted. I had the same compunctions about punishment as before, but, as there was no other course, I ordered him to receive fifty lashes on his back on two successive days, unless he gave up the money, in which case he was to receive only fifty lashes. As soon as the sentence was written down the marshal marched the prisoner out to a tree, made him hug the tree, and in the presence of the crowd that followed, began inflicting the lashes. The man stood it for awhile without flinching, but when he had received the twenty-second lash he cried out, "Stop, for God's sake, and I will tell you where the money is." The marshal stopped and, accompanied by the crowd, took the man to the place indicated, where the money was recovered; and the thief was then made to carry it back to the woman and apologize for stealing it. The marshal then consulted the sentence, and, finding that it prescribed fifty lashes at any rate, he marched the wretch back to the tree and gave him the balance, which was his due.

But the case which made the greatest impression upon the people, and did more to confirm my authority than anything else, was the following: There was a military encampment of United States soldiers on Bear River, about fifteen miles from Marysville, known as "Camp Far West." One day an application was made to me to issue a warrant for the arrest of one of the soldiers for a larceny he had committed. It was stated that a complaint had been laid before the local Alcalde near the camp; but that the officer in charge had refused to give up the soldier unless a warrant for that purpose

were issued by me, it being the general impression that I was the only duly commissioned Alcalde in the district above Sacramento. On this showing I issued my warrant, and a lieutenant of the army brought the soldier over. The soldier was indicted, tried, convicted, and sentenced to be publicly whipped with the usual number of lashes, and the officer stood by and saw the punishment inflicted. He then took the soldier back to camp, where it was afterwards reported that he received an additional punishment. But before the lieutenant left me that day, and while we were dining together, he took occasion to say that, if at any time I had any trouble in enforcing the law, I had but to send him word and he would order out a company of troops to support me. This offer I permitted to become known through the town; and people said—and with what effect may be imagined—"Why here is an Alcalde that has the troops of the United States at his back."

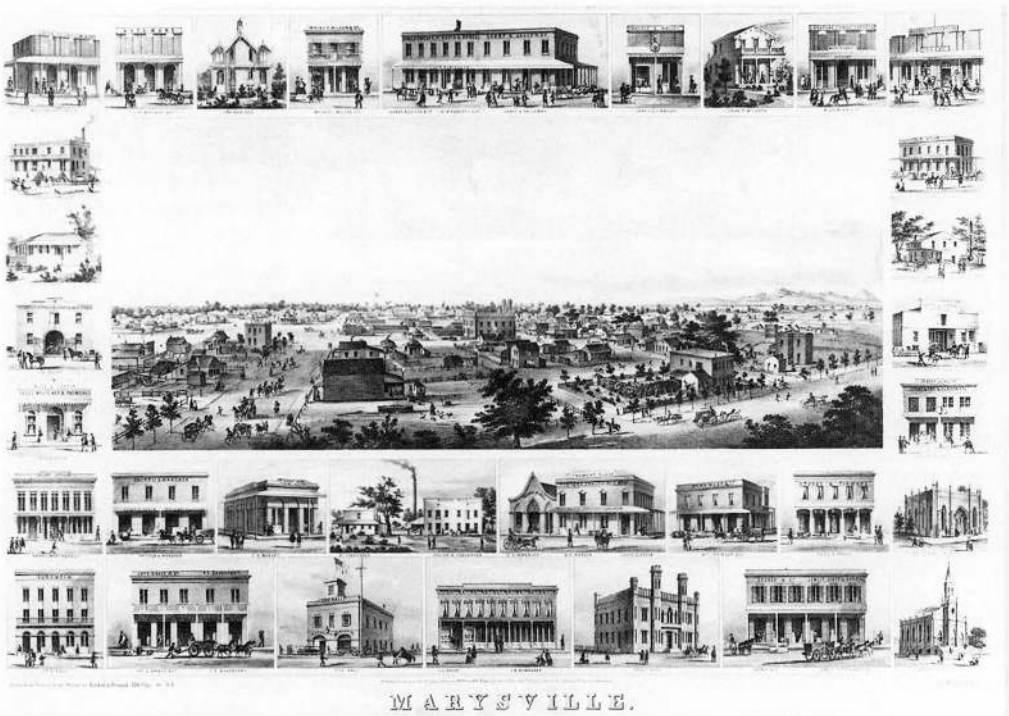
I have already stated that I had the banks of the Yuba River graded so as to facilitate the landing from vessels. I will now mention another instance of my administration as general supervisor of the town. There were several squatters on the landing at the river, which, according to the plan of the town, was several hundred feet wide. The lots fronting on this landing being the best for business commanded the highest prices. But on account of the squatters the owners were deprived of the benefit of the open ground of the landing in front of their property and they complained to me. I called upon the squatters and told them that they must leave, and that if they were not gone by a certain time, I should be commanded to remove them by force, and, if necessary, to call to my aid the troops of the United States. This was enough; the squatters left, the landing was cleared, and business went on smoothly.

In addition to my ordinary duties as a judicial officer and as general supervisor of the town, I acted as arbitrator in a great number of controversies which arose between the citizens. In such cases the parties generally came to my office together and stated that they had agreed to leave the matter in dispute between them to my decision. I immediately heard their respective statements—sometimes under oath, and sometimes without oath—and decided the matter at once. The whole matter was disposed of without any written proceedings, except in some instances I gave to parties a memorandum of my decision. Thus on one occasion a dispute arose as to the rate of wages, between several workmen and their employer; the workmen insisting upon twelve dollars a day and the employer refusing to give more than ten. To settle the dispute they agreed to leave the matter to me. I heard their respective statements, and after stating that both of them ought to suffer a little for not having made a specific contract at the outset, decided that the workingmen should receive eleven dollars a day, with which both appeared to be well satisfied. On another occasion parties disputed as to whether freight on a box of crockery should be charged by measurement or by weight, a specific contract having been made that all articles shipped by the owner should be carried at a fixed price per hundred pounds. They agreed to leave the matter to my determination, and I settled it in five minutes. Again, on one occasion a woman, apparently about fifty-six, rushed into my office under great excitement, exclaiming that she wanted a divorce from her husband, who had treated her shamefully. A few moments afterwards the husband followed, and he also wanted relief from the bonds of matrimony. I heard their respective complaints, and finding that they had children, I persuaded them to make peace, kiss, and forgive; and so they left my office arm-in-arm, each having promised the other never to do so again, amid the applause of the spectators. In this way I carried out my conception of the good Cadi of the village, from which term (Al Cadi) my own official designation Alcalde, was derived.

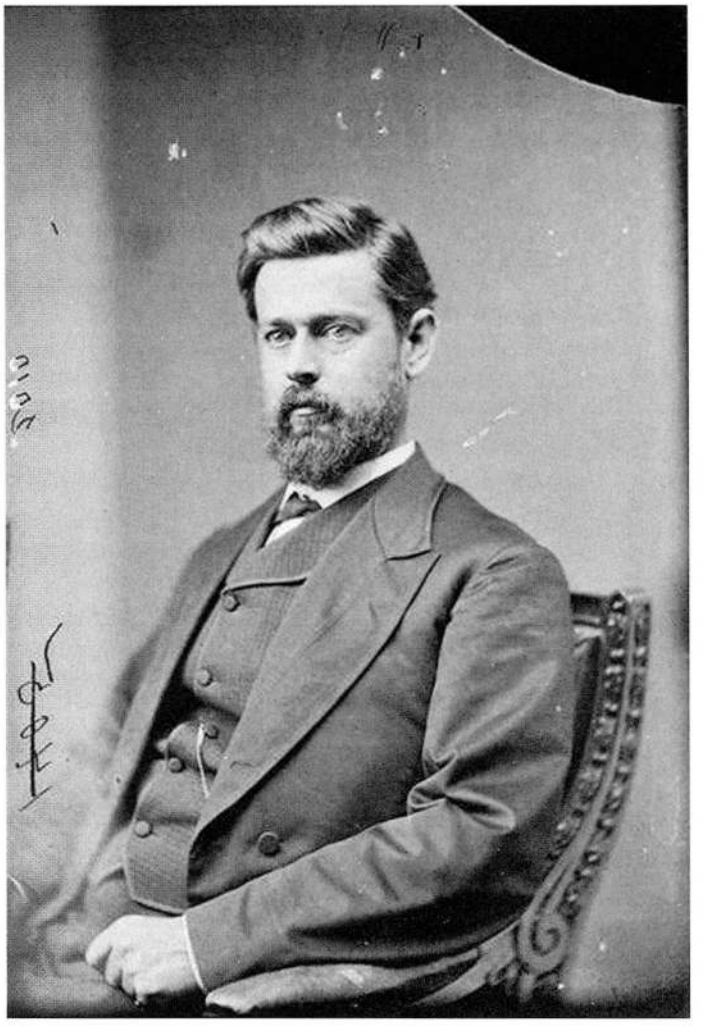
To make a long story short, until I was superseded by officers under the State government, I superintended municipal affairs and administered justice in Marysville with success. Whilst there was a large number of residents there of high character and culture, who would have done honor to any city, there were also unfortunately many desperate persons, gamblers, blacklegs, thieves, and cut-throats; yet the place was as orderly as a New England village. There were no disturbances at night, no riots, and no lynching. It was the model town of the whole country for peacefulness and respect for law.

And now a word about my speculations. In a short time after going to Marysville and writing my name down for sixty-five town lots, property increased tenfold in value. Within ninety days I sold over $25,000 worth, and still had most of my lots left. My frame and zinc houses brought me a rental of over $1,000 a month. The emoluments of my office of Alcalde were also large. In criminal cases I received nothing for my services as judge, and in civil cases the fees were small; but as an officer to take acknowledgments and affidavits and record deeds, the fees I received amounted to a large sum. At one time I had $14,000 in gold dust in my safe, besides the rentals and other property.

One day whilst I was Alcalde, a bright-looking lad, with red cheeks and apparently about seventeen years of age, came into the office and asked if I did not want a clerk. I said I did, and would willingly give $200 a month for a good one; but that I had written to Sacramento and was expecting one from there. The young man suggested that perhaps the one from Sacramento would not come or might be delayed, and he would like to take the place in

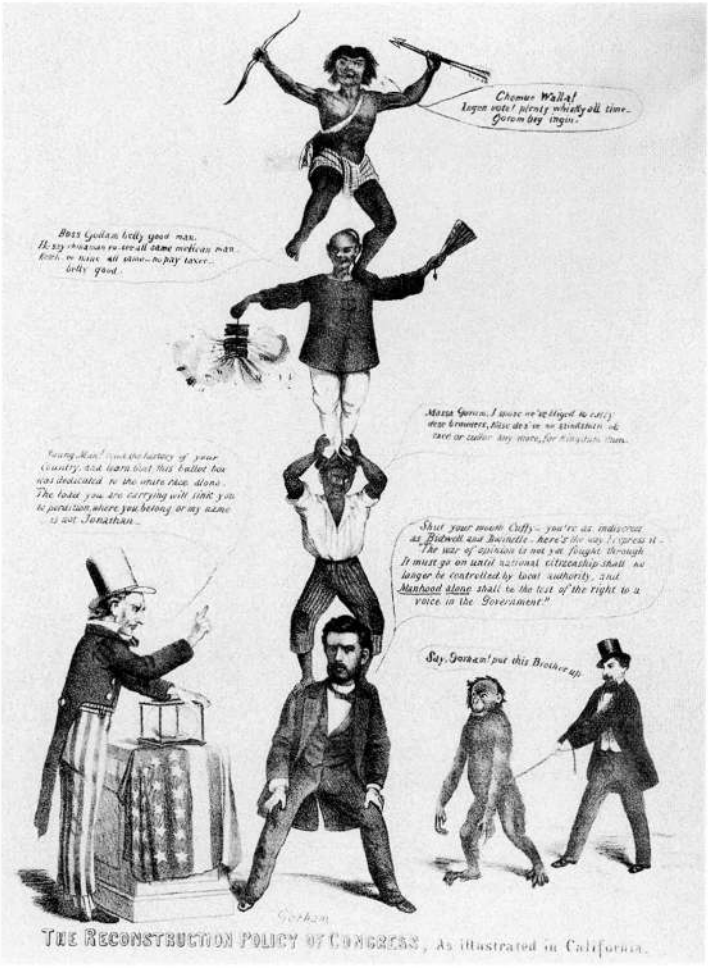


Despite being populated by "desperate persons, gamblers, blacklegs, thieves, and cut-throats," Field said, Marysville "became as orderly as a New England village" and "a model town for peacefulness and respect for law." This drawing dates from 1865, five years after Field's arrival.



Seventeen-year-old George C. Gorham talked his way into being taken on as Field's clerk. He became Field's lifelong friend and the original publisher of this memoir.

the meanwhile. I replied, very well, if he was willing to act until the other arrived, he might do so. And thereupon he took hold and commenced work. Three days afterwards the man from Sacramento arrived; but in the meanwhile I had become so much pleased with the brightness and quickness of my young clerk that I would not part with him. That young clerk was George C. Gorham, the present Secretary of the United States Senate.[22] I remember him distinctly [as] he first appeared to me, with red and rosy cheeks. His quickness of comprehension was really wonderful. Give him half an idea of what was wanted, and he would complete it as it were by intuition. I remember on one occasion he wanted to know what was necessary for a marriage settlement. I asked him why. He replied that he had been employed by a French lady to prepare such a settlement, and was to receive twenty-five dollars for the instrument. I gave him some suggestions, but added that he had better let me see the document after he had written it. In a short-time afterwards he brought it to me, and I was astonished to find it so nearly perfect. There was only one correction to make. And thus ready I always found him. With the most general directions he would execute everything committed to his charge, and usually with perfect correctness. He remained with me several months, and acted as clerk of my Alcalde court, and years afterwards, at different times was a clerk



This cartoon satirizes Gorham's bid for the governorship of California in 1867. A Republican, he espoused voting rights for blacks and other minorities. Gorham went on to become Secretary of the U.S. Senate.

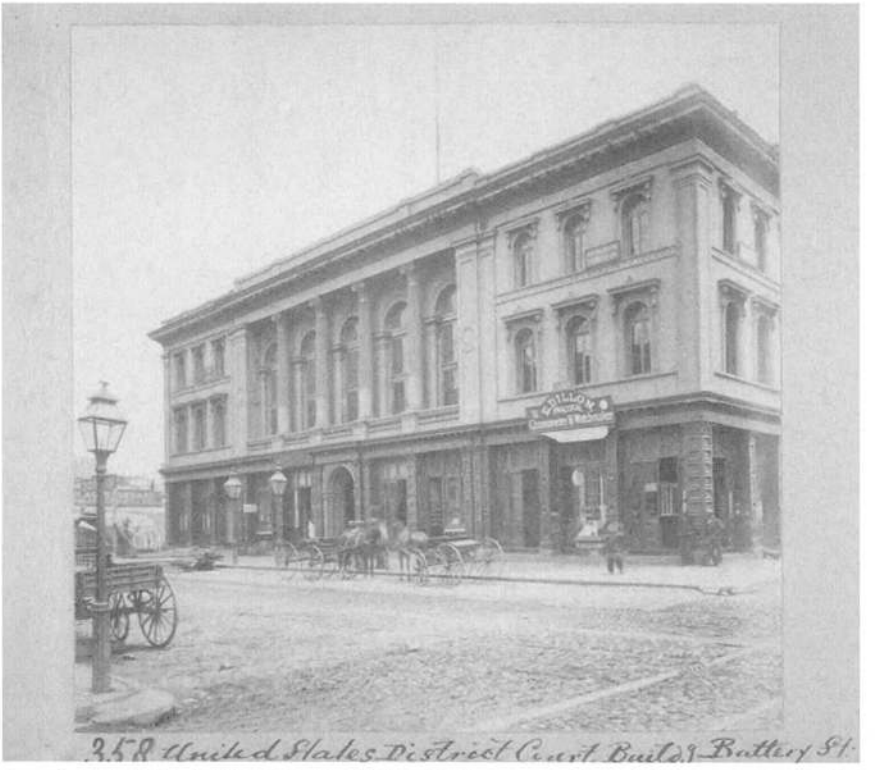
in my office. When I went upon the bench of the Supreme Court, I appointed him clerk of the Circuit Court of the United States for the District of California, and, with the exception of the period during which he acted as secretary of Gov. Low,[23] he remained as such clerk until he was nominated for the office of governor of the State, when he resigned. Through the twenty-seven years of our acquaintance, from 1850 to the present time, July, 1877, his friendship and esteem have been sincere and cordial, which no personal abuse of me could change and no political differences between us could alienate. His worldly possessions would have been more abundant had he pursued the profession of the law, which I urged him to do, and his success as a public man would have been greater, had he been more conciliatory to those who differed from him in opinion.

The Turner Controversy

Towards the end of May, 1860, William R. Turner, who had been appointed Judge of the Eighth Judicial District of the State by the first Legislature which convened under the Constitution, made his appearance and announced that he intended to open the District Court at Marysville on the first Monday of the next month.[24] We were all pleased with the prospect of having a regular court and endeavored, as far as lay in our power, to make the stay of the Judge with us agreeable. I had been in the habit of receiving a package of New York

newspapers by every steamer, and among them came copies of the New York "Evening Post" which was at that time the organ of the so-called Free-soil party. When Judge Turner arrived, I waited on him to pay my respects, and sent him the various newspapers I had received. He had lived for years in Texas, and, as it proved, was a man of narrow mind and bitter prejudices. He seems to have had a special prejudice against New Yorkers and regarded a Free-soiler as an abomination. I have been told, and I believe such to be the fact, that my sending him these newspapers, and particularly the "Evening Post," led him to believe that I was an "Abolitionist"—a person held in special abhorrence in those days by gentlemen from the South. At any rate he conceived a violent dislike of me, which was destined in a short time to show itself and cause me great annoyance. What was intended on my part as an act of courtesy, turned out to be the beginning of a long, bitter, and on his part, ferocious quarrel. At that time my affairs were in a very prosperous condition, as I have already stated. I had $14,000 in gold dust, a rental of over a thousand dollars a month, and a large amount of city property constantly increasing in value. Such being the case, I thought I would go East on a visit, and accordingly began making arrangements to leave. But shortly before the opening of the June term of the District Court, Captain Sutter came to me and told me he had been sued by a man named Cameron and wished me to appear as his counsel. I answered that I was making arrangements to go East and he had better retain some one else. He replied that I ought to remain long enough to appear for him and assist his attorney, and begged of me as an act of friendship to do so. I finally consented, and deferred my departure.

Soon after the opening of the court, some time during the first week, the case of



Field took an instant dislike to District Judge William R. Turner, a sentiment that was amply requited. Judge Turner tried to have Field imprisoned for calling him a "jackass" behind his back and, failing that, to have him disbarred. Pictured is the U.S. District Courthouse in Sacramento, where Turner heard cases.

Captain Sutter was called. A preliminary motion, made by his attorney, was decided against him. Mr. Jesse O. Goodwin, a member of the bar, sitting near, said to me that the practice act, passed at the recent session of the Legislature, contained a section bearing upon the question; and at the same time handed me the act.[25] I immediately rose, and addressing the court, remarked that I was informed there was a statutory provision applicable to the point, and begged permission to read it; and commenced turning over the pages of the act in search of it, when Judge Turner, addressing me and apparently irritated said in a petulant manner; "The court knows the law—the mind of the court is made up—take your seat, sir." I was amazed at hearing such language; but in a respectful and quiet manner stated that I excepted to the decision, and appealed, or would appeal from the order. The Judge instantly replied, in a loud and boisterous manner, "Fine that gentleman two hundred dollars." I replied quietly, "Very well," or "Well, sir." He immediately added, in an angry tone, "I fine him three hundred dollars, and commit him to the custody of the sheriff eight hours." I again replied, "Very well." He instantly exclaimed, in the same violent manner, "I fine him four hundred dollars and commit him twelve hours." I then said that it was my right by statute to appeal from any order of his honor, and that it was no contempt of court to give notice of an exception or an appeal, and asked the members of the bar present if it could be so regarded. But the Judge, being very ignorant of the practice of the law, regarded an exception to his decision as an impeachment of his judgment, and, therefore, something like a personal affront. And so, upon my statement, he flew into a perfect rage, and in a loud and boisterous tone cried out, "I fine him five hundred dollars and commit him twenty-four hours—forty-eight hours—turn him out of court—subpoena—a posse—subpoena me." I then left the court-room. The attorney in the case accompanied me, and we were followed by the deputy sheriff. After going a few steps we met the coroner, to whom the deputy sheriff transferred me; and the coroner accompanied me to my office, and after remaining there a few moments left me to myself. On the way an incident occurred, which probably inflamed Judge Turner against me more than anything else that could have happened. The attorney, who was much exasperated at the conduct of the Judge, said to me as we met the coroner, "Never mind what the Judge does; he is an old fool." I replied, "Yes, he is an old jackass." This was said in an ordinary conversational tone; but a man by the name of Captain Powers, with whom Turner boarded, happened to overhear it, and running to the court-house, and opening the door, he hallooed out, "Judge Turner! oh, Judge Turner! Judge Field says you are an old jackass." A shout followed, and the Judge seemed puzzled whether or not he should send an officer after me, or punish his excitable friend for repeating my language.

I remained in my office the remainder of the day, and many people who were present in court, or heard of what had occurred, called to see me. I immediately wrote out a full statement of everything that happened in the court-room, and had it verified by a number of persons who were eye and ear witnesses of the affair. Towards evening the deputy sheriff met the Judge, who asked him what he had done with me. The deputy answered that I had gone to my office and was still there. The Judge said, "Go and put him under lock and key, and, if necessary, put him in irons." The deputy came to me and said, "The Judge has sent me to put you under lock and key; let me turn the key upon you in your own office." At this I became indignant, and asked for his warrant or commitment to hold me. He replied that he had none, that only a verbal order was given to him by the Judge in the street. I then told him he must go away from me and leave me alone. He replied that, "as he was acting by the orders of the sheriff, whose deputy he was, in obeying the Judge, he must do as he had been directed." He added, "I will lock the door anyway," and doing so he went off. I immediately

sued out a writ of habeas corpus returnable before Henry P. Haun, the County Judge.[26] The writ was executed forthwith, and the same evening I was taken before the Judge. There was a great crowd present. I called the sheriff to the stand and asked him if he had any writ, process, commitment, or order by which he held me in custody. He replied that he had none. I then put on the stand Samuel B. Mulford and Jesse O. Goodwin and several others, who were present in the District Court where the scenes narrated had occurred, and they testified that there was nothing disrespectful in my language or manner; that I had not used an expression at which anybody could justly take offence; and that they had been utterly surprised at the conduct of the Judge, which was violent and tyrannical; and that they saw no possible excuse for it. This testimony was of course of no consequence on the question presented by the habeas corpus; because, as there was no order or warrant for my arrest in the possession of the officer, I could not, under any circumstances, be held; but I wished to show my friends, who had not been present in the court-room, the facts of the case.

I was of course at once discharged. But the matter did not end there. An excited crowd was present, and as I left the court-room they cheered enthusiastically. I thereupon invited them to the Covillaud House, a public house in the town, and directed the keeper to dispense to them the good things of his bar. The champagne was accordingly uncorked without stint, and the best Havana boxes were soon emptied of their most fragrant cigars. A bill of $290 paid the next day settled the amount. Whilst the boys were thus enjoying themselves, Judge Turner, who was not far off, entered the Covillaud House, perfectly furious, and applied obscene and vile epithets to the County Judge, declaring with an oath that he would teach "that fellow" that he was an inferior judge, and that the witnesses before him were a set of "perjured scoundrels" who should be expelled from the bar. Similar threats were made by him in different saloons in the town, to the disgust of every one. That evening he was burned in effigy in the public plaza. I had nothing to do with that act, and did not approve of it. I did not know then, and do not know to this day who were engaged in it. He attributed it to me, however, and his exasperation towards me in consequence became a malignant fury.

On the Monday following, June 10th which was the first day on which the court was held after the scenes narrated, Judge Turner, on the opening of the court, before the minutes of the previous session were read, and without notice to the parties, or any hearing of them, although they were present at the time, ordered that Judge Haun be fined fifty dollars and be imprisoned forty-eight hours for his judicial act in discharging me from arrest under some pretence that the order of the court had been thus obstructed by him. At the same time he ordered that I should be reimprisoned, and that Mr. Mulford, Mr. Goodwin, and myself should be expelled from the bar; myself for suing out the writ, and those two gentlemen for being witnesses on its return, under the pretence that we had "vilified the court and denounced its proceedings." Judge Haun paid his fine and left the courtroom, and I was again taken into custody by the sheriff.

It happened to be the day appointed by law for the opening of the Court of Sessions of the county, over which the County Judge presided. Judge Haun proceeded from the District Court to the room engaged for the Court of Sessions, and there, in connection with an associate justice, opened that court. Immediately afterwards I sued out another writ of habeas corpus returnable forthwith, and whilst before the court arguing for my discharge under the writ, the sheriff entered and declared his intention of taking me out of the room, and of taking Judge Haun from the bench and putting us in confinement, pursuant to the order of Judge Turner. Judge Haun told the sheriff that the Court of Sessions was holding its regular term; that he was violating the law, and that the court must not be disturbed in its proceedings. Judge Turner was then informed that the Court

of Sessions was sitting; that Judge Haun was on the bench, and that I was arguing before the court on a writ of habeas corpus. Judge Turner immediately ordered a posse to be summoned and appealed to gentlemen in the court-room to serve on it, and directed the sheriff to take Judge Haun and myself into custody by force, notwithstanding Judge Haun was on the bench, and I was arguing my case; and if necessary to put Judge Haun in irons—to handcuff him. Soon afterwards the sheriff, with a posse, entered the room of the Court of Sessions and forced me out of it, and was proceeding to seize Judge Haun on the bench, when the Judge stepped to a closet and drew from it a navy revolver, cocked it, and, pointing it towards the sheriff, informed him in a stern manner that he was violating the law; that whilst on the bench he, the Judge, could not be arrested, and that if the sheriff attempted to do so he would kill him. At the same time he fined the sheriff for contempt of court $200, and appointed a temporary bailiff to act, and directed him to clear the court-room of the disturbers. The new bailiff summoned all the bystanders, who instantly responded, and the court-room was immediately cleared. Judge Haun then laid his revolver on a drawer before him, and inquired if there was any business ready; for if so the court would hear it. There being none, the court adjourned.

I regret to be compelled to add, that notwithstanding the manly and courageous conduct which Judge Haun had thus shown, no sooner was the court adjourned than he was persuaded to make a qualified apology to the District Court for discharging me, by sending a communication to it, stating "that if he was guilty of obstructing the order of the court in releasing Field, he did it ignorantly, not intending any contempt by so doing;" and thereupon the District Court ordered that he be released from confinement, and that his fine be remitted.

Of course there was great excitement through the town as soon as these proceedings became known. That night nearly all Marysville came to my office. I made a speech to the people. Afterwards some of them passed in front of Turner's house, and gave him three groans. They then dispersed, and in returning home some of them fired off their pistols as a sort of finale to the proceedings of the evening. The firing was not within three hundred yards of Turner's house; but he seized hold of the fact of firing, and stated that he had been attacked in his house by an armed mob. He also charged that I had instigated the crowd to attack him, but the facts are as I have stated them. There was a great deal of feeling on the part of the people, who generally sided with me; but I did nothing to induce them to violate the law or disturb the peace. Even if I wished to do so, prudence and policy counselled otherwise.

When Turner caused the names of Mulford, Goodwin, and myself, to be stricken from the roll of attorneys, we, of course, could no longer appear as counsel in his court. I at once prepared the necessary papers, and applied to the Supreme Court of the State for a mandamus to compel him to vacate the order and reinstate us. I took the ground that an attorney and counsellor, by his admission to the bar, acquired rights of which he could not be arbitrarily deprived; that he could not, under any circumstances, be expelled from the bar without charges being preferred against him and an opportunity afforded to be heard in his defence; that the proceedings of Judge Turner being ex-parte without charges preferred, and without notice, were void; and that a mandate, directing him to vacate the order of expulsion and restore us to the bar, ought to be issued immediately.

In addition to this application, I also moved for a mandamus to him to vacate the order imposing a fine and imprisonment on me for the alleged contempt of his court, or for such other order in the premises as might be just. I took the ground, that as the order did not show any act committed which could constitute a contempt of court, it was void on its face, and should be so declared. My old friend, Gregory Yale, assisted me in the presentation of these motions. In deciding them, the court

delivered two opinions, in which these positions were sustained. They are reported under the titles of People, ex rel. Mulford et al., vs. Turner, 1 Cal., 143; and People, ex rel. Field vs. Turner, 1 Cal., 152.[27] In the first case, a peremptory writ of mandamus was issued, directed to Judge Turner, ordering him to reinstate us as attorneys; in the second, a writ of certiorari was issued to bring up the order imposing a fine, which was subsequently reversed and vacated, as shown in Ex-parte Field, 1 Cal., 187.[28] The opinions referred to were delivered by Judge Bennett, and are models of their kind. Many years afterwards, when a somewhat similar question came before the Supreme Court of the United States, I was called upon to announce its judgment; and in doing so, I followed these opinions, as may be seen by reference to the case of Ex-parte Robinson, 19 Wallace, 510.[29] I there repeated substantially the doctrine of Judge Bennett, which is the only doctrine that will protect an attorney and counsellor from the tyranny of an arbitrary and capricious officer, and preserve to him his self-respect and independence.[30]

When the order for our restoration came down from the Supreme Court, Turner refused to obey it; and wrote a scurrilous "Address to the Public" about us, which he published in one of the newspapers.[31] We replied in a sharp and bitter article, signed by ourselves and five other gentlemen; and at the same time we published a petition to the Governor, signed by all the prominent citizens of Marysville, asking for Judge Turner's removal. There was a general impression in those days that Judges appointed before the admission of the State into the Union held their offices subject to removal by the Governor. I hardly know how this impression originated, but probably in some vague notions about the powers of Mexican Governors. However this may be, such was the general notion, and in accordance with it, a petition for Turner's removal was started, and, as I have said, was, very generally signed. The matter had by this time assumed such a serious character, and the Judge's conduct was so atrocious, that the people became alarmed and with great unanimity demanded his deposition from office.

In the article referred to as published by us, we said, after setting forth the facts, that "Judge Turner is a man of depraved tastes, of vulgar habits, of an ungovernable temper, reckless of truth when his passions are excited, and grossly incompetent to discharge the duties of his office." Unfortunately the statement was perfectly true. He refused to obey the mandate of the Supreme Court, even talked of setting that court at defiance, and went around saying that every one who had signed an affidavit against him was a "perjured villain," and that as to Goodwin, Mulford, and Field, he would "cut their ears off." He frequented the gambling saloons, associated with disreputable characters, and was addicted to habits of the most disgusting intoxication. Besides being abusive in his language, he threatened violence, and gave out that he intended to insult me publicly the first time we met, and that, if I resented his conduct, he would shoot me down on the spot. This being reported to me by various persons, I went to San Francisco and consulted Judge Bennett as to what course I ought to pursue. Judge Bennett asked if I were certain that he had made such a threat. I replied I was. "Well," said the Judge, "I will not give you any advice; but if it were my case, I think I should get a shot-gun and stand on the street, and see that I had the first shot." I replied that "I could not do that; that I would act only in self-defence." He replied, "That would be acting in self-defence." When I came to California, I came with all those notions, in respect to acts of violence, which are instilled into New England youth; if a man were rude, I would turn away from him. But I soon found that men in California were likely to take very great liberties with a person who acted in such a manner, and that the only way to get along was to hold every man responsible, and resent every trespass upon one's rights. Though I was not prepared to follow Judge Bennett's suggestion, I did purchase a pair of revolvers and had a sack-coat made with pockets in which

the barrels could lie, and be discharged; and I began to practice firing the pistols from the pockets. In time I acquired considerable skill, and was able to hit a small object across the street. An object so large as a man I could have hit without difficulty. I had come to the conclusion that if I had to give up my independence; if I had to avoid a man because I was afraid he would attack me; if I had to cross the street every time I saw him coming, life itself was not worth having.

Having determined neither to seek him nor to shun him, I asked a friend to carry a message to him, and to make sure that it would reach him, I told different parties what I had sent, and I was confident that they would repeat it to him. "Tell him from me," I said, "that I do not want any collision with him; that I desire to avoid all personal difficulties; but that I shall not attempt to avoid him; that I shall not cross the street on his account, nor go a step out of my way for him; that I have heard of his threats, and that if he attacks me or comes at me in a threatening manner I will kill him." I acted on my plan. I often met him in the streets and in saloons, and whenever I drew near him I dropped my hand into my pocket and cocked my pistols to be ready for any emergency. People warned me to look out for him; to beware of being taken at a disadvantage; and I was constantly on my guard. I felt that I was in great danger; but after awhile this sense of danger had a sort of fascination, and I often went to places where he was, to which I would not otherwise have gone. Whenever I met him I kept my eye on him, and whenever I passed him on the street I turned around and narrowly watched him until he had gone some distance. I am persuaded if I had taken any other course, I should have been killed. I do not say Turner would have deliberately shot me down, or that he would have attempted anything against me in his sober moments; but when excited with drink, and particularly when in the presence of the lawless crowds who heard his threats, it would have taken but little to urge him on. As it turned out, however, he never interfered with me, perhaps because he knew I was armed and believed that, if I were attacked, somebody, and perhaps more than one, would be badly hurt. I have been often assured by citizens of Marysville that it was only the seeming recklessness of my conduct, and the determination I showed not to avoid him or go out of his way, that saved me. But at the same time my business was ruined. Not only was I prevented, by his refusal to obey the mandate of the Supreme Court, from appearing as an advocate, but I could not, on account of the relation I occupied towards him, practice at all; nor could I, under the circumstances, leave Marysville and make my intended visit East. Having nothing else to do, I went into speculations which failed, and in a short time—a much shorter time than it took to make my money—I lost nearly all I had acquired and became involved in debt.

Running for the Legislature

One morning about this time I unexpectedly found myself in the newspapers, nominated by my friends as a candidate for the lower house of the Legislature. Who the friends were that named me I did not know; but the nomination opened a new field and suggested new ideas. I immediately accepted the candidacy. Judge Turner had threatened, among other things, to drive me into the Yuba River. I now turned upon him, and gave out that my object in wishing to go to the Legislature was to reform the judiciary, and, among other things, to remove him from the district. I canvassed the county thoroughly and was not backward in portraying him in his true colors. He and his associates spared no efforts to defeat me. Their great reliance consisted in creating the belief that I was an abolitionist. If that character could have been fastened upon me it would have been fatal to my hopes, for it was a term of great reproach. Yuba County then comprised the present county of that name, and also what are now Nevada and Sierra Counties. It was over a hundred miles in length and about fifty in width, and had a population of

twenty-five thousand people, being the most populous mining region in the State. I visited nearly every precinct and spoke whenever I could get an audience. An incident of the canvass may not be uninteresting. I went to the town of Nevada a little more than a week before the election. As I was riding through its main street a gentleman whom I had long known, General John Anderson, hailed me, and, after passing a few words, said, "Field, you won't get fifty votes here."[32] I asked, "Why not?" He replied, "Because everybody is for McCarty, your opponent."[33] I said, somewhat sharply, "Anderson, I have come here to fight my own battle and I intend to carry Nevada." He laughed and I rode on. The first man I met after reaching the hotel was Captain Morgan, who afterwards commanded a steamer on the Bay of San Francisco. After talking for some time on general topics, he asked me about a story in circulation that I was an abolitionist. I saw at once the work of enemies, and I now understood the meaning of General Anderson's remark. I assured Morgan that the story was entirely false, and added; "To-morrow will be Sunday; everybody will be in town; I will then make a speech and show the people what kind of a man I am, and what my sentiments are on this and other subjects." Accordingly, the next day, in the afternoon, when the miners from the country were in town and had nothing else to do than to be amused, I mounted a platform erected for the purpose in the main street, and commenced speaking. I soon had a crowd of listeners. I began about my candidacy and stated what I expected to do if elected. I referred to the necessity of giving greater jurisdiction to the local magistrates, in order that contests of miners respecting their claims might be tried in their vicinity. As things then existed the right to a mule could not be litigated without going to the county seat, at a cost greater than the value of the animal. I was in favor of legislation which would protect miners in their claims, and exempt their tents, rockers, and utensils used in mining from forced sale. I was in favor of dividing the county, and making Nevada the seat of the new county. I had heard of numerous measures they wanted, and I told them how many of these measures I advocated. Having got their attention and excited their interest, I referred to the charge made against me of being an abolitionist, and denounced it as a base calumny. In proof of the charge I was told that I had a brother in New York who was a Free-soiler. So I had, I replied, and a noble fellow he is—God bless him wherever he may be. But I added, I have another brother who is a slaveholder in Tennessee, and with which one, I asked, in the name of all that is good, were they going to place me.[34] I wondered if these "honorable" men, who sought by such littleness to defeat me, did not find out whether I did not have some other relatives,—women, perhaps, who believed in things unearthly and spiritual,—whose opinions they could quote to defeat me. Shame on such tactics I said, and the crowd answered by loud cheering. I then went on to give my views of our government, of the relation between the general government of the Union and the government of the States, to show that the former was created for national purposes which the States could not well accomplish—that we might have uniformity of commercial regulations, one army and one navy, a common currency, and the same postal system, and present ourselves as one nation to foreign countries—but that all matters of domestic concern were under the control and management of the States, with which outsiders could not interfere; that slavery was a domestic institution which each State must regulate for itself, without question or interference from others. In other words, I made a speech in favor of State Rights, which went home to my hearers, who were in great numbers from the South. I closed with a picture of the future of California, and of the glories of a country bounded by two oceans. When I left the platform the cheers which followed showed that I had carried the people with me. McCarty, my opponent, followed, but his speech fell flat. Half his audience left before he had concluded.

The election took place a week from the following Monday. I remained in Nevada until it was over. At the precinct in town where I had spoken, I had between three and four hundred majority, and in another precinct in the outskirts I had a majority of two to one. In the county generally I ran well, and was elected, notwithstanding the fact that I was not the nominee of any convention or the candidate of any party. The morning following the election, as I was leaving Nevada, I rode by the store of General Anderson, and hailing him, inquired what he thought now of my getting fifty votes in the town. "Well," he replied, "it was that Sunday speech of yours which did the business. McCarty could not answer it."

There was one thing in the election which I regretted, and that was that I did not carry Marysville; a majority of the votes of its citizens was cast for my opponent. It is true that there the greater number of gamblers and low characters of the county were gathered, but the better class predominated in numbers, and I looked with confidence to its support. My regret, however, was sensibly diminished when I learned the cause of the failure of a portion of the people to give me their votes. Some few weeks previous to the day of election a man was killed in the street by a person by the name of Keiger, who was immediately arrested. The person killed was about leaving the State, and owed a small debt to Keiger, which he refused either to pay or to give security for its payment. Exasperated by his refusal Keiger drew a pistol and shot him. I was sent for by an acquaintance of Keiger to attend his examination before the local magistrate, by whom he was held for the action of the grand jury. In the afternoon of the same day a large crowd assembled in the streets, with the purpose of proceeding to the summary execution of Keiger. Whilst the people were in a great state of excitement I made a speech to them, begging them not to resort to violence and thus cast reproach upon the good name of Marysville, but to let the law take its course, assuring them that justice would certainly be administered by the courts. My remarks were received with evident displeasure and I am inclined to think that violence would have been resorted to had not the prisoner been secretly removed from the city and taken to Sacramento. The exasperation of a large number, at this escape of their intended victim, vented itself on me, and cost me at least a hundred votes in the city. I would not have acted otherwise had I known beforehand that such would be the result of my conduct. When the civil tribunals are open and in the undisturbed exercise of their jurisdiction, a resort to violence can never be approved or excused.

I witnessed some strange scenes during the campaign, which well illustrated the anomalous condition of society in the county. I will mention one of them. As I approached Grass Valley, then a beautiful spot among the hills, occupied principally by Mr. Walsh,[35] a name since become familiar to Californians, I came to a building by the wayside, a small lodging-house and drinking-saloon, opposite to which a Lynch jury were sitting, trying a man upon a charge of stealing gold dust. I stopped and watched for awhile the progress of the trial. On an occasion of some little delay in the proceedings, I mentioned to those present, the jury included, that I was a candidate for the Legislature, and that I would be glad if they would join me in a glass in the saloon, an invitation which was seldom declined in those days. It was at once accepted, and leaving the accused in the hands of an improvised constable, the jury entered the house and partook of the drinks which its bar afforded. I had discovered, or imagined from the appearance of the prisoner, that he had been familiar in other days with a very different life from that of California, and my sympathies were moved towards him. So, after the jurors had taken their drinks and were talking pleasantly together, I slipped out of the building and approaching the man, said to him, "What is the case against you? Can I help you?" The poor fellow looked up to me and his eyes filled with great globules of tears as he replied, "I am innocent of all I am charged with. I have never stolen anything

nor cheated any one; but I have no one here to befriend me." That was enough for me. Those eyes, filled as they were, touched my heart. I hurried back to the saloon; and as the jurors were standing about chatting with each other I exclaimed, "How is this? you have not had your cigars? Mr. bar-keeper, please give the gentlemen the best you have; and, besides," I added, "let us have another 'smile'—it is not often you have a candidate for the Legislature among you." A laugh followed, and a ready acceptance was given to the invitation. In the meantime my eyes rested upon a benevolent looking man among the jury, and I singled him out for conversation. I managed to draw him aside and inquired what State he came from. He replied, from Connecticut. I then asked if his parents lived there. He answered, with a faltering voice, "My father is dead; my mother and sister are there." I then said, "Your thoughts, I dare say, go out constantly to them; and you often write to them, of course." His eyes glistened, and I saw pearl-like dew-drops gathering in them; his thoughts were carried over the mountains to his old home. "Ah, my good friend," I added "how their hearts must rejoice to hear from you." Then, after a short pause, I remarked, "What is the case against your prisoner? He, too, perhaps, may have a mother and sister in the East, thinking of him as your mother and sister do of you, and wondering when he will come back. For God's sake remember this." The heart of the good man responded in a voice which, even to this day—now nearly twenty-seven years past—sounds like a delicious melody in my ears: "I will do so." Passing from him I went to the other jurors, and, finding they were about to go back to the trial, I exclaimed, "Don't be in a hurry, gentlemen, let us take another glass." They again acceded to my request, and seeing that they were a little mellowed by their indulgence, I ventured to speak about the trial. I told them that the courts of the state were organized, and there was no necessity or justification now for Lynch juries; that the prisoner appeared to be without friends, and I appealed to them, as men of large hearts, to think how they would feel if they were accused of crime where they had no counsel and no friends. "Better send him, gentlemen, to Marysville for trial, and keep your own hands free from stain." A pause ensued; their hearts were softened; and, fortunately, a man going to Marysville with a wagon coming up at this moment, I prevailed upon them to put the prisoner in his charge to be taken there. The owner of the wagon consenting, they swore him to take the prisoner to that place and deliver him over to the sheriff; and to make sure that he would keep the oath, I handed him a "slug," a local coin of octagonal form of the value of fifty dollars, issued at that time by assayers in San Francisco. We soon afterwards separated. As I moved away on my horse my head swam a little, but my heart was joyous. Of all things which I can recall of the past, this is one of the most pleasant. I believe I saved the prisoner's life; for in those days there was seldom any escape for a person tried by a Lynch jury.

The expenses of the election were very great. It was difficult to interest the miners in it; most of them had come to the country in the hope of improving their fortunes in one or two years, and then returning to "the States." It was, therefore, a matter of little moment to them who were chosen members of the coming Legislature. Party lines were not regarded among them, and party questions could not draw many of them from their labors. As I was an independent candidate, not supported by any party, I had to bear the whole expenses of the campaign. How great those expenses were may be imagined from the following bill, one of a large number sent to me after the election. I had told the saloon-keepers in the vicinity of the polling places in the different precincts to be liberally disposed towards my friends on the day of election. They took me literally at my word, as this bill from the keeper of a saloon where the polls were opened in Downieville precinct will show:

Mr. S. J. FIELD,
To Orleans House.
To 460 drinks $230 00
275 cigars 68 75
Downieville, October 9th,
1850 ..... $299 75
[Endorsed:]
We hereby certify that the within account is correct.
"P. L. Moore."
"Wm. S. Spear."
Received payment of the within bill in full from Stephen J. Field.
"J. Stratmen."
"October 14th, 1850."

The Turner Controversy continued

It was not until after my election that Judge Turner paid any attention to the mandate of the Supreme Court commanding him to vacate his order of expulsion against myself and Messrs. Goodwin and Mulford, and to restore us to the bar. The mandate was issued on the fourth of July, and was served on the Judge on the sixteenth. He immediately and publicly declared that he would not obey it, but would stand an impeachment first. Whilst attending the Supreme Court on the application for the writ, Mr. Goodwin, Mr. Mulford, and myself, were admitted as attorneys and counsellors of that court, and that admission under its rules entitled us to practice in all the courts of the State. The effect of this, which reinstated us in the District Court, he determined to defeat. He accordingly directed the sheriff of the county to notify us to show cause before the court in Sutter County, why we should not be again expelled from the bar for the publication of the article in the *Placer Times*, to which I have referred, written in reply to his attack on us in his "Address to the Public." The order was dated on the fourth of October, and was served on the eighth, and required us to appear on the first Thursday of the month, which was the third. As the time for appearance was previous to the day of service and to the date of the order, no attention was paid to it. The Judge, however, proceeded, and on the eleventh of the month made another order of expulsion. After the adjournment of the court, he discovered his blunder, and at once issued another direction to the sheriff to notify us that the last order of expulsion was suspended until the twenty-eighth of October, and to show cause on that day why we should not be again expelled. In the meantime, the Judge made no concealment of his purposes, but publicly declared in the saloons of the town that if we did not appear upon this second notice, he would make an order for our expulsion, and if we did appear, he would expel us for contempt in publishing the reply to his article, which he termed a false and slanderous communication. We knew, of course, that it would be useless to appear and attempt to resist his threatened action; still we concluded to appear and put in an answer. Accordingly, on the day designated, we presented ourselves before the court in Sutter County. I was the first one called upon to show cause why I should not be again expelled. I stated that I was ready, and first read an affidavit of one of the Associate Justices of the Court of Sessions, to show that the Judge had declared his purpose to expel my self and the other gentlemen in any event, and that it was an idle ceremony to call upon us to show cause against such threatened action. As soon as it was read, the Judge declared that it was not respectful and could not be received. I then began to read my answer to the order to show cause, but was stopped when I had read about one half of it, and was told that it was not respectful and could not be received. I then requested permission to file it, but my request was refused. Mr. Mulford being called upon to show cause why he should not be expelled, began to read an answer, but was stopped after reading a few lines. His answer was respectful, and was substantially to the effect that he had been admitted as attorney and counsellor in the Supreme Court on the previous July, and was thus entitled to practice in all the courts of the State; that the communication in the *Placer Times* was written in reply to an

article of the Judge, and that he was ready at the proper time and place to substantiate its truth; and he protested against the Judge's interfering in the matter in the manner indicated in the notice. Mr. Goodwin being called upon, took in his answer substantially the same grounds as Mr. Mulford. Immediately after Mr. Goodwin took his seat, without a moment's hesitation, the Judge made an order that his previous order of the eleventh of October, expelling us, should be confirmed, and that the order should be published in the *Sacramento Times* and the *San Francisco Herald*. I immediately took the proper steps to obtain another mandate from the Supreme Court to vacate this second expulsion; and also to attach the Judge for noncompliance with the original mandate, the first order of expulsion still being unvacated on the records of the court. At the January term, 1851, the applications to the court in both cases were decided, and they are reported in the 1st *California Reports*, at pages 189 and 190.[36] In the attachment case, the court denied the application on the ground that no motion had been made by us or any one on our behalf to cause the original order of expulsion to be vacated, and that the Judge had, in the proceedings to expel us, substantially recognized us as reinstated. In the other case, the court decided that the proceedings to re-expel us were irregular, and directed an alternative writ to issue, commanding the Judge to vacate the order and to permit us to practice in all the courts of the district, or to show cause to the contrary, at the next term. No cause was ever shown; and thus ended the attempts of an ignorant, malicious, and brutal judge to keep us out of the profession of our choice. Mr. Goodwin has since held many positions of honor and trust in the State. He was elected District Attorney at the same time that I was elected to the Legislature, and afterwards was Judge of Yuba County, and is now (1877) a member of the State Senate. Mr. Mulford was afterwards and until his death a successful practitioner at the bar of Marysville, and was in all the affairs of life respected as a high-spirited and honorable man.

But with Judge Turner I have not yet done. I have a long story still to relate with respect to him. After my election to the Legislature was ascertained, he became exceedingly solicitous to prevent in advance my exerting any influence in it. He expected that I would attack him, and endeavor to secure his impeachment, and he wanted to break me down if possible. He accordingly published a pamphlet purporting to be a statement of the charges that I preferred against him, which was, however, little else than a tirade of low abuse of myself and the editor of the *Marysville Herald*, in the columns of which the conduct of the Judge had been the subject of just criticism and censure. There was nothing in the miserable swaggering billingsgate of the publication which merited a moment's notice, but as in one passage he stated that he had attempted to chastise me with a whip, and that I had fled to avoid him, I published in the *Marysville Herald* the following card:

> Judge William R. Turner, in a statement published over his signature on the 12th instant, asserts that he attempted to chastise me with a switch, and that I fled to avoid him. This assertion is a *shameless lie*. I never, to my recollection, saw Judge Turner with a switch or a whip in his hand. He has made, as I am informed, many threats of taking personal vengeance on myself, but he has never attempted to put any of them into execution. I have never avoided him, but on the contrary have passed him in the street almost every day for the last four months. When he attempts to carry any of his threats into execution, I trust that I shall not forget, at the time, what is due to myself.
>
> Judge Turner says he holds himself personally responsible in and under all circumstances. This he says *in print*; but it is well understood in this place that he has stated he should

feel bound by his oath of office to endeavor to obtain an indictment against any gentleman who should attempt to call him to account. Shielded behind his oath of office he has displayed his character by childish boasts of personal courage and idle threats of vengeance.

Stephen J. Field.
Marysville, Dec. 21st, 1850.

There were also annexed to the publication of Turner, letters from different persons expressive of their opinion of his general bearing on the bench and courtesy to them. Among these was one from John T. McCarty, the candidate against me at the recent election in which he spoke in high terms of the Judge's conduct on the bench, and assailed me as his calumniator, applying to me sundry coarse epithets. In answer to this letter I published in the Herald the following card:

John T. McCarty

John T. McCarty, in a letter to Judge William R. Turner, dated the 22d of November, takes occasion to apply several vile epithets to myself, and uses the following language to Judge Turner—Having been present at the first term of your court ever held in this district, and most of your courts since that time, and being familiar with almost every decision and your entire conduct upon the bench, I take pleasure in saying that I never have practiced before any court where there was so great a dispatch of business, so much order and general satisfaction rendered by the rules and decisions of the court, and that, notwithstanding the base denunciations of your enemies, a large majority of the people who have attended your courts approve and sustain your positions and decisions."

During the session of the District Court, at its first term, this same John T. McCarty was called before the County Judge to give his testimony on the return of a writ of habeas corpus, and then he testified "**that the conduct of** *Judge Turner on the bench was the most outrageous he had ever witnessed in any court its which he had practice;" and the tenor and effect of his whole testimony was in the highest degree condemnatory of the conduct of Judge Turner.*

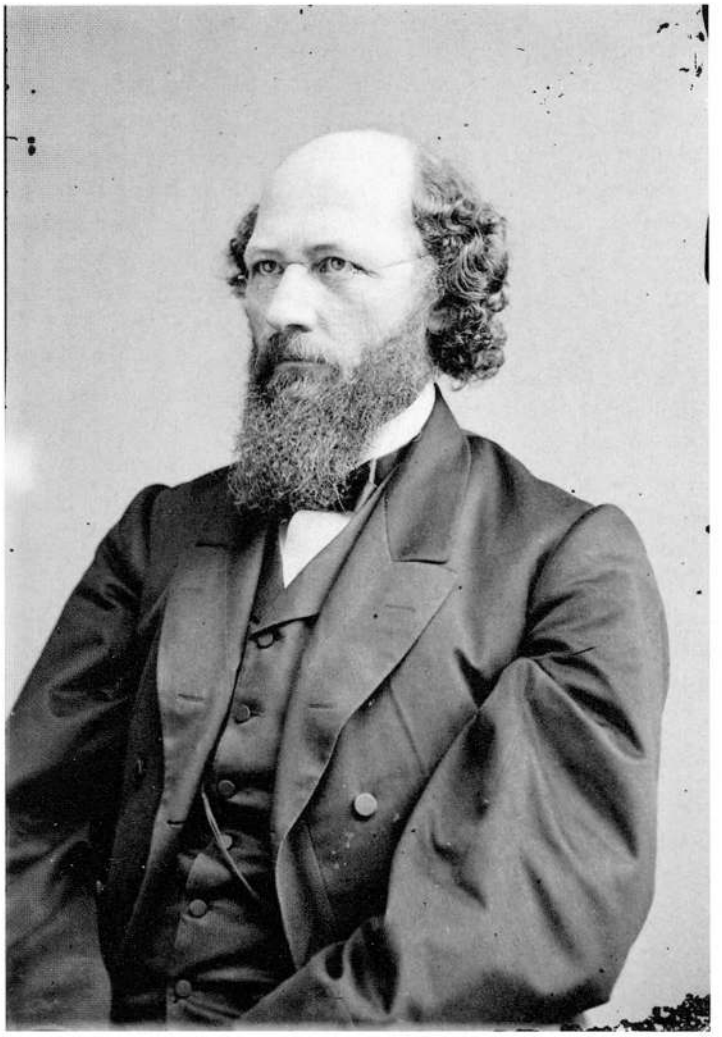
One of two things follows: If the statement in the letter be true, then John T. McCarty was guilty of perjury before the County Judge: but if he testified to the truth, then his statement in the letter is false. In the one case he is a liar and in the other a perjured scoundrel. Thus convicted out of his own mouth, his vile epithets respecting myself are not worth a moment's consideration.

Stephen J. Field
Marysville, Dec. 21st, 1860.

On my return from the Legislature, and afterwards, this same McCarty was in my presence the most abject and humble wretch I knew in Marysville. He almost piteously begged recognition by me, and was ready to go down on his knees for it. He was a blustering miscreant, full of courage where no force was required, and ready to run at the first appearance of a fight. He was one of a class, all of whom are alike, in whom bluster, toadyism, and pusillanimity go in concert, and are about equally developed in degree.

Life in the Legislature

IMMEDIATELY after the election I commenced the preparation of a bill relating to the courts and judicial officers of the State, intending to present it early in the session. The Legislature met at San Jose on the first Monday of January, 1851, and I was placed on the Judiciary Committee of the House. My first business was to call the attention of the Committee



Field was elected to the state legislature in 1851. At his first session, he was placed on the Judiciary Committee of the House and promptly introduced a bill calling for Turner's impeachment.

to the bill I had drawn. It met their approval, was reported with a favorable recommendation and after a full discussion was passed. Its principal provisions remained in force for many years, and most of them are retained in the Code, which went into effect in January, 1873. It created eleven judicial districts and defined the jurisdiction and powers of every judicial officer in the State, from a Supreme Judge to a Justice of the Peace. It provided that the then incumbent District Judges should continue to be the Judges of the new Districts according to their respective numbers. At the same time I introduced a bill dividing the county of Trinity, and creating that of Klamath; and also a bill dividing the county of Yuba, and creating that of Nevada; and I so arranged it that out of Trinity and Klamath a new Eighth Judicial District was created, and out of Yuba, Nevada, and Sutter a Tenth Judicial District. Thus Turner, being Judge of the Eighth District, was sent to the then comparative wilderness of Trinity and Klamath; and the Tenth District, was to have a new judge. After this bill was passed I presented petitions from the citizens of Yuba County, and of that part which now constitutes Nevada County, praying for the impeachment of Turner, and his removal from office, charging as grounds for it his incompetency—from ignorance to discharge

its duties, his arbitrary and tyrannical conduct towards the County Judge and members of the Marysville bar, the particulars of which I have related, his contemptuous treatment of the writ of *habeas corpus*, and his general immoral conduct.

A committee was thereupon appointed to which the petitions were referred, with power to send for persons and papers. The testimony taken by them fully established the charges preferred. Indeed, there was no serious attempt made to refute them. The only evidence offered in behalf of the Judge was that of a few persons who testified that they had been treated by him with courtesy in some instances and that good order had been maintained in court when they were present. There is no doubt that the impeachment would have been ordered but for a strong desire of the members to bring the session to a close, and a report which had obtained credence, that after the passage of the court bill, by which Turner was sent out of the eighth district, I was content to let the question of impeachment be indefinitely postponed. The testimony taken was reported by the Committee on the 15th of April. His impeachment would have required a trial by the Senate, which would have prolonged the session at least a month, and to this members were much averse. Parties came to me and said, "Judge, what's the use of pressing this matter. You have sent Turner where there are only grizzly bears and Indians; why not let him remain there? He can do no harm there." I replied that he was not fit to be a judge anywhere, and I refused assent to a postponement of the matter. Afterwards, when the vote was about to be taken, a Senator and a personal friend of Turner, misinterpreting some expressions of mine that I desired to bring the matter to a speedy close, privately stated to members of the House that I had declared myself satisfied by the passage of the court bill and was willing to let the impeachment be dropped, it being understood that this course would not be taken as a sanction of the Judge's conduct. To my astonishment, members who had said only half an hour before that they should vote for the impeachment now voted for an indefinite postponement, which was carried by three votes—fifteen to twelve. I did not vote, and three members who strongly favored the impeachment were absent at the time. Seven of the members who voted for the indefinite postponement afterwards informed me that they had done so under the impression that such a disposition of the matter would be satisfactory to me, and that if a direct vote had been taken on the charges they should have voted for the impeachment. Here the matter ended; I did not pursue it. Turner did not go back to Marysville and I had no further trouble with him.

To understand fully the legislation with which I was connected, and its effect upon the State, one must be familiar with the history of the country and the condition of its people. In addition to the act concerning the courts and judicial officers referred to, I took up the Code of Civil Procedure, as reported by the Commissioners in New York, remodelled it so as to adapt it to the different condition of things and the different organization of the courts in California, and secured its passage.[37] It became what was known as the California Civil Practice Act, and was afterwards adopted in Nevada and in the Territories west of the Rocky Mountains.

I also took up the Code of Criminal Procedure, as reported by the same Commissioners, and remodelled that in the same way and secured its passage. It constituted what was afterwards known as the California Criminal Practice Act, and was also adopted in the State and Territories mentioned. The amount of labor bestowed upon these acts will be appreciated when I state that I recast, in the two, over three hundred sections, and added over one hundred new ones. I devoted so much attention and earnestness to the work, that in a short time the Legislature placed implicit confidence in everything relating to the judiciary which I recommended. The Criminal Practice Act, for instance, remodelled as stated, consisting of over six hundred sections, was never

read before the Legislature at all. The rules were suspended and the bill read by its title and passed. When it came before the Governor, on the last day of the session, he said he could not sign it without reading it, and it was too late for him to do that. I represented to him that its passage was essential to secure the harmonious working of laws already passed. Turning to me he said, "You say it is all right?" I replied, "Yes;" and thereupon he signed it.

I have already stated that I moved Turner's impeachment. After the testimony was taken I addressed the House upon the subject. In reply to my remarks a member, by the name of B. F. Moore, from Tuolumne County, took occasion to make an abusive attack on me.[38] It was the common practice in those days to go armed. Of the thirty-six members of which the Assembly then consisted, over two-thirds never made their appearance without having knives or pistols upon their persons, and frequently both. It was a thing of every-day occurrence for a member, when he entered the House, before taking his seat, to take off his pistols and lay them in the drawer of his desk. He did it with as little concern and as much a matter of course, as he took off his hat and hung it up. Nor did such a thing excite surprise or comment. But when Mr. Moore rose to reply to me, he first ostentatiously opened his drawer, took out his revolvers, cocked them, and laid them in the open drawer before him. He then launched out into a speech of the most opprobrious language, applying to me offensive epithets, and frequently interspersing his remarks with the declaration that he was responsible for what he said, both there and elsewhere. It is difficult for me to describe the indignation I felt at this outrageous assault and the manner in which it was made. Its very fierceness made me calm, as it is said that a tempest at sea is sometimes so violent as to still the waves. So when I came to make my rejoinder, I answered only such portions of his speech as attempted argument, and made no allusion to the personal language he had used towards me. But as soon as the vote was had on the question of postponing the impeachment, I took measures to call him to account. For this purpose I applied to Mr. Samuel A. Merritt, a member from Mariposa County, to carry a note from me to him, calling upon him to apologize for his offensive conduct or give me the satisfaction which it was understood one gentleman had the right to demand from another.[39]

At that time it was generally supposed that the constitutional provision in regard to duelling was self-operative, and that any person who either sent or accepted a challenge, or acted as a second to one who thus offended, would ipso facto be disqualified from afterwards holding any public office. Upon this understanding of the law, Mr. Merritt, with many expressions of regard for me and regret at the law, declined to carry the note. I then applied to Mr. Richardson, also a member, but he declined for the same reason.[40] I was afraid, as matters stood, that I could not get anybody to act for me, and I did not know to whom to apply or what to do. Whilst thinking the matter over, I happened, about nine o'clock in the evening, to walk into the Senate Chamber, and there found Mr. David C. Broderick, afterwards United States Senator, sitting at his desk writing. He was at that time President pro tem. of the Senate. I had known him for some time, but not intimately; we were merely bowing acquaintances. As I entered he looked up and said, "Why, Judge, you don't look well, what is the matter?" I answered that I did not feel well, for I had not a friend in the world. He replied, "What is it that worries you?" I then related to him everything that had happened, giving the particulars of the gross and violent assault upon my character, and stated that I was determined, at all hazards, to call Moore to account. Mr. Broderick, without hesitation, said, "My dear Field, I will be your friend in this matter; go and write at once a note to Moore, and I will deliver it myself." I accordingly sat down at an adjoining desk and wrote him a note, the purport of which was that I required him either to make a public retraction of his insulting language in the Legislature, or to give

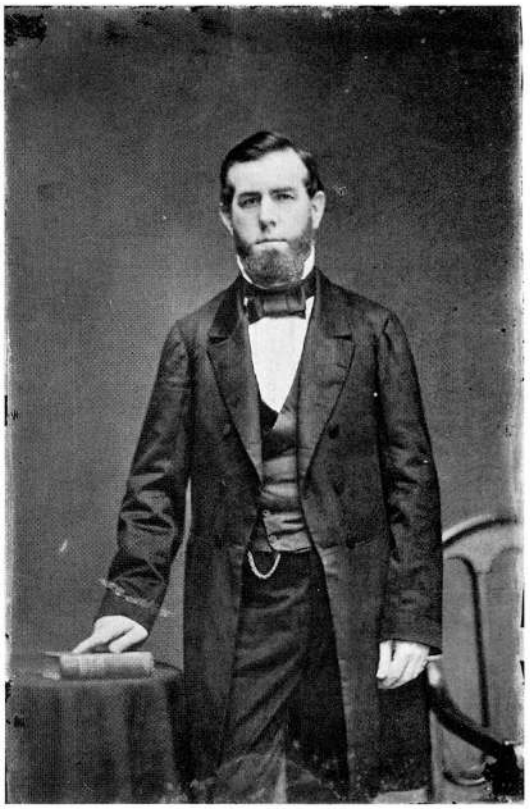
me the satisfaction I had a right to demand. Broderick approved of its terms and at once proceeded to deliver it.

When he called on Moore and presented it, the latter said he expected to be a candidate for Congress before the coming convention, and he could not accept a challenge because it would disqualify him under the constitution from holding the office. But at the same time he observed that he was willing to meet me at any time and place; in other words, that he had no objection to a street fight. Broderick replied that a street fight was not exactly the thing among gentlemen; but that if Moore would do no better, a street fight there should be; and thereupon named a time and place when and where I would be found the next morning. Within an hour afterwards Moore changed his mind, and informed Mr. Broderick that Drury Baldwin, another member of the House, would act as his friend, and give a reply to my note the next morning.

In anticipation of a possible collision, Mr. Broderick took me out early the following morning to try my skill in the use of a pistol. I tried a navy revolver and succeeded in hitting a knot on a tree, at a distance of thirty yards, three times out of five. Broderick declared himself satisfied, and I then urged upon him the necessity of bringing the matter to a speedy issue. In all this he concurred, and before the meeting of the House, called upon Baldwin for an answer to my note. Baldwin replied that his principal had made up his mind to do nothing further in the matter. "Then," said Broderick, "as soon as the House meets, Judge Field will arise in his seat and refer to the attack on him and to the language of Moore, that he held himself responsible for what he said, and state that respect for the dignity of the House had prevented him from replying to the attack at the time in the terms it deserved; that he had since demanded satisfaction of Moore for his language, and that Moore had refused to respond, and will thereupon pronounce him a liar and a coward." "Then," said Baldwin, "Judge Field will get shot in his seat." "In that case," rejoined Broderick, "there will be others shot too." Mr. Broderick soon afterwards informed me of his conversation with Baldwin, and asked me if I would act as he had stated I would. "Most certainly," I replied; "never fear for me; I will meet the case as it should be met." Accordingly, when the House opened, I took my seat at my desk as usual. Looking around I saw that Broderick was seated near me, and behind him were eight or nine of his personal friends, all armed to the teeth and ready for any emergency. In the meantime, and just before the House met, General John E. Addison, who had found out what was going on and knew the seriousness of the affair, called on Moore, who was his friend, and urged him to retract what he had said and make a suitable apology, and for that purpose drew up a document for him to read to the House, but of this I was not at the time informed. As soon as the journal was read I rose in my seat and said, "Mr. Speaker." At the same moment Moore rose in his seat and said, "Mr. Speaker." The Speaker recognized Moore first; and Moore thereupon proceeded to read the written apology prepared by Addison for his conduct and language to me. It was full, ample, and satisfactory; and of course with that the matter ended. From that time forward to the end of the session I had no further trouble with any one.

Friendship for David C. Broderick

THE narrative which I have given of my difficulty with Moore explains how Broderick befriended me at a very trying time. But that was not the only occasion on which he befriended me. When I came to San Francisco after the adjournment of the Legislature, in May, 1851, I went several times to see him at the hotel where he stopped. On one occasion in the evening, while we were in the saloon of the hotel, he asked me to take a glass of wine with him. We stepped up to the bar and were about drinking, when he suddenly threw himself before me and with great violence pushed me out



Judge David C. Broderick (left) saved Field's life by pushing him out of the line of fire of Vicesimus Turner, Judge Turner's outlaw brother. Field repaid this kindness by supporting Broderick's bid for the United States Senate. In 1859, Broderick was mortally wounded in a duel with David S. Terry, Chief Justice of the Supreme Court of California.

of the room. The proceeding was so sudden and unexpected that I was astonished and for a moment indignant. I demanded an explanation saying "What does this mean, Mr. Broderick?" He then told me that while we were standing at the bar he had noticed Vi.—or to give his full name, Vicesimus Turner, a brother of the Judge, a man of desperate character, come into the bar-room, throw back his Spanish cloak, draw forth a navy revolver, and level it at me. Seeing the movement, he had thrown himself between me and the desperado and carried me off. These good offices on the part of Mr. Broderick filled me with a profound sense of gratitude. For years afterwards I thought and felt as if there was nothing I could do that would be a sufficient return for his kindness. On his account I took much greater interest in political matters than I otherwise should. In order to aid him in his aspirations for election to the United States Senate, upon which he had set his heart, I attended conventions and gave liberally, often to my great inconvenience, to assist the side to which he belonged. To many persons it was a matter of surprise that I should take such an interest in his success and through good and evil report remain so constant and determined in my support of him; but the explanation lies in the circumstances I have narrated and the brave manner in which he had stood by me in a most critical moment of my life.

I regret to state that this friendship was ever broken. It was not by me; but broken it was. Shortly after Mr. Broderick was elected to the Senate, he quarrelled with Mr. Buchanan over appointments to office in California; and when he returned to the State, he expressed a good deal of hostility to the Administration. In that hostility I did not participate, and he complained of me for that reason. I was then spoken of throughout the State as a probable candidate for the bench, and he announced his opposition to my nomination. I made no complaints of his conduct, but was much hurt by it.

My nomination and election soon afterwards removed me from the sphere of politics. I seldom met him after my election, and never had any conversation with him. Though he was offended at my failure to take sides with him in his controversy with the President, and our intimacy ceased, I could never forget his generous conduct to me; and for his sad death there was no more sincere mourner in the State.[41]

Legislation Secured and Beginning a New Life

My legislative career was not without good results. I drew, as already stated, and carried through the Legislature a bill defining the powers and jurisdiction of the courts and judicial officers of the State; and whilst thus doing good, I also got rid of the ignorant and brutal judge of our district who had outraged my rights, assaulted my character, and threatened my life. I also, as I have mentioned, introduced bills regulating the procedure in civil and criminal cases, remodelled with many changes from the Codes of Civil and Criminal Procedure reported by the Commissioners of New York; and secured their passage.

In the Civil Practice Act I incorporated provisions making the most liberal exemptions from forced sale of the personal property of a debtor, including not merely a limited amount of household furniture, and provisions sufficient for individual or family use for one month, but also the instruments or tools by which he earned his livelihood. The exemptions embraced necessary household and kitchen furniture, wearing apparel, beds and bedding of the debtor, whatever his calling; and also the farming utensils and implements of husbandry of the farmer, two beasts of burden employed by him, and one cart or wagon; the tools and implements of a mechanic or artisan necessary to carry on his trade; the instruments and chests of a surgeon, physician, surveyor, and dentist; the law libraries of an attorney and counsellor; the cabin or dwelling of a miner, and his pick, rocker, wheelbarrow and other implements necessary to carry on mining operations; two oxen, two horses or two mules and their harness and one cart or wagon of the cartman, hackman, or teamster; and one horse with vehicle and harness and other equipments used by a physician, surgeon, or minister of the gospel in making his professional visits; and all arms and accoutrements required by law to be kept by any person.

I never could appreciate the wisdom of that legislation which would allow a poor debtor to be stripped of all needed articles of his household and of the implements by which alone he could earn the means of supporting himself and family and of ultimately discharging his obligations. It has always seemed to me that an exemption from forced sale of a limited amount of household and kitchen furniture of the debtor, and of the implements used in his trade or profession, was not only the dictate of humanity, but of sound policy.

I also incorporated a provision into the Civil Practice Act respecting suits for mining claims, which was the foundation of the jurisprudence respecting mines in the country. The provision was that in actions before magistrates for such claims, evidence should be admitted of the usages, regulations, and custom prevailing in the vicinity, and that such usages, regulations, and customs, when not in conflict with the constitution and laws of the State, or of the United States, should govern the decision of the action. At this time suits for mining claims, the mines being confessedly on the property of the United States, were brought upon an alleged forcible or unlawful detainer. This rule, thus for the first time adopted by legislative enactment, was soon extended to actions for such claims in all courts, and has since been adopted in all the States and Territories west of the Rocky Mountains and substantially by the legislation of Congress. Simple as the provision is, it solved a difficult problem.

I also advocated and aided the passage of the Homestead Exemption Bill. That bill was introduced by Mr. G. D. Hall, a member

from El Dorado, and now a resident of San Francisco. It provided for an exemption of the homestead to the value of $5,000. An effort was made to reduce the amount to $3,000, and I think I rendered some aid in defeating this reduction, which has always been to me a source of great gratification.

I also secured the passage of an act concerning attorneys and counsellors-at-law in which incorporated provisions that rendered it impossible for any judge to disbar an attorney in the arbitrary manner in which Judge Turner had acted towards me, without notice of the charges against him and affording him an opportunity to be heard upon them.

I also introduced a bill creating the counties of Nevada and Klamath, the provisions of which were afterward incorporated into a general bill which was passed, dividing the State into counties and establishing the seats of justice therein, and by which also the County of Placer was created.

I drafted and secured the passage of an act concerning county sheriffs, in which the duties and responsibilities of those officers, not only in the execution of process and the detention of prisoners, but as keepers of the county jail, were declared and defined; also an act concerning county recorders, in which the present system of keeping records was adopted. This latter act, though drawn by me, was introduced by Mr. Merritt, of Mariposa, but he does not hesitate to speak publicly of my authorship of it. I also prepared a bill concerning divorces, which was reported from the Judiciary Committee as a substitute for the one presented by Mr. Carr, of San Francisco, and was passed. In this act, aside from the ordinary causes of adultery, and consent obtained by force or fraud, for which divorces are granted, I made extreme cruelty and habitual intemperance, wilful desertion of either husband or wife for a period of two years, and wilful neglect of the husband to provide for the wife the common necessities of life, having the ability to provide the same, for a period of three years, also causes of divorce. I also drew the charters of the cities of Marysville, Nevada, and Monterey, which were adopted—that of Monterey being reported by the Judiciary Committee as a substitute for one introduced by a member from that district. Other bills drawn or supported by me were passed, the provisions of which are still retained in the laws of the State.

But notwithstanding all this, when I turned my face towards Marysville I was, in a pecuniary sense, ruined. I had barely the means to pay my passage home. My ventures, after my expulsion from the bar, in June, 1850, had proved so many maelstroms into which the investments were not only drawn but swallowed up. My affairs had got to such a pass that before I left Marysville for the Legislature I felt it to be my duty to transfer all my real property to trustees to pay my debts, and I did so. And now when I stepped upon the landing in Marysville my whole available means consisted of eighteen and three-quarter cents, and I owed about eighteen thousand dollars, the whole of which bore interest at the rate of ten per cent. a month. I proceeded at once to the United States Hotel, kept by a Mr. Peck, who had known me in the days of my good fortune. "My dear Mr. Peck," I said, "will you trust me for two weeks' board?" "Yes," was the reply, "and for as long as you want." "Will you also send for my trunks on the steamer, for I have not the money to pay the carman." "Certainly," the good man added, and so the trunks were brought up. On the next day I looked around for quarters. I found a small house, thirty feet by sixteen, for an office, at eighty dollars a month, and took it. It had a small loft or garret, in which I placed a cot that I had purchased upon credit. Upon this cot I spread a pair of blankets, and used my valise for a pillow. I secured a chair without a back for a wash stand, and with a tin basin, a pail, a piece of soap, a toothbrush, a comb, and a few towels, I was rigged out. I brought myself each day the water I needed from a well near by. I had an old pine table and a cane-bottomed sofa, and with these and the bills which had passed the Legislature, corrected, as they became laws, and the statutes of the previous session, I put out my

sign as an attorney and counsellor-at-law, and began the practice of my profession.

Soon afterwards I found my name mentioned as a candidate for the State Senate. The idea of returning to the Legislature as a Senator pleased me. The people of the county seemed to favor the suggestion. Accordingly I made a short visit to neighboring precincts and finding my candidacy generally approved I went to work to make it successful. At the election of delegates to the county convention, which was to nominate candidates, a majority was returned in my favor. Several of them being unable to attend the convention, which was to be held at Downieville, a distance of about seventy miles from Marysville, sent me their proxies made out in blank to be filled with the name of any one whom I might designate. To one supposed friend I gave ten proxies, to another five, and to a third two. When the members met, just previous to the assembling of the convention, it was generally conceded that I had a majority of the delegates. But I had a new lesson in manipulation to learn. Just before the opening of the convention my supposed friend, who had the ten proxies, was approached by the other side, and by promises to give the office of sheriff to his partner—an office supposed to be worth thirty thousand a year—his ten votes were secured for my opponent. The one to whom I had given five proxies was promised for those votes the county judgeship. So when the convention voted, to my astonishment and that of my friends, fifteen of my proxies were cast for my opponent, Joseph C. McKibben, afterwards a member of Congress, who acted so fearlessly when the Kansas question came up. I was accordingly beaten by two votes.[42]

For the moment I was furious, and hunted up the man who had held my ten proxies, and had been seduced from my support. When I found him in the room of the convention, I seized him and attempted to throw him out of the window. I succeeded in getting half his body out, when bystanders pulled me back and separated us. This was fortunate for both of us; for just underneath the window there was a well or shaft sunk fifty feet deep. The following morning I left Downieville, returned to my office and loft at Marysville, and gave my attention to the practice of the law. My business soon became very large; and, as my expenses were moderate, within two years and a half I paid off all my indebtedness, amounting with the accumulations of interest to over thirty-eight thousand dollars. Part of this amount was paid by a surrender of the property mortgaged, or a sale of that previously assigned, but the greater part came from my earnings. I paid every creditor but one in full; to each I gave his pound of flesh, I mean his interest, at ten per cent. a month. I never asked one of them to take less than the stipulated rate. The exceptional creditor was Mr. Berry, a brother lawyer, who refused to receive more than five per cent. a month on a note he held for $450. By this time I had become so much interested in my profession as to have no inclination for office of any kind. On several occasions I was requested by influential party leaders to accept a nomination for the State Senate, but I refused. I am inclined to think that I had for some time a more lucrative practice than any lawyer in the State, outside of San Francisco. No such fees, however, were paid in those days as have been common in mining cases since the discovery of the silver mines of Nevada and the organization of great corporations to develop them.

The Bar of Marysville during this period, and afterwards while I remained in that city—which was until October, 1857—was a small but a very able body of men. Many of its members have since attained distinction and held offices of honor and trust. Richard S. Mesick, who settled there in 1851, became a State Senator, and after his removal to Nevada, a District Judge of that State. He ranks now among the ablest lawyers of the Coast. Charles H. Bryan, who settled there the same year, was an eloquent speaker, and in his forensic contests gave great trouble to his opponent whenever he got at the jury. He was on the Supreme Court of the State for a short period, under the appointment of Governor Bigler.[43] Jesse O. Goodwin,

of whom I have already spoken, settled in Marysville in 1850. He was a ready speaker, and sometimes rose to genuine eloquence. He was distinguished in criminal cases. As already stated, he was elected District Attorney in 1850, and afterwards became County Judge, and is now State Senator. Gabriel N. Swezy, who settled there in 1850, was learned in his profession, and quick of apprehension. Few lawyers could equal him in the preparation of a brief. He afterwards at different times represented the county in the Assembly and the Senate of the State. William Walker, who afterwards figured so conspicuously in the filibustering expeditions to Nicaragua, and was called by his followers "the grey-eyed man of destiny," had an office in Marysville in 1851 and '52.[44] He was a brilliant speaker, and possessed a sharp but not a very profound intellect. He often perplexed both court and jury with his subtleties, but seldom convinced either. John V. Berry, who came to Marysville from the mines in 1851, was a fine lawyer, deeply read in the law of adjudged cases. He died in 1853 from poison given to him in mistake by a druggist. Edward D. Wheeler, who came there in 1850, and Thomas B. Reardon who came in 1853, were both men of strong minds. Mr. Wheeler represented Yuba County at one time in the Senate, and is now the District Judge of the Nineteenth District, at San Francisco. He is regarded as among the ablest and best of the State Judges.[45] Mr. Reardon has been a District Judge for some years in the Fourteenth District, greatly respected by the profession for his ability and learning. Isaac S. Belcher, who came to Marysville at a later period—in 1855, I believe—was noted for his quiet manners and studious habits. He has once been District Judge, and has worthily filled a seat on the bench, of the Supreme Court of the State, where he was greatly respected by his Associates and members of the bar.[46] Edward O. Marshall, the brilliant orator, who at one time represented the State in Congress, had his office in Marysville in 1855 and '56.[47] He occasionally appeared in court, though he was generally occupied in politics, and in his case, as in nearly all others, the practice of the law and the occupation of politics did not always move harmoniously together.

Charles E. Filkins, afterwards County Judge; Charles Lindley, afterwards also County Judge and one of the Code Commissioners; Henry P. Haun, the first County Judge, and afterwards appointed to the United States Senate by Governor Weller; N. E. Whitesides, afterwards a member of the Legislature from Yuba, and Speaker of the House; F. L. Hatch, now County Judge of Colusa; George Row, afterwards Treasurer of the County; and Wm. S. Belcher, who afterwards rendered good service to the public as a School Commissioner, also practiced at the Marysville bar with success.

Charles E. DeLong, afterwards a member of the State Senate, and our Minister to Japan, and Henry K. Mitchell, afterwards a nominee of the Democrats for the U.S. Senate in Nevada, were just getting a good position at the bar when I left, and gave evidence of the ability which they afterwards exhibited. Others might be named who held fine positions in the profession.

These mentioned show a bar of great respectability, and I may add that its members were, with few exceptions, gentlemen of general information and courteous manners. The litigation which chiefly occupied them and gave the largest remuneration related to mines and mining claims. The enforcement of mortgages and collection of debts was generally—by me, at least—entrusted to clerks, unless a contest was made upon them.

There was one case which I recall with pleasure, because of the result obtained in face of unconcealed bribery on the other side. The subject of the suit was the right to a "placer" mine in Yuba River, at Park's Bar. Its value may be estimated from the fact that within two or three weeks after the decision of the case, the owners took from the mine over ninety thousand dollars in gold dust. The suit was brought before a justice of the peace, and was for an alleged forcible entry and detainer, a form of

action generally adopted at the time for the recovery of mining claims, because the title to the lands in which the mines were found was in the United States. It was prosecuted as a purely possessory action.[48] The constable whose duty it was to summon the jurors had received the sum of two hundred dollars to summon certain parties, named by the other side. This fact was established beyond controversy by evidence placed in my hand. And whilst I was in bed in one of the tents or canvas sheds at the Bar, which the people occupied in the absence of more substantial buildings, I heard a conversation in the adjoining room—I could not help hearing it, as it was carried on without any attempt at concealment and the room was only separated from me by the canvas between one of the jurors and one of the opposite party, in which the juror assured the party that it was "all right," and he need not worry as to the result of the suit; his side would have the verdict; the jury were all that way. On the next day, when the case was summed up, the saloon in which the trial was had was crowded with spectators, most of whom were partisans of the other side. I addressed the jury for over three hours, and after having commented upon the evidence at length and shown conclusively, as I thought, that my client was entitled to a verdict, I said substantially as follows: "Gentlemen, we have not endeavored to influence your judgment except by the evidence; we have not approached you secretly and tried to control your verdict; we have relied solely upon the law and the evidence to maintain our rights to this property. But the other side have not thus acted; they have not been content that you should weigh only the evidence; they have endeavored to corrupt your minds and pervert your judgments; they have said that you were so low and debased that although you had with uplifted hands declared that so might the ever-living God help you, as you rendered a verdict according to the evidence, you were willing, to please them, to decide against the evidence, and let perjury rest on your souls. I know that you [pointing to one of the jurors] have been approached. Did you spurn the wretch away who made a corrupt proposal to you, or did you hold counsel, sweet counsel with him? I know that you [pointing to another juror] talked over this case with one of the other side at the house on the hill last night, for I overheard the conversation—the promise made to you and your pledge to him. In the canvas houses here all rooms are as one; the words uttered in one are voices in all. You did not dream that any but you two were in the tent; but I was there and overheard the foul bargain."

At this thrust there was great excitement, and click, click, was heard all through the room, which showed a general cocking of pistols; for every one in those days went armed. I continued: "There is no terror in your pistols, gentlemen; you will not win your case by shooting me; you can win it only in one way—by evidence showing title to the property; you will never win it by bribery or threats of violence. I charge openly attempted bribery, and if what I say be not true, let the jurors speak out now from their seats. Attempted bribery, I say—whether it will be successful bribery, will depend upon what may occur hereafter. If, after invoking the vengeance of Heaven upon their souls should they not render a verdict according to the evidence, the jurors are willing to sell their souls, let them decide against us."

This home-thrust produced a great sensation. It was evident that the jury were disturbed. When the case was submitted to them, they were absent only a few minutes. They returned a verdict in our favor. Some of them afterwards came to me and admitted that they had been corruptly approached, but added that they were not low enough to be influenced in their verdict in that way. "Of course not," I replied; though I had little doubt that it was only the fear of exposure which forced them to do right.

I have said that in those days everyone went armed; it would be more correct to say that this was true in the mining regions of the State and when travelling. I, myself, carried a Derringer pistol and a Bowie-knife until the Summer of 1854, though of course out of sight.

I did so by the advice of Judge Mott, of the District Court, who remarked that, though I never abused a witness or a juror, or was discourteous to any one in court, there were desperate men in the country, and no one could know to what extremity they might go, as I would not be deterred by any considerations from the discharge of my whole duty to my clients. So, until the Summer of 1854, I carried weapons. And yet they were not such provocatives of difficulty as some of our Eastern friends are accustomed to think. On the contrary, I found that a knowledge that they were worn generally created a wholesome courtesy of manner and language.

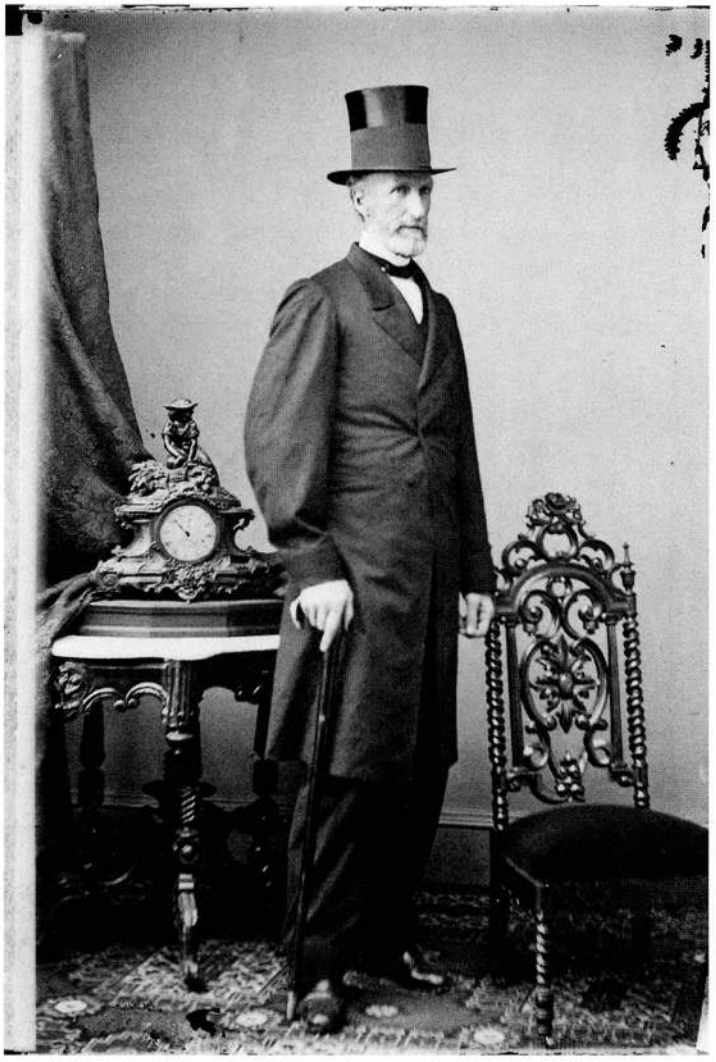
I continued to occupy my small office and slept in its loft through the Summer and Fall of 1851, and felt quite contented with them. Twice I was summarily dislodged, being threatened by a fire on the other side of the street. On one occasion a most ludicrous incident occurred, which I cannot recall without a smile. A little after midnight we were aroused, on the occasion referred to, by a loud thumping at our door, accompanied by a cry of "fire." My loft was shared with three others, and at the cry we all leaped from our cots and two of our number seizing whatever was convenient and portable carried it out of the house to a distance of about one hundred yards, where gathered a multitude of people, fleeing before the flames with all sorts of baggage, trunks, chairs, beds, and utensils of every kind which they had brought from their houses. I hastily threw the papers of sundry suits and a dozen law books, recently purchased, into a box, and with the assistance of the other occupant of my loft, carried it off. Just as we reached the crowd, a pair of young grizzly bears which the owner had kept in a cage near by were let loose, and they came towards us growling in their peculiar way. At their sight, there was a general *stampede* of men, women, and children, in all directions. Boxes and everything else portable were instantly dropped, and such an indiscriminate flight was never before seen except from a panic in battle.

The Barbour Difficulty

When the bill of 1851, dividing the State into new judicial districts, became a law, there were several candidates for the office of Judge of the Tenth Judicial District, which comprised the counties of Yuba, Nevada, and Sutter. Henry P. Haun, the County Judge of Yuba, was one candidate; John V. Berry, a lawyer of the same county was another; and Gordon N. Mott, a lawyer of Sutter County, was a third. My first choice was Berry; but, finding that he had very little chance, I gave what influence I had in favor of Mr. Mott, and he received from the Governor the appointment of Judge of the new district.[49]

In the Summer of 1851, the Governor issued his proclamation for the Fall elections, and, among others, for an election to fill the office of Judge of the Tenth District. I had supposed—and there were many others who agreed with me—that Judge Mott's term under his appointment would continue until the election of 1852. But there being some doubts about the matter and the Governor having issued his proclamation for an election, candidates were nominated by the conventions; and at the ensuing election one of them, William T. Barbour, a lawyer of Nevada County, received a majority of the votes cast and was declared elected. When he came, however, to demand the office, Judge Mott expressed his opinion that there had been no vacancy to be filled and declined to surrender. This led to a suit between them. The question involved being exclusively one of law, an agreed case was made up and presented to the Supreme Court, and that tribunal decided in favor of Barbour. A report of the case is given in the 3d California Reports, under the title of People, ex rel. Barbour, vs. Mott.[50]

In the case I appeared as counsel for Judge Mott and argued his cause. This offended Judge Barbour, and he gave free expression to his displeasure. Afterwards, when his term for the vacancy was about to expire and a new election was to be held, he presented himself as a



Field represented District Judge Gordon Mott (left) in his suit against William T. Barbour, who was elected to Mott's seat in 1851. Field argued that Mott should serve out his appointed term through 1852 despite a bill calling for judicial elections in 1851. Mott challenged Barbour to a duel, but was refused.

candidate for a second term. It was my opinion that he was not qualified for the position, and I therefore recommended my friends to vote for his opponent. For some weeks previous to the election I was absent from the district; but I returned two days before it was to take place and at once took a decided part against Barbour and did all I could to defeat him. This action on my part, in connection with my previous zeal in behalf of Judge Mott, led Barbour to make some very bitterly vituperative remarks about me, which being reported to me, I called on him for an explanation. Some harsh words passed between us at the interview. The result was that Barbour refused to make any explanation, but gave me a verbal challenge to settle our difficulties in the usual way among gentlemen. I instantly accepted it and designated Judge Mott as my friend.

In half an hour afterwards Judge Mott was called upon by Mr. Charles S. Fairfax as the friend of Barbour, who stated that Barbour had been challenged by me, and that his object in calling upon Mott was to arrange the terms of a hostile meeting.[51] Mott answered that he understood the matter somewhat differently; that the challenge, as he had been informed, came from Barbour, and that I, instead of being the

challenging, was the accepting party. Fairfax, however, insisted upon his version of the affair; and upon consulting with Mott, I waived the point and accepted the position assigned me. Fairfax then stated that Barbour, being the challenged party, had the right to choose the weapons and the time and place of meeting; to all of which Mott assented. Fairfax then said that, upon consultation with his principal, he had fixed the time for that evening; the place, a room twenty feet square, describing it; the weapons, Colt's revolvers and Bowie-knives; that the two principals so armed were to be placed at opposite sides of the room with their faces to the wall; that they were to turn and fire at the word, then advance and finish the conflict with their knives. Mott answered that the terms were, unusual, unprecedented, and barbarous, and that he could not consent to them. Fairfax admitted that they were so; but replied that they were those Barbour had prescribed. He would, however, see Barbour and endeavor to obtain a modification of them. Soon afterwards he reported that Barbour still insisted upon the terms first named and would not agree to any other.

When Mott reported the result of his conference with Fairfax, I at once said that Barbour was a coward and would not fight at all. I knew perfectly well that such terms could come only from a bully. I saw that it was a game of bluff he was playing. So I told Mott to accept them by all means. Mott accordingly called on Fairfax and accepted the terms as proposed, and gave notice that I would be on hand and ready at the time and place designated. This being reported to Barbour, Fairfax soon afterwards made his appearance with a message that his principal would waive the Bowie-knives; and not long afterwards he came a second time with another message that it would not do to have the fight in the room designated, because the firing would be heard outside and attract a crowd. In accordance with my instructions, Mott assented to all the modifications proposed, and it was finally agreed that the meeting should take place the next morning in Sutter County. I was to take a private conveyance, and Barbour was to take one of the two daily stages that ran to Sacramento. At a specified place we were to leave our conveyances and walk to a retired spot, which was designated, where the hostile meeting was to take place.

The next morning, accordingly, I took a carriage, and with my friend Judge Mott drove down to the appointed place. After we had been there some time the first stage appeared and stopped. Soon after the second stage appeared and stopped, and Judge Barbour and Mr. Fairfax got out. But instead of proceeding to the designated place, Barbour declared that he was a judicial officer, and as such could not engage in a duel. At the same time he would take occasion to say that he would protect himself, and, if assaulted, would kill the assailant. With these words, leaving Fairfax standing where he was, he walked over to the first stage, and mounting rode on to Sacramento. Seeing Fairfax standing alone on the ground I sent word to him that I would be happy to give him a place in my carriage—an invitation which he accepted, and we then drove to Nicolaus, where we breakfasted, and thence returned to Marysville.

The conduct of Barbour on the ground, after his fierce and savage terms at the outset, produced a great deal of merriment and derision; and some very sharp squibs appeared in the newspapers. One of them gave him great annoyance, and he inquired for its author. I told the editor of the paper in which it appeared that if it was necessary to protect the writer, to give my name, although I did not write it, or know beforehand that it was to be written.

On the following morning, whilst in front of my office gathering up kindling-wood for a fire, and having my arms full—for each man was his own servant in those days—Barbour came up and, placing a cocked navy revolver near my head, cried out, "Draw and defend yourself." As I had not observed his approach I was taken by surprise, but turning on him I said, "You infernal scoundrel, you cowardly assassin—you come behind my back and put your revolver to my head and tell me to draw;

you haven't the courage to shoot; shoot and be damned." There were at least ten witnesses of this scene; and it was naturally supposed that having advanced so far he would go farther; but as soon as he found I was not frightened, he turned away and left me. It is impossible to express the contempt I felt for him at that moment for his dastardly conduct, a feeling which the spectators shared with me, as they have since often stated.

I do not give these details as having any importance in themselves; but they illustrate the semi-barbarous condition of things in those early days, and by comparison show out of what our existing condition has been evolved, and how far we have advanced. I give them also for the reason that Barbour afterwards wrote a letter to Turner, which the latter published, referring to the affair, in which he boasted of having given me a "whipping." How far his boast was warranted the above facts show.

For a long time afterwards he expressed his bitterness towards me in every possible way. He did not take Turner's plan of expelling me from the bar; but he manifested his feelings by adverse rulings. In such cases, however, I generally took an appeal to the Supreme Court, and in nearly all of them procured a reversal. The result was that he suddenly changed his conduct and commenced ruling the other way. While this was his policy, there was hardly any position I could take in which he did not rule in my favor. At last I became alarmed lest I should lose my cases in the appellate court by winning them before him.

About a year afterwards he sent one of his friends to ask me if I was willing to meet him halfway—stating that my conduct in court had always been courteous, and he was satisfied that he had done me injustice. I answered that I was always willing to meet any one half-way, but in this case it must be without explanations for the past. This condition was accepted; accordingly we met, and taking a glass of wine, I said, "Here is to an act of oblivion, but no explanations." For a long time no allusion was made by either to the old difficulties. But at last he insisted upon telling me how tales had been brought to him, and how they exasperated him; and he expressed great regret for what had taken place; and to make amends, as far as he was able, for what he had written about me, he sent me the following letter.

"Marysville, Dec. 22, 1856.

"Hon. S. J. Field.

"Dear Sir: On yesterday I learned through our mutual friend Charles S. Fairfax, Esq., that Judge W. R. Turner has recently issued a publication which contains a letter of mine, written him some four years ago. I have not been able to procure a copy of this publication, and I have entirely forgotten the language used; in truth I do not remember to have written him on the subject of yourself or otherwise; but I suppose I must have done so, and have given expressions of opinion that I have long since ceased to entertain, and to invectives that I have no disposition to justify. You will recall that, at the time referred to, there unfortunately existed between us feelings of deep hostility; and I may at the time have used harsh terms indicative of my then feelings, which I regret and do not now approve, if they are as represented by others.

"Judge Turner has taken an unwarranted liberty in publishing the letter, be it of what character it may. He never requested my permission for this purpose, nor did I know that it was his intention.

"Trusting that this explanation may be satisfactory, I remain,

"Very respectfully yr. obt. servant,"
"WM. T. BARBOUR."

He ever afterwards, as occasion offered, spoke of me in the highest terms as a gentleman

and lawyer. My resentment accordingly died out, but I never could feel any great regard for him. He possessed a fair mind and a kindly disposition, but he was vacillating and indolent. Moreover, he loved drink and low company. He served out his second term and afterwards went to Nevada, where his habits became worse, and he sunk so low as to borrow of his acquaintances from day to day small sums—one or two dollars at a time—to get his food and lodging. He died from the effects of his habits of intemperance.

In stating the result of the intended hostile meeting with him, I mentioned that when he proceeded on his way to Sacramento, he left his second, Mr. Fairfax, standing alone on the ground, and that I invited the latter to take a seat in my carriage. From this time the intercourse between Mr. Fairfax and myself became more frequent than it had been previously, and a friendship followed which continued as long as he lived. He was not sparing in his censure of the conduct of his principal, whilst his language was complimentary of mine. In a few months I became quite intimate with him, and I found him possessed of a noble and chivalric spirit. With great gentleness of manner, he had the most intrepid courage. His fidelity to his friends and devotion to their interests attached them strongly to him. He was beloved by all who knew him. No man in the State was more popular. He represented the county of Yuba in the Legislature two or three times, and at one session was Speaker of the Assembly. When the land office at Marysville was established in 1855, he was appointed Register; and in 1856, he was elected Clerk of the Supreme Court of the State. It was my good fortune to aid him in securing both of these positions. At my suggestion, Mr. McDougal, a Member of Congress from California, urged the establishment of the land office, and obtained for him the appointment of Register.[52] In 1856, when he sought the clerkship of the Supreme Court of the State, I became a delegate from Yuba County to the State Convention, and made his nomination for that office my special object, and with the aid of the rest of the delegation, succeeded in obtaining it.

Two or three incidents which I will relate will illustrate the character of the man. It was either in the session of 1854 or 1855, I forget which, that a petition was presented to the Assembly of California on the part of some of the colored people of the State, requesting that the laws then in force, which excluded them from being witnesses in cases where a white person was a party, might be repealed so as to allow them to testify in such cases. At that time there was a great deal of feeling throughout the country on the subject of slavery, and any attempt to legislate in behalf of the colored people was sure to excite opposition, and give rise to suggestions that its promoter was not sound on the slavery question. The presentation of the petition accordingly stirred up angry feelings. It created a perfect outburst of indignation, and some one moved that the petition should be thrown out of the window; and the motion was passed almost unanimously. If I recollect aright, there was but a single vote in the negative. I was standing by Mr. Fairfax when he was informed of the proceeding. He at once denounced it, and said, in energetic terms—"This is all wrong—the petition should have been received. If my horse or my dog could in any way express its wishes to me I would listen to it. It is a shame that a petition from any one, black or white, should not be received by the Legislature of the State, whether it be granted or not." I was greatly impressed at that time with the manliness of this expression in a community which looked with suspicion on any movement in favor of extending any rights to the colored race.

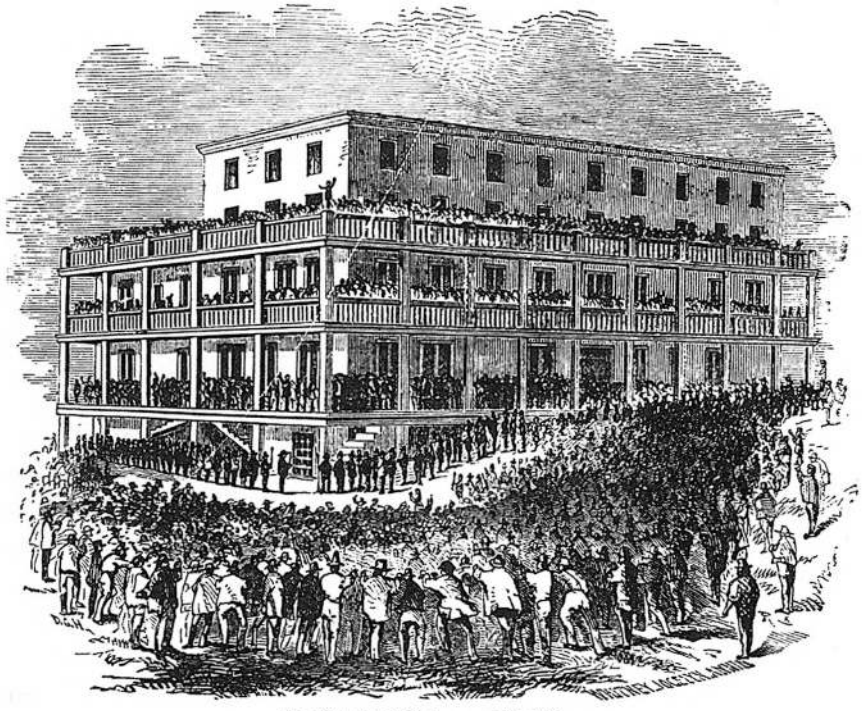
On another occasion, some years afterwards, when I was Judge of the Supreme Court of the State and he was the clerk of the court, there was a good deal of complaint against Harvey Lee, the reporter of the court, who was appointed to the office by Governor Weller. I believe that Lee was instrumental, but of this I am not certain, in getting a law passed which took the appointment of the reporter from the

court and gave it to the Governor. He was an inferior lawyer, and, of course, had very little practice. The appointment, therefore, to which a fair salary was attached, was eagerly sought by him. His reports, however, were so defective that an effort was made by the judges to get the law repealed and have the appointment restored to the court. This led to a bitter feeling on his part towards the judges, and in a conversation with Mr. Fairfax he gave vent to it in violent language. Mr. Fairfax resented the attack and an altercation ensued, when Lee, who carried a sword-cane, drew the sword and ran it into Fairfax's body. Fortunately it entered the chest above the heart. Withdrawing the sword Lee made a second lunge at Fairfax, which the latter partially avoided so as to receive only a flesh wound in the side. By this time Fairfax had drawn his pistol and covered the body of Lee, as he was raising his sword for a third thrust. Lee, seeing the pistol, stepped back and threw up his arms exclaiming, "I am unarmed"—though he had only that moment withdrawn his sword from the body of Fairfax, and it was then dripping with blood. "Shoot the damned scoundrel," cried the latter's friend, Samuel B. Smith, then standing by his side. But Fairfax did not shoot. Looking at Lee, whose body was covered with his pistol, while the blood was trickling from his own person, he said, "You are an assassin! you have murdered me! I have you in my power! your life is in my hands!" And gazing on him, he added, "But for the sake of your poor sick wife and children I will spare you." He thereupon uncocked his pistol and handed it to his friend, into whose arms he fell fainting. He had known the wife of Lee when a young girl; and, afterwards, in speaking of the affair to a friend, he said, "I thought my wife would be a widow before sundown, and I did not wish to leave the world making another." All California rang with the story of this heroic act. It has its parallel only in the self-abnegation of the dying hero on the battle-field, who put away from his parched lips the cup of water tendered to him, and directed that it be given to a wounded soldier suffering in agony by his side, saying, "His need is greater than mine."

During the war his sympathies, as was the case with most southerners in California, were with his people in Virginia. He told me on one occasion that he could not but wish they would succeed; but, he said; "Though I am a Virginian by birth, I have adopted California, and whilst I live in a state which has taken her stand with the Northern people, I cannot in honor do anything, and I will not, to weaken her attachment to the Union. If my health were good I should leave the State and return to Virginia and give my services to her; but, as that is impossible, I shall remain in California, and, whilst here, will not be false to her by anything I do or say."

These incidents, better than any elaborate description, illustrate the character of the man. He was a lineal descendant of the great Fairfax family which has figured so conspicuously in the history of England and of Virginia. He was its tenth Baron in a direct line. But notwithstanding the rank of his family he was a republican in his convictions. He loved his country and its institutions. He was himself more noble than his title. He came East to attend the National Democratic Convention in 1868 at the head of the delegates from California. After the Convention, he spent some months among his friends and relatives at the old family residence in Maryland. At this time the seeds of consumption, which had long been lurking in his system, began to be developed, and he was taken down with a severe illness which proved fatal. He became so ill as to be unable to walk, and was conveyed to Baltimore to procure the best medical attendance; and there he died on the 4th of April, 1869, in the arms of his devoted wife, who had come from California to be with him in his last hours. His body was brought to Washington and interred within sight of the Capitol, near Rock Creek Church, in which his ancestors had worshipped.

I have mentioned that when Fairfax was stabbed by Lee he fell into the arms of Mr. Samuel B. Smith.[53] This gentleman I had known slightly before my difficulty with Judge Barbour; but the intimacy which sprang up between Fairfax and myself, after that affair, brought me more in contact with Mr. Smith, who was his constant companion. Mr. Smith came to California from New Jersey in 1849, and passed through some stirring scenes during that and the following year. He came with Mr. John S. Hagar, who was afterwards State Senator, District Judge, and United States Senator, and was engaged with him in the mines in the winter of 1849–'50.[54] In 1850 he settled in Sutter County; and in the fall of 1852 was elected State Senator from that county. Having become more intimately acquainted with him after he was elected Senator, I requested him to introduce a bill into the Legislature, revising and amending the one which I had originally drawn concerning the courts and judicial officers of the State; and he cheerfully consented to do so, and took great interest in securing its passage. Indeed, it was through his influence that the bill became a law. Many circumstances threw us together after that, and I learned to appreciate his manly character, his generous disposition, and his great devotion to his friends. Finally, in the fall of 1854, we agreed to form a partnership after my return from the Eastern States, which I then proposed to visit. After the Barbour affair the course of my professional life was much the same as that of any other lawyer. My business was large and I gave to it my unremitting attention. In 1854 I determined to go East to see my parents and brothers and sisters, who had never been out of



The City Hall, February 22d, 1851.

In 1857 Field was elected by a large majority to the Supreme Court of California, on which he served a six-year term. The Court was lodged in The City Hall (above).

my mind a single day since I left them in 1849. Accordingly, I went East, and after passing a few months with them I returned to California in January, 1855. After that I continued to practice my profession, with Mr. Smith as my partner, until the spring of 1857, though during this period he went to Washington as Commissioner of the State to obtain from Congress the payment of moneys expended by her in suppressing the hostilities of Indians within her borders, and was absent several months. In April of that year we dissolved our partnership. A few months afterwards I was nominated for the bench of the Supreme Court of the State, and was elected by a large majority. There were two candidates besides myself for the position, and 93,000 votes were polled. Of these I received a majority of 36,000 over each of my opponents, and 17,000 over them both together.[55] The term to which I was elected was for six years, commencing January 1st, 1858. In September, 1857, Hugh C. Murray, then Chief Justice, died, and Associate Justice Peter H. Burnett was appointed to fill the vacancy. This left the balance of Judge Burnett's term of service to be filled, and I was urged by the Governor of the State to accept his appointment to it, as it was for less than three months, and immediately preceded my own term. At first I refused, as I desired to revisit the East; but being assured by the judges that taking the place need not prevent my intended visit, I accepted the appointment, and on the 13th of October, 1857, took my seat on the bench.

Removal from Marysville—Life on the Supreme Bench—End of Judge Turner

The day following my acceptance of the Governor's appointment to the Supreme Court of the State, I returned to Marysville to close my business before taking up my residence in Sacramento, where the court held its sessions. I had gone to Sacramento to argue some cases before the court when the appointment was tendered to me; and, of course, did not expect to remain there very long. In a few days I arranged my affairs at Marysville and then removed permanently to Sacramento. I left Marysville with many regrets. I had seen it grow from a collection of tents with a few hundred occupants to a town of substantial buildings with a population of from eight to ten thousand inhabitants. From a mere landing for steamers it had become one of the most important places for business in the interior of the State. When I left, it was a depot of merchandise for the country lying north and east of it; and its streets presented a scene of bustle and activity. Trains of wagons and animals were constantly leaving it with goods for the mines. Its merchants were generally prosperous; some of them were wealthy. Its bankers were men of credit throughout the State. Steamers plied daily between it and Sacramento, and stages ran to all parts of the country and arrived every hour. Two daily newspapers were published in it. Schools were opened and fully attended. Churches of different denominations were erected and filled with worshippers. Institutions of benevolence were founded and supported. A provident city government and a vigorous police preserved order and peace. Gambling was suppressed or carried on only in secret. A theatre was built and sustained. A lecture-room was opened and was always crowded when the topics presented were of public interest. Substantial stores of brick were put up in the business part of the city; and convenient frame dwellings were constructed for residences in the outskirts, surrounded with plats filled with trees and flowers. On all sides were seen evidences of an industrious, prosperous, moral, and happy people, possessing and enjoying the comforts, pleasures, and luxuries of life. And they were as generous as they were prosperous. Their hearts and their purses were open to all calls of charity. No one suffering appealed to them in vain. No one in need was turned away from their doors without having his necessities relieved. It is many years since I was there, but I have never forgotten and I shall never forget the noble and generous people that I found there in all the walks of life.

The Supreme Court of the State then consisted of three members, the senior in commission being the Chief Justice. David S. Terry was the Chief Justice and Peter H. Burnett was the Associate Justice. Both of these gentlemen have had a conspicuous career in California, and of both I have many interesting anecdotes which would well illustrate their characters and which at some future day I may put upon paper. They were both men of vigorous minds, of generous natures and of positive wills; but in all other respects they differed as widely as it was possible for two extremes. Mr. Terry had 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 life-long bitterness to the survivor. A wiser mode of settling difficulties between gentlemen has since been adopted in the State; but those who have not lived in a community where the duel is practiced cannot well appreciate the force of the public sentiment which at one time existed, compelling a resort to it when character was assailed.[56]

Mr. Burnett was one of the early settlers in Oregon, and had held positions of honor and trust there before settling in California. He came here soon after the discovery of gold, took an interest in public affairs, and was elected the first Governor of the State, when the constitution was adopted.

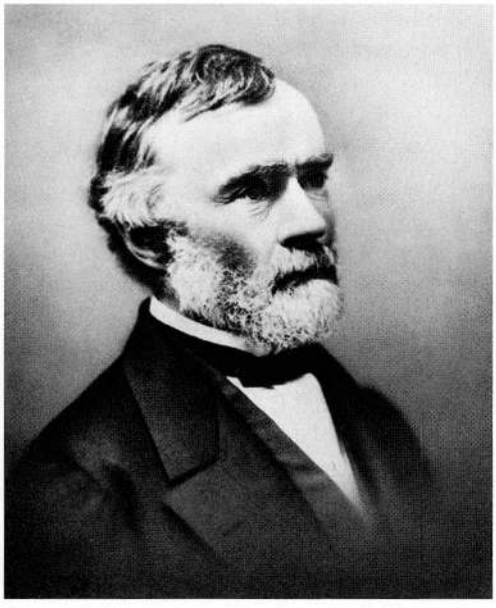
Judge Terry resigned his office in September, 1859, when he determined to send a challenge to Mr. Broderick, and I succeeded him as Chief Justice; and W. W. Cope, of Amador, was elected to fill the vacant place on the bench. I was absent from the State at the time, or I should have exerted all the power I possessed by virtue of my office to put a stop to the duel. I would have held both of the combatants to keep the peace under bonds of so large an amount as to have made them hesitate about taking further steps; and in the meantime I should have set all my energies to work, and called others to my aid, to bring about a reconciliation. I believe I should have adjusted the difficulty.

Mr. Cope, who filled the vacant place on the bench, possessed a superior mind and a genial nature. He made an excellent Judge. He studiously examined every case and carefully prepared his opinions. He remained on the bench until January, 1864, when the new constitutional amendments, reorganizing the court, went into effect. He is now in practice in San Francisco, and has a large clientage.

Judge Burnett continued in office until the election of his successor in the fall of 1858. His successor was Joseph G. Baldwin, a lawyer of distinction and a gentleman of literary reputation.[57] He was the author of "The Flush Times of Alabama and Mississippi," and of "Party Leaders." The first is a work full of humor and a great favorite in the section of the country whose "times" it portrays with such spirit and glee as to excite roars of laughter in the reader. The latter is a thoughtful history of the character and influence upon the country of Jefferson, Hamilton, Jackson, Clay, and Randolph. His portraitures present these men in the fullness and freshness of living beings, whom we see and hear, and whose power we feel.

My friendship for Mr. Baldwin commenced long before he came to the bench, and it afterwards warmed into the attachment of a brother. He had a great and generous heart; there was no virtue of humanity of which he did not possess a goodly portion. He was always brimful of humor, throwing off his jokes, which sparkled without burning, like the flashes of a rocket. There was no sting in his wit. You felt as full of merriment at one of his witticisms, made at your expense, as when it was played upon another. Yet he was a profound lawyer, and some of his opinions are models of style and reasoning. He remained on the bench until January, 1862, when he was succeeded by Edward

Judge Joseph G. Baldwin joined Field on the bench in 1858, and the two developed a deep friendship. "He was always brimful of humor," wrote Field, "throwing off his jokes, which sparkled without burning, like the flashes of a rocket."



Edward Norton, elected Chief Justice of the Supreme Court of California in 1862, was, according to Field, "the exemplar of a judge of the subordinate court. He was learned, patient, industrious, and conscientious; but . . . [h]e had no confidence in his own unaided judgment."

Norton, of San Francisco.[58] This gentleman was the exemplar of a judge of a subordinate court. He was learned, patient, industrious, and conscientious; but he was not adapted for an appellate tribunal. He had no confidence in his own unaided judgment. He wanted some one upon whom to lean. Oftentimes he would show me the decision of a tribunal of no reputation with apparent delight, if it corresponded with his own views, or with a shrug of painful doubt, if it conflicted with them. He would look at me in amazement if I told him that the decision was not worth a fig; and would appear utterly bewildered at my waywardness when, as was sometimes the case, I refused to look at it after hearing by what court it was pronounced.

It is not my purpose to speak of my own career on the Bench of the Supreme Court of California. It is only for reminiscences of my previous life that you, Mr. Hittell, have asked.[59] I am tempted, however, to hand to you a letter of Judge Baldwin, my associate for over three years, in which he presents, in terms exaggerated by his friendship, the result of my labors there.[60]

There is only one scene to which I wish to refer.

About a year and a half after I went upon the bench, a contested election case came up from Trinity County. It appeared that Judge Turner, who had been sent to the district composed of the counties of Trinity and Klamath, by the act concerning the courts and judicial officers of the State, at the end of his term offered himself for re-election as Judge of that district. When the vote was counted there appeared to be a majority of one against him, and his opponent was declared elected. He instituted a contest for the office, and, being defeated in the court below, appealed to the Supreme Court.[61] He then became very much exercised over his appeal, because I was one of the Justices. There were not wanting persons who, out of sheer malice, or not comprehending any higher motives of conduct than such as governed

themselves, represented that I would improve the opportunity to strike him a blow.

When his case came on for hearing, I left the bench to my associates, Judges Terry and Baldwin, and they decided in his favor. At this action of mine Turner was amazed. It was something wholly unexpected and surprising to him. Soon after the decision he sent one of his friends, named Snowden, to know if I would speak to him if he should make the first advance. I answered that under no circumstances would I ever consent to speak to him; that he had done me injuries which rendered any intercourse with him impossible; that the world was wide enough for us both, and he must go his own way. This answer Snowden communicated to him. The next morning he stationed himself at the foot of the stairway leading up to the Supreme Court rooms, which was on the outside of the building, and, as I passed up, he cried out; "I am now at peace with all the world; if there is any man who feels that I have done him an injury, I am ready to make him amends." I turned and looked at him for a moment, and then passed on without saying a word. On the following morning he took the same position and repeated substantially the same language. I stopped and gazed at him for a moment, and then passed on in silence. This was the last time I saw him. He returned to Trinity, and held his office for the balance of his term, six years, under the decision of the Supreme Court, and was re-elected in 1863. But his character and habits unfitted him for a judicial position. He was addicted to gambling and drinking, and he consorted with the lowest characters; and the same tyrannical temper and conduct which he had exhibited towards me in Marysville, were displayed in his new district. Accordingly measures were taken by citizens of Trinity to secure his impeachment by the Legislature. Mr. Westmoreland, a member of the Assembly from that county in 1867 offered a resolution for the appointment of a committee to inquire whether articles of impeachment should be presented against him for high crimes and misdemeanors, with power to send for persons and papers and report articles if warranted by the evidence. In offering the resolution Mr. Westmoreland charged, that during the time Turner had held the office of District Judge he had been grossly tyrannical; that he had imprisoned citizens, depriving them of their liberty without process of law; that he had neglected and refused to perform the duties incumbent upon him by statute; that by a standing rule he allowed no witness to be called in a case unless he was subpoenaed and in attendance on the first day of the term; that he had used the power of his position for the furtherance of his own ends of private hate; that he was an habitual drunkard, with rare intervals of sobriety, and had upon occasions come into the court-room to sit upon the trial of causes so intoxicated as to be unable to stand, and had fallen helplessly upon the floor, whence he had been removed by officers of the court; that upon one occasion, when engaged in a trial, he had in the presence of jurors, witnesses, and other persons attending the court, deliberately gone out of the court-room and openly entered a house of ill-fame near by; and that by his disgraceful conduct he had become a burden upon the people of that district too grievous to be borne. These things Mr. Westmoreland stated he stood prepared to prove, and he invoked the interposition of the Legislature to protect the people of the Eighth Judicial District who were suffering from the deportment and conduct of this officer. The resolution was passed. Finding that articles of impeachment would be presented against him, Turner resigned his office. After this his habits of drinking became worse, and he was sent to the Asylum for Inebriates, where he died.

In thinking over my difficulties with Turner at this distant day, there is nothing in my conduct which I in the least regret. Had I acted differently; had I yielded one inch, I should have lost my self-respect and been for life an abject slave. There was undoubtedly an unnecessary severity of language in two or three passages of my answers to his attacks; and some portion of my answer in court to his order to

show cause why I should not be re-expelled from the bar might better have been omitted. I have since learned that one is never so strong as when he is calm, and never writes so forcibly as when he uses the simplest language: My justification in these particulars, if they require any, must be found in the savage ferocity with which I was assailed, the brutal language applied to my character and conduct, and the constant threats made of personal violence. Malignity and hate, with threats of assassination, followed me like a shadow for months. I went always armed for protection against assault. I should have been less or more than man had I preserved at all times perfect calmness either in my language or conduct.

In the contest with this man I was cheered by the support of the best men of the State. But of all of them no one aided me so much, and so freely, as the editor of the *Marysville Herald*, Mr. Robert H. Taylor, a gentleman still living, in the full strength of his intellect, and honored and trusted as a learned member of the legal profession in Nevada. May length of years and blessings without number attend him.

Here my narrative of "Personal Experiences" must for the present end. I could have given you, Mr. Hittell, more interesting matter. I could have given you sketches of Fremont, Halleck, Gwin, Broderick, Weller, Geary, Sherman, Bigler, McDougal, Bennett, Heydenfeldt, Murray, and others, with many striking anecdotes illustrative of their characters. They were all remarkable men, and the history of their lives would be full of interest and instruction. I could have related the story of the Vigilance Committees of 1851 and 1856, and shown how the men of order and virtue acquired and maintained ascendancy [sic] over the irregular and disorderly elements of society. I could have told you of the gradual development of the industries of the State until her yearly products have become one of the marvels of the world. I could have described the wild excitement produced by the supposed discoveries of gold in boundless quantities on Fraser River; and the later but more substantial movement upon the development of the silver mines of Nevada. I could have recounted the efforts made in 1860 and 1861 to keep the State in the Union against the movements of the Secessionists, and the communications had with President Lincoln by relays of riders over the Plains. I could have described the commencement, progress, and completion of the Pacific railroad, and the wonderful energy and unfailing resolution of its constructors. I could have told you stories without number, full of interest, of the Judges of California, State and Federal, who preceded me on the bench, and of members of the profession; of Hastings, Bennett, Lyons, Wells, Anderson, Heydenfeldt, and Murray, of the State Supreme Court; of Hoffman and McAllister of the Federal bench; of Robinson, Crittenden, Randolph, Williams, Yale, McConnell, Felton, and others of the Bar, now dead, and of some who are at its head, now living; composing as a whole a bar not exceeded in ability, learning, eloquence, and literary culture by that of any other State of the Union. But you asked me merely for personal reminiscences of occurrences at Marysville and during the days preceding my going there. I will, therefore, postpone until another occasion a narrative which I think will be more interesting than anything I have here related.

The Career of Judge Field on the Supreme Bench of California, by Judge Joseph G. Baldwin, His Associate for Three Years

[From the *Sacramento Union* of May 6, 1863.]

"The resignation by Judge Field of the office of Chief Justice of the Supreme Court of California, to take effect on the 20th instant, has been announced. By this event the State has been deprived of the ablest jurist who ever presided over her courts. Judge Field came to California from New York in 1849 and settled in Marysville. He immediately commenced the

practice of law and rose at once to a high position at the local bar, and upon the organization of the Supreme Court soon commanded a place in the first class of the counsel practicing in that forum. For many years, and until his promotion to the bench, his practice was as extensive, and probably as remunerative, as that of any lawyer in the State. He served one or two sessions in the Legislature, and the State is indebted to him for very many of the laws which constitute the body of her legislation.[62] In 1857 he was nominated for Judge of the Supreme Court for a full term, and in October of the same year was appointed by Governor Johnson to fill the unexpired term of Justice Heydenfeldt, resigned. He immediately entered upon the office, and has continued ever since to discharge its duties. Recently, as the reader knows, he was appointed, by the unanimous request of our delegation in Congress, to a seat upon the Bench of the Supreme Court of the United States, and was confirmed, without opposition, by the Senate.

"Like most men who have risen to distinction in the United States, Judge Field commenced his career without the advantages of wealth, and he prosecuted it without the factitious aids of family influence or patronage. He had the advantage, however—which served him better than wealth or family influence—of an accomplished education, and careful study and mental discipline. He brought to the practice of his profession a mind stored with professional learning, and embellished with rare scholarly attainments. He was distinguished at the bar for his fidelity to his clients, for untiring industry, great care and accuracy in the preparation of his cases, uncommon legal acumen, and extraordinary solidity of judgment. As an adviser, no man had more the confidence of his clients, for he trusted nothing to chance or accident when certainty could be attained, and felt his way cautiously to his conclusions, which, once reached, rested upon sure foundations, and to which he clung with remarkable pertinacity. Judges soon learned to repose confidence in his opinions, and he always gave them the strongest proofs of the weight justly due to his conclusions.

"When he came to the bench, from various unavoidable causes the calendar was crowded with cases involving immense interests, the most important questions, and various and peculiar litigation. California was then, as now, in the development of her multiform physical resources. The judges were as much pioneers of law as the people of settlement. To be sure something had been done, but much had yet to be accomplished; and something, too, had to be undone of that which had been done in the feverish and anomalous period that had preceded. It is safe to say that, even in the experience of new countries hastily settled by heterogeneous crowds of strangers from all countries, no such example of legal or judicial difficulties was ever before presented as has been illustrated in the history of California. There was no general or common source of jurisprudence. Law was to be administered almost without a standard. There was the civil law, as adulterated or modified by Mexican provincialism, usages, and habitudes, for a great part of the litigation; and there was the common law for another part, but *what that was* was to be decided from the conflicting decisions of any number of courts in America and England, and the various and diverse considerations of policy arising from local and other facts. And then, contracts made elsewhere, and some of them in semi-civilized countries, had to be interpreted here. Besides all which may be added that large and important interests peculiar to the State existed—mines, ditches, etc.—for which the courts were compelled to frame the law, and make a system out of what was little better than chaos.

"When, in addition, it is considered that an unprecedented number of contracts, and an amount of business without parallel, had been made and done in hot haste, with the utmost carelessness; that legislation was accomplished in the same way, and presented the crudest and most incongruous materials for construction; that the whole scheme and

organization of the government, and the relation of the departments to each other, had to be adjusted by judicial construction—it may well be conceived what task even the ablest jurist would take upon himself when he assumed this office. It is no small compliment to say that Judge Field entered upon the duties of this great trust with his usual zeal and energy, and that he leaves the office not only with greatly increased reputation, but that he has raised the character of the jurisprudence of the State. He has more than any other man given tone, consistency, and system to our judicature, and laid broad and deep the foundation of our civil and criminal law. The land titles of the State—the most important and permanent of the interests of a great commonwealth—have received from his hand their permanent protection, and this alone should entitle him to the lasting gratitude of the bar and the people.

"His opinions, whether for their learning, logic, or diction, will compare favorably, in the judgment of some of our best lawyers, with those of any judge upon the Supreme Bench of the Union. It is true what he has accomplished has been done with labor; but this is so much more to his praise, for such work was not to be hastily done, and it was proper that the time spent in perfecting the work should bear some little proportion to the time it should last. We know it has been said of Judge Field that he is too much of a 'case lawyer,' and not sufficiently broad and comprehensive in his views. This criticism is not just. It is true he is reverent of authority, and likes to be sustained by precedent; but an examination of his opinions will show that, so far from being a timid copyist, or the passive slave of authority, his rulings rest upon clearly defined principles and strong common sense.

"He retires from office without a stain upon his ermine. Millions might have been amassed by venality. He retires as poor as when he entered, owing nothing and owning little, except the title to the respect of good men, which malignant mendacity cannot wrest from a public officer who has deserved, by a long and useful career, the grateful appreciation of his fellow citizens. We think that we may safely predict that, in his new place, Justice Field will fulfill the sanguine expectations of his friends."

J. G. B.
San Francisco, May 1, 1863.

In 1855 a circuit court for California was created by Congress, and clothed with the ordinary jurisdiction of the several circuit courts of the United States. Hon. M. Hall McAllister was appointed its judge.[63] In January, 1863, he resigned and my appointment as his successor was recommended by our Senators. They telegraphed me what they had done, and I replied that I could not accept the place, that I preferred to remain Chief Justice of the Supreme Court of the State than to be a judge of an inferior federal court, but that if a new justice were added to the Supreme Court of the United States, I would accept the office if tendered to me. Notwithstanding this reply my appointment was urged, and I was nominated by the President. The Senators have since told me that they pressed my nomination from a belief that another justice would soon be added to the Supreme Court, and that the appointment would be made from the Pacific States, and that if I were circuit judge it would more likely be tendered to me than to any one else. The interests of those States were so great, and from the character of their land titles, and their mines of gold and silver, were in some respects so different from those of the Eastern States, that it was deemed important to have some one familiar with them on the Supreme Bench of the United States. Accordingly, while my nomination for circuit judge was pending before the Senate, a bill providing for an additional justice of the Supreme Court, and making the Pacific States a new circuit, was introduced into both Houses of Congress, and on the last day of the session, March 3d, 1863, it became a law. Soon after the adjournment of Congress, the entire delegation from the Pacific States united in recommending my appointment to the new office.

The delegation then consisted of four Senators and four Members of the House, of whom five were Democrats and three Republicans; all of them were Union men.[64] I was accordingly nominated by the President, and the nomination was unanimously confirmed by the Senate. My commission was signed on the 10th of March, 1863, and forwarded to me. I did not, however, take the oath of office and enter upon its duties until the 20th of May following. At the time I received the commission there were many important cases pending in the Supreme Court of California, which had been argued when only myself and one of the associate justices were present. I thought that these cases should be disposed of before I resigned, as otherwise a reargument of them would be required, imposing increased expense and delay upon the parties. I therefore sent my resignation as Chief Justice to the Governor, to take effect on the 20th of May. I selected that day, as I believed the cases argued could be decided by that time, and because it was the birthday of my father. I thought it would be gratifying to him to know that on the eighty-second anniversary of his birth his son had become a Justice of the Supreme Court of the United States. Accordingly on that day I took the oath of office.[65]

The Annoyances of my Judicial Life

After the narrative of my Personal Reminiscences was completed, I concluded to dictate an account of some strange annoyances to which I had been subjected in the course of my judicial life. The account will have an interest to those of my friends for whom the Reminiscences were printed, and it is intended for their perusal alone.

Rosy Views of Judicial Life—Gradually Vanishing—Unsettled Land Titles of the State—Asserted Ownership by the State of Gold and Silver Found in the Soil—Present of a Torpedo

When I went on the bench, I not only entertained elevated notions of the dignity and importance of the judicial office, but looked forward confidently to the respect and honor of the community from a faithful discharge of its duties. I soon discovered, however, that there would be but little appreciation for conscientious labor on the bench, except from a small number of the legal profession, until after the lapse of years. For the heavy hours of toil which the judges endured, for the long examination which they gave to voluminous records, for their nights of sleeplessness passed in anxious thought to ascertain what was true and right amidst a mass of conflicting evidence and doubtful principles, the public at large appeared to have little thought and less consideration. The cry of disappointment over frustrated schemes of cupidity and fraud was sufficient for the time to drown all other expressions of judgment upon the action of the court.

The unsettled condition of the land titles of the State gave occasion to a great deal of litigation and was for a long time the cause of much bad feeling towards the judges who essayed to administer impartial justice. When California was acquired, the population was small and widely scattered. To encourage colonization, grants of land in large quantities, varying from one to eleven leagues, had been made to settlers by the Mexican government. Only small tracts were subjected to cultivation. The greater part of the land was used for grazing cattle, which were kept in immense herds. The grants were sometimes of tracts with defined boundaries, and sometimes of places by name, but more frequently of specified quantities within boundaries embracing a greater amount. By the Mexican law, it was incumbent upon the magistrates of the vicinage to put the grantees in possession of the land granted to them; and for that purpose to measure off and segregate the quantity designated.[66] Owing to the sparseness of the population there was little danger of dispute as to boundaries, and this segregation in the majority of cases had been neglected before our acquisition of the country. From the size of the grants and the want of definite boundaries, arose nearly all the difficulties

and complaints of the early settlers. Upon the discovery of gold, immigrants from all parts of the world rushed into the country, increasing the population in one or two years from a few thousand to several hundred thousand. A large number crossed the plains from the Western States, and many of them sought for farming lands upon which to settle. To them a grant of land, leagues in extent, seemed a monstrous wrong to which they could not be reconciled. The vagueness, also, in many instances, of the boundaries of the land claimed gave force and apparent reason to their objections. They accordingly settled upon what they found unenclosed or uncultivated, without much regard to the claims of the Mexican grantees. If the land upon which they thus settled was within the tracts formerly occupied by the grantees with their herds, they denied the validity of grants so large in extent. If the boundaries designated enclosed a greater amount than that specified in the grants, they undertook to locate the supposed surplus. Thus, if a grant were of three leagues within boundaries embracing four, the immigrant would undertake to appropriate to himself a portion of what he deemed the surplus; forgetting that other immigrants might do the same thing, each claiming that what he had taken was a portion of such surplus, until the grantee was deprived of his entire property.

When I was brought to consider the questions to which this condition of things gave rise, I assumed at the outset that the obligations of the treaty with Mexico were to be respected and enforced. This treaty had stipulated for the protection of all rights of property of the citizens of the ceded country; and that stipulation embraced inchoate and equitable rights, as well as those which were perfect.[67] It was not for the Supreme Court of California to question the wisdom or policy of Mexico in making grants of such large portions of her domain, or of the United States in stipulating for their protection. I felt the force of what Judge Grier had expressed in his opinion in the case of The United States vs. Sutherland, in the 19th of Howard, that the rhetoric which denounced the grants as enormous monopolies and princedoms might have a just influence when urged to those who had a right to give or refuse; but as the United States had bound themselves by a treaty to acknowledge and protect all *bonafide* titles granted by the previous government, the court had no discretion to enlarge or contract such grants to suit its own sense of propriety or to defeat just claims, however extensive, by stringent technical rules of construction to which they were not originally subjected.[68] Since then, while sitting on the Bench of the Supreme Court of the United States, I have heard this obligation of our government to protect the rights of Mexican grantees stated in the brilliant and powerful language of Judge Black. In the Fossat case, referring to the land claimed by one Justo Larios, a Mexican grantee, he said: "The land we are claiming never belonged to this government. It was private property under a grant made long before our war with Mexico. When the treaty of Guadalupe Hidalgo came to be ratified—at the very moment when Mexico was feeling the sorest pressure that could be applied to her by the force of our armies, and the diplomacy of our statesmen—she utterly refused to cede her public property in California unless upon the express condition that all private titles should be faithfully protected. We made the promise. The gentleman sits on this bench who was then our Minister there.[69] With his own right hand he pledged the sacred honor of this nation that the United States would stand over the grantees of Mexico and keep them safe in the enjoyment of their property. The pledge was not only that the government itself would abstain from all disturbance of them, but that every blow aimed at their rights, come from what quarter it might, should be caught upon the broad shield of our blessed Constitution and our equal laws.[70]

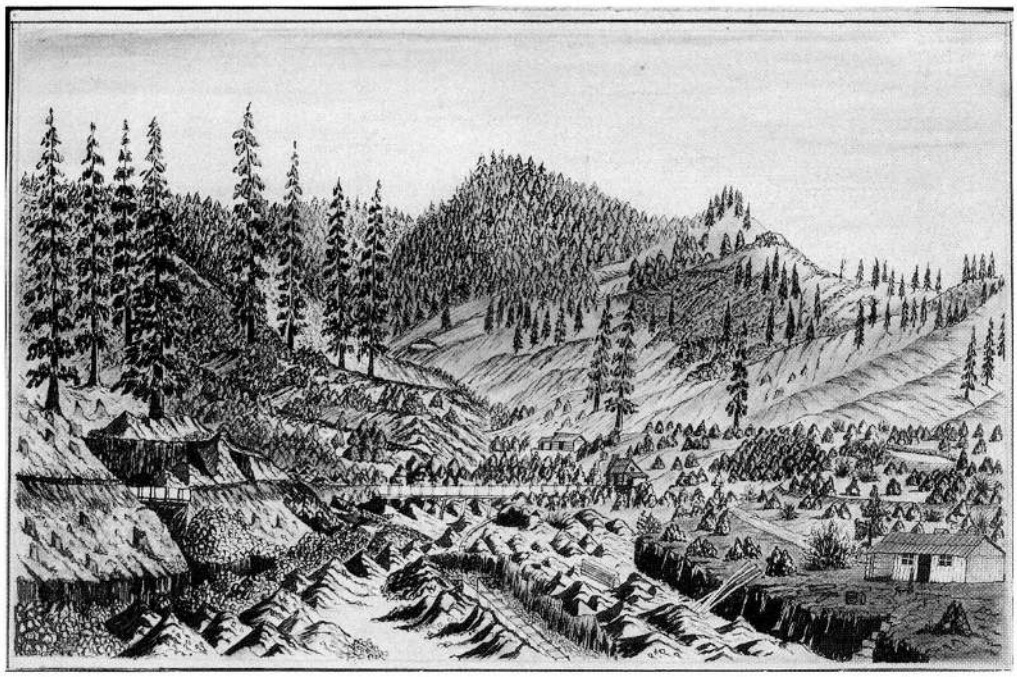
"It was by this assurance thus solemnly given that we won the reluctant consent of Mexico to part with California. It gave us a domain of more than imperial grandeur. Besides the vast extent of that country, it has natural

advantages such as no other can boast. Its valleys teem with unbounded fertility, and its mountains are filled with inexhaustible treasures of mineral wealth. The navigable rivers run hundreds of miles into the interior, and the coast is indented with the most capacious harbors in the world. The climate is more healthful than any other on the globe: men can labor longer with less fatigue. The vegetation is more vigorous and the products more abundant; the face of the earth is more varied, and the sky bends over it with a lovelier blue. That was what we gained by the promise to protect men in the situation of Justo Larios, their children, their alienees, and others claiming through them. It is impossible that in this nation they will ever be plundered in the face of such a pledge."

Actuated by this principle—that fidelity to a nation's pledge is a sacred duty, and that justice is the highest interest of the country, I endeavored, whenever the occasion presented itself, and my associates heartily co-operated with me, to protect the Mexican grantees. Their grants contained a stipulation for the possession of the lands granted, inasmuch as they were subject to the conditions of cultivation and occupancy, and a failure to comply with the conditions was considered by the tribunals of the United States as a most material circumstance in the determination of the right of the grantees to a confirmation of their claims. I held, therefore, with the concurrence of my associates, that the grantees, whether they were to be considered as having a legal or an equitable right to the lands, were entitled to their possession until the action of the government upon their claims, and, therefore, that they could recover in ejectment. And when the grant was not a mere float, but was of land within defined boundaries, which embraced a greater quantity than that specified in it, with a provision that the surplus should be measured off by the government, I held that until such measurement the grantee could hold the whole as against intruders, and until then he was a tenant in common with the government.[71] As I said in one of my opinions, speaking for the court, until such measurement no individual could complain, much less could he be permitted to determine in advance, that any particular locality would fall within the supposed surplus, and thereby justify its forcible seizure and detention by himself. "If one person could in this way appropriate a particular parcel to himself, all persons could do so; and thus the grantee, who is the donee of the government, would be stripped of its bounty for the benefit of those who were not in its contemplation and were never intended to be the recipients of its favors."[72]

These views have since met with general assent in California and have been approved by the Supreme Court of the United States.[73] But at that time they gave great offence to a large class, and the judges were denounced in unmeasured terms as acting in the interests of monopolists and land-grabbers. Even now, when the wisdom and justice of their action are seen and generally recognized, words of censure for it are occasionally whispered through the Press. Persons sometimes seem to forget that to keep the plighted faith of the nation, to preserve from reproach its fair fame, where its honor is engaged, is one of the highest duties of all men in public life.

The action of the court as to the possession of the public lands of the United States met with more favor. The position of the people of California with respect to the public lands was unprecedented. The discovery of gold brought, as already stated, an immense immigration to the country. The slopes of the Sierra Nevada were traversed by many of the immigrants in search of the precious metals, and by others the tillable land was occupied for agricultural purposes. The title was in the United States, and there had been no legislation by which it could be acquired. Conflicting possessory claims naturally arose, and the question was presented as to the law applicable to them. As I have mentioned in my Narrative of Reminiscences, the Legislature in 1851 had provided that in suits before magistrates for mining



Faced with numerous cases of conflicting land title claims, the Supreme Court of California drew hostility from those who did not benefit from its attempts to administer impartial justice. Field notes that generally all the judges agreed that the rights of the first appropriator of a claim outweighed all others except the government's. Above is an 1860 drawing by Daniel A. Jenks of his mining claim at the Long Gulch gold mine near Yreka.

claims, evidence of the customs, usages, and regulations of miners in their vicinage should be admissible, and, when not in conflict with the Constitution and laws of the United States, should govern their decision, and that the principle thus approved was soon applied in actions for mining claims in all courts. In those cases it was considered that the first possessor or appropriator of the claim had the better right as against all parties except the government, and that he, and persons claiming under him, were entitled to protection. This principle received the entire concurrence of my associates, and was applied by us, in its fullest extent, for the protection of all possessory rights on the public lands. Thus, in Coryell vs. Cain, I said, speaking for the court: "It is undoubtedly true, as a general rule, that the claimant in ejectment must recover upon the strength of his own title, and not upon the weakness of his adversary's, and that it is a sufficient answer to his action to show title out of him and in a third party. But this general rule has, in this State, from the anomalous condition of things arising from the peculiar character of the mining and landed interests of the country, been, to a certain extent, qualified and limited. The larger portion of the mining lands within the State belong to the United States, and yet that fact has never been considered as a sufficient answer to the prosecution of actions for the recovery of portions of such lands. Actions for the possession of mining claims, water privileges, and the like, situated upon the public lands, are matters of daily occurrence, and if the proof of the paramount title of the government would operate to defeat them, confusion and ruin would be the result. In determining controversies between parties thus situated, this court proceeds upon the presumption of a grant from the government to the first appropriator of mines, water privileges, and the like. This presumption, which would have no place for consideration as against the assertion of the rights of the superior

proprietor, is held absolute in all those controversies. And with the public lands which are not mineral lands, the title, as between citizens of the State, where neither connects himself with the government, is considered as vested in the first possessor, and to proceed from him."[74]

The difficulties attendant upon any attempt to give security to landed possessions in the State, arising from the circumstances I have narrated, were increased by an opinion, which for some time prevailed, that the precious metals, gold and silver, found in various parts of the country, whether in public or private lands, belonged to the State by virtue of her sovereignty. To this opinion a decision of the Supreme Court of the State, made in 1853, gave great potency. In Hicks vs. Bell, decided that year, the court came to that conclusion, relying upon certain decisions of the courts of England recognizing the right of the Crown to those metals.[75] The principal case on the subject was that of The Queen vs. The Earl of Northumberland, reported in Plowden. The counsel of the Queen in that case gave, according to our present notions, some very fanciful reasons for the conclusion reached, though none were stated in the judgment of the court. There were three reasons, said the counsel, why the King should have the mines and ores of gold and silver within the realm, in whatsoever land they were found: "The first was, in respect to the excellency of the thing, for of all things which the soil within this realm produces or yields, gold and silver are the most excellent, and of all persons in the realm, the King is, in the eye of the law, most excellent. And the common law, which is founded upon reason, appropriates everything to the person whom it best suits, as common and trivial things to the common people, things of more worth to persons in a higher and superior class, and things most excellent to those persons who excel all others; and because gold and silver are the most excellent things which the soil contains, the law has appointed them (as in reason it ought) to the person who is most excellent, and that is the King.—The second reason was, in respect of the necessity of the thing. For the King is the head of the Weal-public and the subjects are his members; and the office of the King, to which the law has appointed him, is to preserve his subjects; and their preservation consisted in two things, viz., in an army to defend them against hostilities, and in good laws. And an army cannot be had and maintained without treasure, for which reason some authors, in their books, call treasure the sinews of war; and, therefore, inasmuch as God has created mines within this realm, as a natural provision of treasure for the defence of the realm, it is reasonable that he who has the government and care of the people, whom he cannot defend without treasure, should have the treasure wherewith to defend them.—The third reason was, in respect of its convenience to the subjects in the way of mutual commerce and traffic. For the subjects of the realm must, of necessity, have intercourse or dealing with one another, for no individual is furnished with all necessary commodities, but one has need of the things which another has, and they cannot sell or buy together without coin.—And if the subject should have it (the ore of gold or silver) the law would not permit him to coin it, nor put a print or value upon it, for it belongs to the King only to fix the value of coin, and to ascertain the price of the quantity, and to put the print upon it, which being done, the coin becomes current for so much as the King has limited.—So that the body of the realm would receive no benefit or advantage if the subject should have the gold and silver found in mines in his land; but on the other hand, by appropriating it to the King, it tends to the universal benefit of all the subjects in making their King able to defend them with an army against all hostilities, and when he has put the print and value upon it, and has dispersed it among his subjects, they are thereby enabled to carry on mutual commerce with one another, and to buy and sell as they have occasion, and to traffic at their pleasure. Therefore, for these reasons, viz., for the excellency of the thing, and for the necessity of it, and the convenience that

will accrue to the subjects, the common law, which is no other than pure and tried reason, has appropriated the ore of gold and silver to the King, in whatever land it be found."

The Supreme Court of the State, without considering the reasons thus assigned in the case in Plowden, adopted its conclusion; and as the gold and silver in the British realm are there held to belong to the Crown, it was concluded, on the hypothesis that the United States have no municipal sovereignty within the limits of the State, that they must belong in this country to the State. The State, therefore, said the court, "has solely the right to authorize them" (the mines of gold and silver) "to be worked; to pass laws for their regulation; to license miners; and to affix such terms and conditions as she may deem proper to the freedom of their use. In the legislation upon this subject she has established the policy of permitting all who desire it to work her mines of gold and silver, with or without conditions, and she has wisely provided that their conflicting claims shall be adjudicated by the rules and customs which may be established by bodies of them working in the same vicinity."[76]

The miners soon grasped the full scope of this decision, and the lands of private proprietors were accordingly invaded for the purpose of mining as freely as the public lands. It was the policy of the State to encourage the development of the mines, and no greater latitude in exploration could be desired than was thus sanctioned by the highest tribunal of the State. It was not long, however, before a cry came up from private proprietors against the invasion of their possessions which the decision had permitted; and the court was compelled to put some limitation upon the enjoyment by the citizen of this right of the State. Accordingly, within two years afterwards, in Stoakes vs. Barrett, (5 Cal., 37,) it held that although the State was the owner of the gold and silver found in the lands of private individuals as well as in the public lands, "yet to authorize an invasion of private property in order to enjoy a public franchise would require more specific legislation than any yet resorted to."[77]

The spirit to invade other people's lands, to which the original decision gave increased force against the intention of its authors, could not be as easily repressed as it was raised in the crowd of adventurers, who filled the mining regions. Accordingly, long before I went on the bench, the right to dig for the precious metals on the lands of private individuals was stoutly asserted under an assumed license of the State. And afterwards, in the case of Biddle Boggs vs. The Merced Mining Co., which came before the court in 1859, where the plaintiff claimed under a patent of the United States, issued upon the confirmation of a Mexican grant, the existence of this license was earnestly maintained by parties having no connection with the government, nor any claim of title to the land. Its existence was, however, repudiated by the court, and speaking for it in that case I said: "There is gold in limited quantities scattered through large and valuable districts, where the land is held in private proprietorship, and under this pretended license the whole might be invaded, and, for all useful purposes, destroyed, no matter how little remunerative the product of the mining. The entry might be made at all seasons, whether the land was under cultivation or not, and without reference to its condition; whether covered with orchards, vineyards, gardens, or otherwise. Under such a state of things, the proprietor would never be secure in his possessions, and without security there would be little development, for the incentive to improvement would be wanting. What value would there be to a title in one man, with a right of invasion in the whole world? And what property would the owner possess in mineral land—the same being in fact to him poor and valueless just in proportion to the actual richness and abundance of its products? There is something shocking to all our ideas of the rights of property in the proposition that one man may invade the possessions of another, dig up his fields and gardens, cut down

his timber, and occupy his land, under the pretence that he has reason to believe there is gold under the surface, or if existing, that he wishes to extract and remove it."[78]

At a later day the court took up the doctrine, that the precious metals belonged to the State by virtue of her sovereignty, and exploded it. The question arose in Moore vs. Smaw, reported in 17th California, and in disposing of it, speaking for the court, I said: "It is undoubtedly true that the United States held certain rights of sovereignty over the territory which is now embraced within the limits of California, only in trust for the future State, and that such rights at once vested in the new State upon her admission into the Union. But the ownership of the precious metals found in public or private lands was not one of those rights. Such ownership stands in no different relation to the sovereignty of a State than that of any other property which is the subject of barter and sale. Sovereignty is a term used to express the supreme political authority of an independent State or Nation. Whatever rights are essential to the existence of this authority are rights of sovereignty. Thus the right to declare war, to make treaties of peace, to levy taxes, to take private property for public uses, termed the right of eminent domain, are all rights of sovereignty, for they are rights essential to the existence of supreme political authority. In this country, this authority is vested in the people, and is exercised through the joint action of their federal and State governments. To the federal government is delegated the exercise of certain rights or powers of sovereignty; and with respect to sovereignty, rights and powers are synonymous terms; and the exercise of all other rights of sovereignty, except as expressly prohibited, is reserved to the people of the respective States, or vested by them in their local governments. When we say, therefore, that a State of the Union is sovereign, we only mean that she possesses supreme political authority, except as to those matters over which such authority is delegated to the federal government, or prohibited to the States; in other words, that she possesses all the rights and powers essential to the existence of an independent political organization, except as they are withdrawn by the provisions of the Constitution of the United States. To the existence of this political authority of the State—this qualified sovereignty, or to any part of it—the ownership of the minerals of gold and silver found within her limits is in no way essential. The minerals do not differ from the great mass of property, the ownership of which may be in the United States, or in individuals, without affecting in any respect the political jurisdiction of the State. They may be acquired by the State, as any other property may be, but when thus acquired she will hold them in the same manner that individual proprietors hold their property, and by the same right; by the right of ownership, and not by any right of sovereignty."[79]

And referring to the argument of counsel in the case in Plowden, I said that it would be a waste of time to show that the reasons there advanced in support of the right of the Crown to the mines could not avail to sustain any ownership of the State in them. The State takes no property by reason of "the excellency of the thing," and taxation furnishes all requisite means for the expenses of government. The convenience of citizens in commercial transactions is undoubtedly promoted by a supply of coin, and the right of coinage appertains to sovereignty. But the exercise of this right does not require the ownership of the precious metals by the State, nor by the federal government, where this right is lodged under our system, as the experience of every day demonstrates. I also held that, although under the Mexican law the gold and silver found in land did not pass with a grant of the land, a different result followed, under the common law, when a conveyance of land was made by an individual or by the government. By such conveyance everything passed in any way connected with the land, forming a portion of its soil or fixed to its surface.

The doctrine of the right of the State by virtue of her sovereignty to the mines of gold and silver perished with this decision. It was never afterwards seriously asserted. But for holding what now seems so obvious, the judges were then grossly maligned as acting in the interest of monopolists and land owners, to the injury of the laboring class.

The decisions, however, which caused for the time the greatest irritation, and excited the bitterest denunciation of the judges, related to the titles to land in the city of San Francisco, though in the end they proved to be of incalculable benefit. Upon the acquisition of California, there was a Mexican Pueblo upon the site of the city. The term *pueblo* is aptly translated by the English word *town.* It has all the vagueness of that term, and is equally applicable to a settlement of a few individuals at a particular place, or to a regularly organized municipality. The *Pueblo* of San Francisco was composed of a small population; but, as early as 1835, it was of sufficient importance to have an *Ayuntamiento* or Town Council, composed of alcaldes and other officers, for its government. At the time of our acquisition of the country it was under the government of alcaldes or justices of the peace. By the laws of Mexico, then in force, *pueblos* or towns, when once officially recognized as such by the appointment of municipal magistrates, became entitled to four square leagues of land, to be measured off and assigned to them by the officers of the government. Under these laws the city of San Francisco, as successor of the Mexican Pueblo, asserted a claim to such lands, to be measured off from the northern portion of the peninsula upon which the city is situated. And the alcaldes, assuming an authority similar to that possessed by *alcaldes* in other *pueblos,* exercised the power of distributing these municipal lands in small parcels to settlers for building, cultivation, and other uses.

When the forces of the United States took possession of the city, the alcaldes, holding under the Mexican government, were superseded by persons appointed by our military or naval officers having command of the place. With the increase of population which followed the discovery of gold, these magistrates were besieged by applicants for grants of land; and it was refreshing to see with what generous liberality they disposed of lots in the city—a liberality not infrequent when exercised with reference to other people's property. Lots, varying in size from fifty to one hundred varas square, (a measure nearly equal to our yard,) were given away as freely as they were asked, only a small fee to meet necessary charges for preparing and recording the transfers being demanded. Thus, for the lot occupied by the Lick House, and worth now nearly a million, only a few dollars, less I believe than twenty, were paid. And for the lot covered by the Grand Hotel, admitted to be now worth half a million, less than thirty-five dollars were paid.

The authority of the alcaldes to dispose of the lands was questioned by many of the new immigrants, and the validity of their grants denied. They asserted that the land was part of the public property of the United States. Many holding these views gave evidence of the earnestness of their convictions by immediately appropriating to themselves as much vacant land in the city as they could conveniently occupy. Disputes followed, as a matter of course, between claimants under the alcalde grants and those holding as settlers, which often gave rise to long and bitter litigation. The whole community was in fact divided between those who asserted the existence of a *pueblo* having a right to the lands mentioned, and the power of the alcaldes to make grants of them; and those who insisted that the land belonged to the United States. Early in 1850, after the State government was organized, the Legislature incorporated the City of San Francisco; and, as is usual with municipal bodies not restrained by the most stringent provisions, it contracted more debts than its means warranted, and did not always make provision for their payment at maturity. Numerous suits, therefore, were instituted and

judgments were recovered against the city. Executions followed, which were levied upon the lands claimed by her as successor of the *pueblo.* Where the occupants denied the title of the city, they were generally indifferent to the sales by the sheriff. Property of immense value, in some cases many acres in extent, was, in consequence, often struck off to bidders at a merely nominal price. Upon the deeds of the officer, suits in ejectment were instituted in great numbers; and thus questions as to the existence of the alleged *pueblo,* and whether, if existing, it had any right to land, and the nature of such right, if any, were brought before the lower courts; and, finally, in a test case—Hart vs. Burnett—they found their way to the Supreme Court of the State.[80] In the meantime a large number of persons had become interested in these sales, aside from the occupants of the land, and the greatest anxiety was manifested as to the decision of the Court. Previous decisions on the questions involved were not consistent; nor had they met the entire approval of the profession, although the opinion prevailed generally that a Mexican pueblo of some kind, owning or having an interest in lands, had existed on the site of the city upon the acquisition of the country, and that such lands, like other property of the city not used for public purposes, were vendible on execution.

In 1855, after the sale in respect to which the test case was made, the Council of the city passed "the Van Ness Ordinance," so called from the name of its author, the object of which was to settle and quiet, as far as practicable, the title of persons occupying land in the city.[81] It relinquished and granted the right and interest of the city to lands within its corporate limits, as defined by the charter of 1851, with certain exceptions, to parties in the actual possession thereof, by themselves or tenants, on or before the first of January, 1855, if the possession were continued to the time of the introduction of the ordinance into the Common Council in June of that year; or, if interrupted by an intruder or trespasser, it had been or might be recovered by legal process. And it declared that, for the purposes of the act, all persons should be deemed in possession who held titles to land within the limits mentioned, by virtue of a grant made by the authorities of the pueblo, including alcaldes among them, before the 7th of July, 1846,—the day when the jurisdiction over the country is deemed to have passed from Mexico to the United States,—or by virtue of a grant subsequently made by those authorities, if the grant, or a material portion of it, had been entered in a proper book of record deposited in the office or custody of the recorder of the county of San Francisco on or before April 3d, 1850. This ordinance was approved by an act of the Legislature of the State in March, 1858, and the benefit of it and of the confirmatory act was claimed by the defendant in the test case.

That case was most elaborately argued by able and learned counsel. The whole law of Mexico respecting *pueblos*, their powers, rights, and property, and whether, if possessing property, it was subject to forced sale, the effect upon such land of the change of sovereignty to the United States, the powers of alcaldes in disposing of the property of these municipalities, the effect of the Van Ness Ordinance, and the confirmatory act of the Legislature, were all discussed with a fullness and learning which left nothing unexplained or to be added. For weeks afterwards the judges gave the most laborious attention to the questions presented, and considered every point and the argument on both sides of it with anxious and painful solicitude to reach a just conclusion. The opinion of the court, prepared by Mr. Justice Baldwin, is without precedent for the exhaustive learning and research it exhibits upon the points discussed.[82] The Court held, among other things, that, at the date of the conquest and cession of the country, San Francisco was a pueblo, having the rights which the law of Mexico conferred upon such municipal organizations; that as such pueblo it had proprietary rights to certain lands, which were held in trust for the public use of the city, and were not subject to seizure and sale under execution;

that such portions as were not set apart for common use or special purposes could be granted in lots to private persons by its ayuntamiento or by alcaldes or other officers who represented or had succeeded to its powers; that the lands, and the trusts upon which they were held, were public and municipal in their nature, and since the organization of the State were under its control and supervision; that the act of the Legislature confirming the Van Ness Ordinance was a proper exercise of the power of the State, and vested in the possessors therein described, as against the city and State, a title to the lands mentioned; and that the city held the lands of the pueblo, not legally disposed of by its officers, unaffected by sheriff's sales under executions against her.

This decision was of the greatest importance both to the city and the occupants of land within its limits. The Van Ness Ordinance had reserved from grant for the uses of the city all the lots which it then occupied or had set apart for public squares, streets, sites for schoolhouses, city hall and other buildings belonging to the corporation, and also such other lots as it might subsequently select for public purposes within certain designated limits. All these were by the decision at once released from any possible claim by virtue of sales on executions. All persons occupying lands not thus reserved were by the decision quieted in their possession, so far as any claim of the city or State could be urged against them. Property to the value of many millions was thereby rescued from the spoiler and speculator, and secured to the city, or settler. Peace was given to thousands of homes. Yet for this just and most beneficent judgment there went up from a multitude, who had become interested in the sales, a fierce howl of rage and hate. Attacks full of venom were made upon Judge Baldwin and myself, who had agreed to the decision. No epithets were too vile to be applied to us; no imputations were too gross to be cast at us. The Press poured out curses upon our heads. Anonymous circulars filled with falsehoods, which malignity alone could invent, were spread broadcast throughout the city, and letters threatening assassination in the streets or by-ways were sent to us through the mail. The violence of the storm, however, was too great to last. Gradually it subsided and reason began to assert its sway. Other words than those of reproach were uttered; and it was not many months before the general sentiment of the people of the city was with the decision. A year did not elapse before the great good it had conferred upon the city and settler was seen and appreciated. Since then its doctrines have been repeatedly re-affirmed. They have been approved by the Supreme Court of the United States; and now no one doubts their soundness.

After that decision there was still wanting for the complete settlement of titles in the city the confirmation by the tribunals of the United States of her claim to the lands. The act of Congress of March 3d, 1851, creating the Board of Land Commissioners, provided that all claims to land in California, by virtue of any right or title derived from the Spanish or Mexican government, should be presented to the board for examination and adjudication. Accordingly, the city of San Francisco, soon after the organization of the board, in 1852, presented her claim for four square leagues as successor of the *pueblo*, and asked for its confirmation. In December, 1854, the board confirmed the claim for a portion of the four square leagues, but not for the whole; the portion confirmed being embraced within the charter limits of 1851. The city was dissatisfied with this limitation, and appealed from the decision of the Commissioners to the District Court of the United States. An appeal was also taken by the United States, but was subsequently withdrawn. The case remained in the District Court without being disposed of until September, 1884, nearly ten years, when, under the authority of an act of Congress of July 1st of that year, it was transferred to the Circuit Court of the United States.

Whilst the case was pending in the District Court, the population of the city had increased more than four-fold; and improvements of a

costly character had been made in all parts of it. The magnitude of the interests which had thus grown up demanded that the title to the land upon which the city rested should be in some way definitely settled. To expedite this settlement, as well as the settlement of titles generally in the State, was the object of the act of July 1st, 1864. Its object is so stated in its title. It was introduced by Senator Conness, of California, who was alive to everything that could tend to advance the interests of the State.[83] He felt that nothing would promote its peace and prosperity more than giving security to its land titles, and he labored earnestly to bring about that result. In framing the act, he consulted me, and at my suggestion introduced sections four, five, and seven, which I drafted and gave to him, but without the exception and proviso to the fifth section, which were added at the request of the Commissioner of the Land Office.[84] The fourth section authorized the District Court to transfer to the Circuit Court cases pending before it arising under the act of March 3d, 1851, affecting the title to lands within the corporate limits of a city or town, and provided that in such cases both the District and Circuit Judges might sit. By the fifth section, all the right and title of the United States to the land within the corporate limits of the city, as defined by its charter of 1851, were relinquished and granted to the city and its successors for the uses and purposes specified in the Van Ness Ordinance. The exceptions incorporated at the suggestion of the Commissioner of the Land Office related to parcels of land previously or then occupied by the United States for military, naval, or other public purposes, and such other parcels as might be subsequently designated for such purposes by the President within one year after the return to the land office of an approved plat of the exterior limits of the city. The holders of grants from the authorities of the *pueblo* and the occupants of land within the limits of the charter of 1851 were thus quieted in their possessions. But as the claim of the city was for a much greater quantity, the case for its confirmation was still prosecuted. Under the fourth section it was transferred to the Circuit Court, as already stated; and it was soon afterwards brought to a hearing. On the 30th of October, 1864, it was decided. For some reason I do not now recall, the District Judge was unable to sit with me, and the case was, therefore, heard before me alone. I held that a pueblo of some kind existed at the site of the present city of San Francisco upon the cession of the country; that as such it was entitled to the possession of certain lands to the extent of four square leagues; and that the present city had succeeded to such rights, following, in these particulars, the decision which had previously been made in the case of Hart vs. Burnett, by the Supreme Court of the State, in which I had participated. I accordingly decided that the city was entitled to have her claim confirmed to four square leagues of land, subject to certain reservations. But I also added that the lands to which she was entitled had not been given to her by the laws of the former government in absolute property with full right of disposition and alienation, but to be held in trust for the benefit of the whole community, with such powers of use, disposition, and alienation as had been or might thenceforth be conferred upon her or her officers for the execution of the trust. The trust character of the city's title was expressed in the decree of confirmation. The decision was rendered on the 30th of October, 1864, as stated, and a decree was soon afterwards entered; but as a motion was made for a re-hearing, the control over it was retained by the Circuit Court until May of the following year. Upon the suggestion of counsel, it was then modified in some slight particulars so as to limit the confirmation to land above ordinary high water mark, as it existed at the date of the acquisition of the country, namely, the 7th of July, 1846. On the 18th of May, 1865, the decree was finally settled and entered.[85] Appeals from it were prosecuted to the Supreme Court both by the United States and by the city; by the United States from the whole decree, and

by the city from so much of it as included certain reservations in the estimate of the quantity of land confirmed.[86]

In October following I proceeded as usual to Washington to attend the then approaching term of the Supreme Court, and thought no more of the case until my attention was called to it by a most extraordinary circumstance. Just before leaving San Francisco Mr. Rulofson, a photographer of note, requested me to sit for a photograph, expressing a desire to add it to his gallery. I consented, and a photograph of a large size was taken. As I was leaving his rooms he observed that he intended to make some pictures of a small size from it, and would send me a few copies. On the morning of the 13th of January following (1866), at Washington, Mr. Delos Lake, a lawyer of distinction in California, at one time a District Judge of the State, and then District Attorney of the United States, joined me, remarking, as he did so, that the arrival of the California steamer at New York had been telegraphed, and he hoped that I had received some letters for him, as he had directed his letters to be forwarded to my care.[87] I replied that when I left my room my messenger had not brought my mail; but if he would accompany me there we would probably find it. Accordingly, we proceeded to my room, where on the centre-table [sic] lay my mail from California, consisting of a large number of letters and papers. Among them I noticed a small package about an inch and a half thick, three inches in breadth, and three and a half in length. It was addressed as follows, the words being printed

Per steamer.
[Three postage stamps].

Hon. Stephen J. Field,
Washington, D.C.

It bore the stamp of the San Francisco post-office upon the address. My name had evidently been cut from the California Reports, but the words "Washington, D.C.," and "Per steamer," had been taken from a newspaper. The slips were pasted on the package. On the opposite side were the words in print:

From
Geo. H. Johnson's
Pioneer Gallery,
645 and 649 Clay street,
San Francisco.

As I took up the package I remarked that this must come from Rulofson;—no, I immediately added, Rulofson has nothing to do with the Pioneer Gallery. It then occurred to me that it might be a present for my wife, recollecting at the moment that the mail came by the steamer which sailed from San Francisco about Christmas time. It may be, I said to myself, a Christmas present for my wife.[88] I will open it just far enough to see, and, if it be intended for her, I will close it and forward it to New York, where she was at the time. I accordingly tore off the covering and raised the lid just far enough to enable me to look inside. I was at once struck with the black appearance of the inside. "What is this, Lake?" I said, addressing myself to my friend. Judge Lake looked over my shoulder into the box, as I held it in my hand, and at once exclaimed, "It is a torpedo. Don't open it." I was startled by the suggestion, for the idea of a torpedo was the last thing in the world to occur to me. I immediately laid the package on the sill of the window, where it was subjected to a careful inspection by us both, so far as it could be made with the lid only an eighth of an inch open.

Soon afterwards Judge Lake took the package to the Capitol, which was directly opposite to my rooms, and to the office of the Clerk of the Supreme Court, and showed it to Mr. Broom, one of the deputies. They dipped the package into water and left it to soak for some minutes. They then took it into the carriage way under the steps leading to the Senate Chamber, and shielding themselves behind one of the columns, threw the box against the wall. The blow broke the hinge of the lid and exposed the contents. A murderous contrivance

it was;—a veritable infernal machine! Twelve cartridges such as are used in a common pistol, about an inch in length, lay imbedded in a paste of some kind, covered with fulminating powder, and so connected with a bunch of friction matches, a strip of sand-paper, and a piece of linen attached to the lid, that on opening the box the matches would be ignited and the whole exploded. The package was sent to the War Department, and the following report was returned, giving a detailed description of the machine:

> Washington Arsenal, *Jan.* 16, 1866.
>
> *Gen. A. B. Dyer,*
> *Chief of Ordnance,*
> *Washington, D. C.*
>
> Sir: Agreeably to your instructions, I have examined the explosive machine sent to this arsenal yesterday. It is a small miniature case containing twelve copper cartridges, such as are used in a Smith & Wesson pocket pistol, a bundle of sensitive friction matches, a strip of sand-paper, and some fulminating powder. The cartridges and matches are imbedded in common glue to keep them in place. The strip of sand-paper lies upon the heads of the matches. One end has been thrown back, forming a loop, through which a bit of thread evidently passed to attach it to the lid of the case. This thread may be seen near the clasp of the lid, broken in two. There are two wire staples, under which the strip of sand-paper was intended to pass to produce the necessary pressure on the matches. The thread is so fixed that the strip of sand-paper could be secured to the lid after it was closed.
>
> The whole affair is so arranged that the opening of the lid would necessarily ignite the matches, were it not that the lower end of the strip has become imbedded in the glue, which prevents it from moving. That the burning of the matches may explode the cartridges, there is a hole in each case, and all are covered with mealed powder.
>
> One of the cartridges has been examined and found to contain ordinary grain powder. Two of the cartridges were exploded in a closed box sent herewith. The effect of the explosion was an indentation on one side of the box.
>
> Very respectfully,
> your obedient servant,
>
> J. G. BENTON,
> *Major of Ord. and Bvt. Col. Comdg.*

Between the outside covering and the box there were two or three folds of tissue-paper—placed there, no doubt, to prevent the possibility of an explosion from the stamping at the post office, or the striking against other packages during the voyage from San Francisco to New York.

On the inside of the lid was pasted a slip cut from a San Francisco paper, dated October 31st, 1864, stating that on the day previous I had decided the case of the City against the United States, involving its claim to four square leagues of land, and giving the opening lines of my opinion.

The Secretary of War, Mr. Stanton, immediately telegraphed in cipher to General Halleck, then in command in San Francisco, to take active measures to find out, if possible, the person who made and sent the infernal machine.[89] General Halleck put the detectives of his department on the search. Others employed detectives of the San Francisco police—but all in vain. Suspicions were excited as to the complicity of different parties, but they were never sustained by sufficient evidence to justify the arrest of any one. The instrument, after remaining in the hands of the detectives in San Francisco for nearly

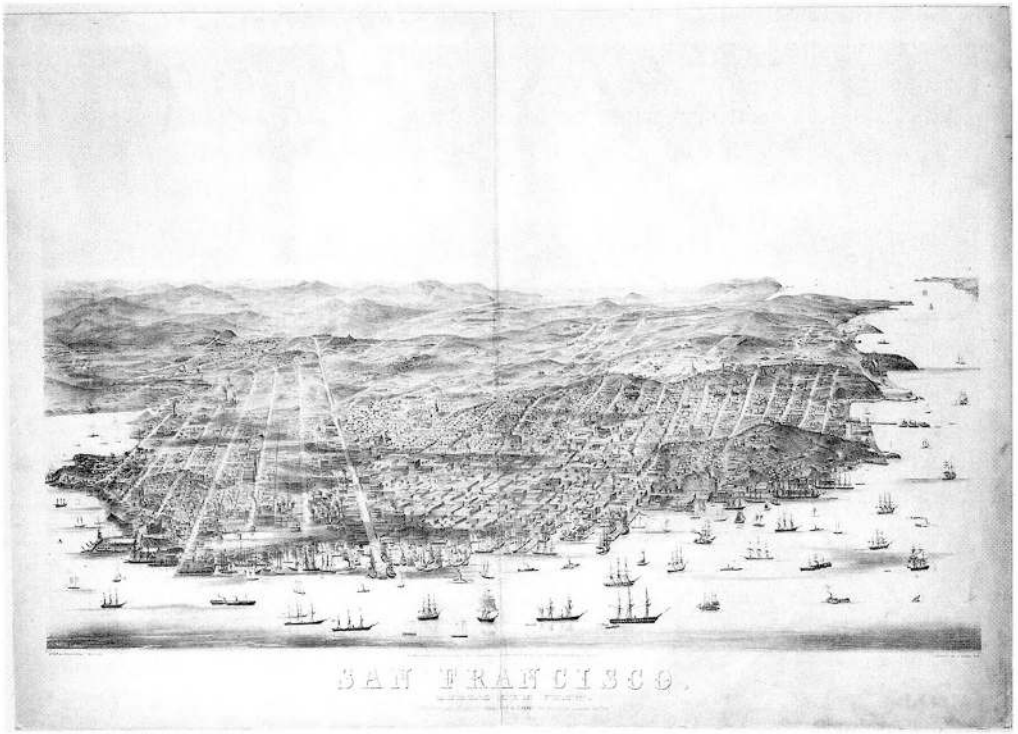
two years, was returned to me and it is now in my possession.

It has often been a matter of wonder to me how it was that some good angel whispered to me not to open the box. My impetuous temperament would naturally have led me to tear it open without delay. Probably such hesitation in opening a package directed to me never before occurred, and probably never will again. Who knows but that a mother's prayer for the protection of her son, breathed years before, was answered then? Who can say that her spirit was not then hovering over him and whispering caution in his ear? That I should on that occasion have departed from my usual mode of action is strange—passing strange.

As already stated, the fifth section of the act of Congress of July 1st, 1864, which granted the interest of the United States to the lands within the charter limits of 1851 to the city and its successors, in trust for the benefit of possessors under the Van Ness Ordinance, among other things provided for certain reservations to be subsequently made by the President, within one year after an approved plat showing the exterior limits of the city had been filed in the land office. No such map was filed nor were any reservations made. The case on appeal in the meantime was not reached in the Supreme Court, and was not likely to be for a long period. Ascertaining from General Halleck that the Secretary of War would not recommend any further reservations to be made from the municipal lands, and that probably none would be made, I drew a bill to quiet the title of the city to all the lands embraced within the decree of confirmation, and gave it to Senator Conness, who being ready, as usual, to act for the interests of the city, immediately took charge of it and secured its passage in the Senate. In the House Mr. McRuer, Member of Congress from California, took charge of it, and with the assistance of the rest of the delegation from the State, procured its passage there.[90] It was signed by the President and became a law on the 8th of March, 1866. By it all the right and title of the United States to the land covered by the decree of the Circuit Court were relinquished and granted to the city, and the claim to the land was confirmed, subject, however, to certain reservations and exceptions; and upon trust that all the land not previously granted to the city, should be disposed of and conveyed by the city to the parties in the bona fide actual possession thereof, by themselves or tenants, on the passage of the act, in such quantities, and upon such terms and conditions, as the Legislature of the State of California might prescribe, except such parcels thereof as might be reserved and set apart by ordinance of the city for public uses.[91]

Not long afterwards both the appeals to the Supreme Court were dismissed by stipulation of parties. The litigation over the source of title to lands within the limits of the city, not disposed of by independent grants of the government previous to the acquisition of the country, was thus settled and closed. The title of the city rests, therefore, upon the decree of the Circuit Court entered on the 18th day of May, 1865, and this confirmatory act of Congress. It has been so adjudged by the Supreme Court of the United States.[92]

The title of the city being settled, the municipal authorities took measures, under the provisions of the confirmatory act, to set apart lands for school-houses, hospitals, court-house buildings, and other public purposes, and through their exertions, instigated and encouraged by Mr. McCoppin, the accomplished and efficient Mayor of the city at that time, the Ocean Park, which looks out upon the Pacific Ocean and the Golden Gate, and is destined to be one of the finest parks in the world, was set apart and secured to the city for all time.[93] As the grounds thus taken were, in many instances, occupied by settlers, or had been purchased from them, an assessment was levied by the city and sanctioned by the Legislature upon other lands conveyed to the occupants, as a condition of their receiving deeds from the city; and the money raised was applied



After Field decided a case in 1864 awarding the federal government title to four square leagues of valuable land in the city of San Francisco, he received—but managed to avoid being injured by—a package containing a potent explosive device. The Supreme Court of the United States eventually awarded the land title to the municipal authorities, who used it to build schools, hospitals, and courthouses.

to compensate those whose lands had been appropriated.

Hostility to the Supreme Court after the Civil War—The Scofield Resolution

The irritations and enmities crested by the civil war did not end with the cessation of active hostilities. They were expressed whenever any acts of the military officers of the United States were called in question or any legislation of the States or of Congress in hostility to the insurgents was assailed; or the validity of the "Reconstruction Acts" was doubted. And they postponed that cordial reconciliation which all patriotic men earnestly desired.[94]

The insurrection was overthrown after a contest which, for its magnitude and the number and courage of the belligerents, was without a parallel in history. The immense loss of life and destruction of property caused by the contest, and the burden of the enormous debt created in its prosecution, left a bitterness in the hearts of the victors which it was difficult to remove. The assassination of Mr. Lincoln added intensity to the feeling.[95] That act of a madman, who had conceived the idea that he might become in our history what Brutus was in the history of Rome, the destroyer of the enemy of his country, was ascribed to a conspiracy of leading Confederates. The proclamation of the Secretary of War, offering a reward for the arrest of parties charged with complicity in the act, gave support to this notion. The wildest stories, now known to have had no foundation, were circulated and obtained ready credence among the people of the North, already wrought up to the highest pitch of excitement. They manifested, therefore, great impatience when a doubt was cast upon the propriety or

validity of the acts of the government, or of its officers, which were taken for the suppression of the rebellion or "the reconstruction" of the States; and to question their validity was almost considered proof of hostility to the Union.

By those who considered the union indissoluble, except by the common consent of the people of the several States, the organization known as the Confederate States could only be regarded as unlawful and rebellious, to be suppressed, if necessary, by force of arms. The Constitution prohibits any treaty, alliance, or confederation by one State with another, and it declares on its face that it is the supreme law of the land. The Confederate government, therefore, could only be treated by the United States as the military representative of the insurrection against their authority. Belligerent rights were accorded to its armed forces in the conduct of the war, and they thus had the standing and rights of parties engaged in lawful warfare. But no further recognition was ever given to it, and when those forces were overthrown its whole fabric disappeared. But not so with the insurgent States which had composed the Confederacy. They retained the same form of government and the same general system of laws, during and subsequent to the war, which they had possessed previously. Their organizations as distinct political communities were not destroyed by the war, although their relations to the central authority were changed. And their acts, so far as they did not impair or tend to impair the supremacy of the general government, or the rights of citizens of the loyal States, were valid and binding. All the ordinary authority of government for the protection of rights of persons and property, the enforcement of contracts, the punishment of crime, and the due order of society, continued to be exercised by them as though no civil war had existed.

There was, therefore, a general expectation through-out the country, upon the cessation of actual hostilities, that these States would be restored to their former relations in the Union as soon as satisfactory evidence was furnished to the general government that resistance to its authority was overthrown and abandoned, and its laws were enforced and obeyed. Some little time might elapse before this result would clearly appear. It was not expected that they would be immediately restored upon the defeat of the armies of the Confederacy, nor that their public men, with the animosities of the struggle still alive, would at once be admitted into the councils of the nation, and allowed to participate in its government. But whenever it was satisfactorily established that there would be no renewal of the struggle and that the laws of the United States would be obeyed, it was generally believed that the restoration of the States would be an accomplished fact.

President Johnson saw in the institution of slavery the principal source of the irritation and ill-feeling between the North and the South, which had led to the war.[96] He believed, therefore, that its abolition should be exacted, and that this would constitute a complete guaranty for the future. At that time the amendment for its abolition, which had passed the two Houses of Congress, was pending before the States for their action.[97] He was of opinion, and so expressed himself in his first message to Congress, that its ratification should be required of the insurgent States on resuming their places in the family of the Union; that it was not too much, he said, to ask of them "to give this pledge of perpetual loyalty and peace." "Until it is done," he added, "the past, however much we may desire it, will not be forgotten. The adoption of the amendment re-unites us beyond all power of disruption. It heals the wound that is still imperfectly closed; it removes slavery, the element which has so long perplexed and divided the country; it makes of us once more a united people, renewed and strengthened, bound more than ever to mutual affection and support."

It would have been most fortunate for the country had this condition been deemed sufficient and been accepted as such. But the North was in no mood for a course so simple and just. Its leaders clamored for more stringent

measures, on the ground that they were needed for the protection of the freedmen, and the defeat of possible schemes for a new insurrection. It was not long, therefore, before a system of measures was adopted, which resulted in the establishment at the South of temporary governments, subject to military control, the offices of which were filled chiefly by men alien to the States and indifferent to their interests. The misrule and corruption which followed are matters of public history. It is no part of my purpose to speak of them. I wish merely to refer to the state of feeling existing upon the close of the civil war as introductory to what I have to say of the unfriendly disposition manifested at the North towards the Supreme Court and some of its members, myself in particular.

Acts of the military officers, and legislation of some of the States and of Congress, during and immediately succeeding the war, were soon brought to the consideration of the Court. Its action thereon was watched by members of the Republican party with manifest uneasiness and distrust. Its decision in the Dred Scott case had greatly impaired their confidence in its wisdom and freedom from political influences.[98] Many of them looked upon that decision as precipitating the war upon the country, by the sanction it gave to efforts made to introduce slavery into the Territories; and they did not hesitate to express their belief that the sympathies of a majority of the Court were with the Confederates. Intimations to that effect were thrown out in some of the journals of the day, at first in guarded language, and afterwards more directly, until finally it came to be generally believed that it was the purpose of the Court, if an opportunity offered, to declare invalid most of the legislation relating to the Southern States which had been enacted during the war and immediately afterwards. Nothing could have been more unjust and unfounded. Many things, indeed, were done during the war, and more after its close, which could not be sustained by any just construction of the limitations of the Constitution. It was to be expected that many things would be done in the heat of the contest which could not bear the examination of calmer times. Mr. Chief Justice Chase expressed this fact in felicitous language when speaking of his own change of views as to the validity of the provision of law making government notes a legal tender, he said: "It is not surprising that amid the tumult of the late civil war, and under the influence of apprehensions for the safety of the Republic almost universal, different views, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready justification in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent. Those who were strongly averse to making government notes a legal tender felt themselves constrained to acquiesce in the views of the advocates of the measure. Not a few who then insisted upon its necessity, or acquiesced in that view, have, since the return of peace, and under the influence of the calmer time, reconsidered this conclusion, and now concur in those which we have just announced."[99]

Similar language might be used with reference to other things done during the war and afterwards, besides making government notes a legal tender. The Court and all its members appreciated the great difficulties and responsibilities of the government, both in the conduct of the war, and in effecting an early restoration of the States afterwards, and no disposition was manifested at any time to place unnecessary obstacles in its way. But when its measures and legislation were brought to the test of judicial judgment there was but one course to pursue, and that was to apply the law and the Constitution as strictly as though no war had ever existed. The Constitution was not one thing in war, and another in peace. It always spoke the same language, and was intended as a rule for all times and occasions. It recognized, indeed, the possibility of war, and, of course, that the rules of war had to be applied in its conduct

in the field of military operations. The Court never presumed to interfere there, but outside of that field, and with respect to persons not in the military service within States which adhered to the Union, and after the war in all the States, the Court could not hesitate to say that the Constitution, with all its limitations upon the exercise of executive and legislative authority, was, what it declares on its face to be, the supreme law of the land, by which all, legislation, State and federal, must be measured.

The first case growing out of the acts of military officers during the war, which attracted general attention and created throughout the North an uneasy feeling, was the Milligan case, which was before the Court on habeas corpus.[100] In October, 1864, Milligan, a citizen of the United States and a resident of Indiana, had been arrested by order of the military commander of the district and confined in a military prison near the capital of the State. He was subsequently, on the 21st of the same month, put on trial before a military commission convened at Indianapolis, in that State, upon charges of: 1st. Conspiring against the government of the United States; 2d. Affording aid and comfort to the rebels against the authority of the United States; 3d. Inciting insurrection; 4th. Disloyal practices; and 5th. Violations of the laws of war; and was found guilty and sentenced to death by hanging. He had never been in the military service; there was no rebellion in Indiana; and the civil courts were open in that State and in the undisturbed exercise of their jurisdiction. The sentence of the military commission was affirmed by the President, who directed that it should be carried into immediate execution. The condemned thereupon presented a petition to the Circuit Court of the United States in Indiana for a writ of habeas corpus, praying to be discharged from custody, alleging the illegality of his arrest and of the proceedings of the military commission. The judges of the Circuit Court were divided in opinion upon the question whether the writ should be issued and the prisoner be discharged, which, of course, involved the jurisdiction of the military commission to try the petitioner. Upon a certificate of the division the case was brought to the Supreme Court at the December term of 1865. The case has become historical in the jurisprudence of the country, and it is unnecessary to state the proceedings at length. Suffice it to say that it was argued with great ability by eminent counsel—consisting of Mr. Joseph E. McDonald, now U.S. Senator from Indiana, Mr. James A. Garfield, a distinguished member of Congress, Mr. Jeremiah S. Black, the eminent jurist of Pennsylvania, and Mr. David Dudley Field, of New York, for the petitioner; and by Mr. Henry Stanbery, the Attorney-General, and Gen. B. F. Butler, for the government.[101] Their arguments were remarkable for learning, research, ability, and eloquence, and will repay the careful perusal not only of the student of law, but of all lovers of constitutional liberty. Only a brief synopsis of them is given in the report of the case in 4th Wallace. The decision of the Court was in favor of the liberty of the citizen. Its opinion was announced by Mr. Justice Davis, and it will stand as a perpetual monument to his honor.[102] It laid down in clear and unmistakable terms the doctrine that military commissions organized during the war, in a State not invaded nor engaged in rebellion, in which the federal courts were open and in the undisturbed exercise of their judicial functions, had no jurisdiction to try a citizen who was not a resident of a State in rebellion, nor a prisoner of war, nor a person in the military or naval service; and that Congress could not invest them with any such power; and that in States where the courts were thus open and undisturbed the guaranty of trial by jury contained in the Constitution was intended for a state of war as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances.

This decision was concurred in by Justices Nelson, Grier, Clifford, and myself, then constituting, with Justice Davis, a majority of the Court.[103] At this day it seems strange that its soundness should have been doubted by any

one, yet it was received by a large class—perhaps a majority of the Northern people—with disfavor, and was denounced in unmeasured terms by many influential journals. It was cited as conclusive evidence of the hostility of the Court to the acts of the government for the suppression of the rebellion. The following, taken from the *Daily Chronicle* of January 14th, 1867, a journal of Washington, edited by Mr. Forney, then Secretary of the Senate, is a fair sample of the language applied to the decision:[104]

> "The opinion of the Supreme Court on one of the most momentous questions ever submitted to a judicial tribunal, has not startled the country more by its far-reaching and calamitous results, than it has amazed jurists and statesmen by the poverty of its learning and the feebleness of its logic. It has surprised all, too, by its total want of sympathy with the spirit in which the war for the Union was prosecuted, and, necessarily, with those great issues growing out of it, which concern not only the life of the Republic, but the very progress of the race, and which, having been decided on the battlefield, are now sought to be reversed by the very theory of construction which led to rebellion."

At the same term with the Milligan case the test-oath case from Missouri was brought before the Court and argued.[105] In January, 1865, a convention had assembled in that State to amend its constitution. Its members had been elected in November previous. In April, 1865, the constitution, as revised and amended, was adopted by the convention, and in June following by the people. Elected, as the members were, in the midst of the war, it exhibited throughout traces of the animosities which the war had engendered. By its provisions the most stringent and searching oath as to past conduct

Field (seated at right) concurred in the *Milligan* decision, while Justice David Davis (seated, far left) wrote the majority opinion. "At this day it seems strange that [*Milligan*'s] soundness should have been doubted by anyone," wrote Field, "yet it was received by a large class—perhaps a majority of the Northern people—with disfavor, and was denounced in unmeasured terms by many influential journals."

known in history was required, not only of officers under it, but of parties holding trusts and pursuing avocations in no way connected with the administration of the government. The oath, divided into its separate parts, contained more than thirty distinct, affirmations touching past conduct, and even embraced the expression of sympathies and desires. Every person unable to take the oath was declared incapable of holding, in the State, "any office of honor, trust, or profit under its authority, or of being an officer, councilman, director, or trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority, or of acting as a professor or teacher in any educational institution, or in any common or other school, or of holding any real estate or other property in trust for the use of any church, religious society, or congregation."

And every person holding, at the time the amended constitution took effect, any of the offices, trusts, or positions mentioned, was required, within sixty days thereafter, to take the oath; and, if he failed to comply with this requirement, it was declared that his office, trust, or position should *ipso facto* become vacant.

No person, after the expiration of the sixty days, was permitted, without taking the oath, "to practice as an attorney or counsellor-at-law," nor, after that period could "any person be competent as a bishop, priest, deacon, minister, elder, or other clergyman, of any religious persuasion, sect, or denomination, to teach, or preach, or solemnize marriages."

Fine and imprisonment were prescribed as a punishment for holding or exercising any of "the offices, positions, trusts, professions, or functions" specified, without having taken the oath; and false swearing or affirmation in taking it was declared to be perjury, punishable by imprisonment in the penitentiary.

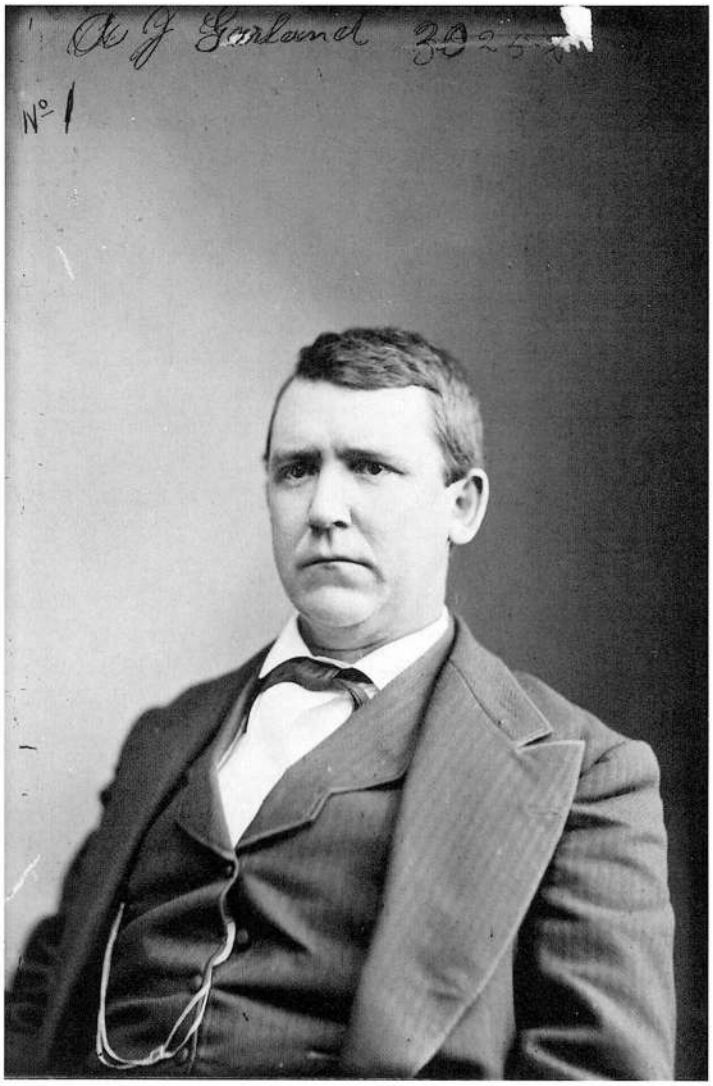
Mr. Cummings of Missouri, a priest of the Roman Catholic Church, was indicted and convicted in one of the Circuit Courts of that State, of the crime of teaching and preaching as a priest and minister of that religious denomination without having first taken the oath thus prescribed, and was sentenced to pay a fine of five hundred dollars and to be committed to jail until the same was paid. On appeal to the Supreme Court of the State the judgment was affirmed, and the case was brought on a writ of error to our court. It was there argued with great learning and ability by Mr. Montgomery Blair, of Washington, Mr. David Dudley Field, of New York, and Mr. Reverdy Johnson, of Maryland, for Mr. Cummings; and by Mr. G. P. Strong and Mr. John B. Henderson, of Missouri, the latter then United States Senator for the State.[106]

It was evident, after a brief consideration of the case, that the power asserted by the State of Missouri to exact this oath for past conduct from parties, as a condition of their continuing to pursue certain professions, or to hold certain trusts, might, if sustained, be often exercised in times of excitement to the oppression, if not ruin, of the citizen. For, if the State could require the oath for the acts mentioned, it might require it for any other acts of one's past life, the number and character of which would depend upon the mere will of its legislature. It might compel one to affirm, under oath, that he had never violated the ten commandments, nor exercised his political rights except in conformity with the views of the existing majority. Indeed, under this kind of legislation, the most flagrant wrongs might be committed and whole classes of people deprived, not only of their political, but of their civil rights.

It is difficult to speak of the whole system of expurgatory oaths for past conduct without a shudder at the suffering and oppression they were not only capable of effecting but often did effect. Such oaths have never been exacted in England, nor on the Continent of Europe; at least I can recall no instance of the kind. Test-oaths there have always been limited to an affirmation on matters of present belief, or as to present disposition towards those in power. It was reserved for the ingenuity of legislators in our country during the civil war to make test-oaths reach to past conduct.

The Court held that enactments of this character, operating, as they did, to deprive parties by legislative decree of existing rights for past conduct, without the formality and the safeguard of a judicial trial, fell within the inhibition of the Constitution against the passage of bills of attainder. In depriving parties of existing rights for past conduct, the provisions of the constitution of Missouri imposed, in effect, a punishment for such conduct. Some of the acts for which such deprivation was imposed were not punishable at the time; and for some this deprivation was added to the punishments previously prescribed, and thus they fell under the further prohibition of the Constitution against the passage of an *ex post facto* law. The decision of the Court, therefore, was for the discharge of the Catholic priest. The judgment against him was reversed, and the Supreme Court of Missouri was directed to order the inferior court by which he was tried to set him at liberty.

Immediately following the case of Cummings that of *Ex-parte* Garland was argued, involving the validity of the iron-clad oath, as it was termed, prescribed for attorneys and



Field delivered the Court's opinion in *Ex parte Garland*, which overturned an act of Congress requiring former Confederate attorneys to take an oath of loyalty to the Union in order to practice before federal courts. The plaintiff in the case, A. H. Garland (left), was a senator from Arkansas who had received a presidential pardon for holding office in the Confederate government.

counsellors-at-law by the act of Congress of January 24th, 1865.[107] Mr. A. H. Garland, now United States Senator from Arkansas, had been a member of the Bar of the Supreme Court of the United States before the civil war.[108] When Arkansas passed her ordinance of secession and joined the Confederate States, he went with her, and was one of her representatives in the Congress of the Confederacy. In July, 1865, he received from the President a full pardon for all offences committed by his participation, direct or implied, in the rebellion. At the following term of the Court he produced his pardon and asked permission to continue to practice as an attorney and counsellor without taking the oath required by the act of Congress, and the rule of the Court made in conformity with it, which he was unable to take by reason of the offices he had held under the Confederate government. The application was argued by Mr. Matthew H. Carpenter, of Wisconsin, and Mr. Reverdy Johnson, of Maryland, for the petitioner—Mr. Garland and Mr. Marr, another applicant for admission, who had participated in the rebellion, filing printed arguments—and by Mr. Speed, of Kentucky, and Mr. Henry Stanbery, the Attorney-General, on the other side. The whole subject of expurgatory oaths was discussed, and all that could be said on either side was fully and elaborately presented.[109]

The Court in its decision followed the reasoning of the Cummings case and held the law invalid, as applied to the exercise of the petitioner's right to practice his profession that such right was not a mere indulgence, a matter of grace and favor, revocable at the pleasure of the Court, or at the command of the legislature; but was a right of which the petitioner could be deprived only by the judgment of the Court for moral or professional delinquency. The Court also held that the pardon of the petitioner released him from all penalties and disabilities attached to the offence of treason committed by his participation in the rebellion, and that, so far as that offence was concerned, he was placed beyond the reach of punishment of any kind. But to exclude him by reason of that offence—that is, by requiring him to take an oath that he had never committed it—was to enforce a punishment for it notwithstanding the pardon; and that it was not within the constitutional power of Congress thus to inflict punishment beyond the reach of executive clemency.

I had the honor to deliver the opinion of the Court in these cases—the Cummings case and the Garland case. At the present day both opinions are generally admitted to be sound, but when announced they were received by a portion of the Northern Press with apparent astonishment and undisguised condemnation. It is difficult to appreciate at this day the fierceness with which the majority of the Court was assailed. That majority consisted of Justices Wayne, Nelson, Grier, Clifford, and myself.[110] I was particularly taken to task, however, as it was supposed—at least I can only so infer from the tone of the Press—that because I had been appointed by Mr. Lincoln, I was under some sort of moral obligation to support all the measures taken by the States or by Congress during the war. The following, respecting the opinion in the Garland case, from the editor of the *Daily Chronicle,* of Washington, to the *Press,* of Philadelphia, under date of January 16, 1867, is moderate in its language compared with what appeared in many other journals:

> "Dred Scott Number Three has just been enacted in the Supreme Court of the United States, Justice Field, of California, taking the leading part as the representative of the majority decision against the constitutionality of the iron-clad test-oath, to prevent traitors from practicing before that high tribunal. I understand it takes the ground that, as the law is a living or profession, the oath cannot be insisted upon to take that living away, and that the President's pardon restores all such rights. The country has been repeatedly admonished that

such a decision would be made about this time; nevertheless, a very considerable sensation was created when it was officially enunciated. All these movements are but preparations for a counter-revolution in the interest of slavery and treason."—"I learn that the opinion of Justice Field against the test-oath, like that against military trials in time of war, goes outside of the immediate case in issue, and indulges in a fierce onslaught upon test-oaths in general. If so, it will only add another reason for such a re-organization as will prevent the judges in the last resort from becoming the mere agents of party, or the mere defenders of rebellion. The adage constantly quoted, yet never out of fashion, that 'Whom the Gods wish to destroy they first make mad,' is having a pointed illustration in these successive judicial assaults upon the rights of the people. Although the Supreme Judges hold for life, there is at once precedent, necessity, and law for such a change in the present system as will in a short time make it a fearless interpreter of republican institutions, instead of the defender and apologist of treason."

The decisions were announced on the 14th of January, 1867. On the 22d of the month, Mr. Boutwell, from Massachusetts, introduced a bill into the House far more stringent in its provisions than the act of Congress just declared invalid.[111] It was a pitiable exhibition of hate and vengeance against all persons who had been engaged, directly or indirectly, in the rebellion. It declared that no person who had been thus engaged should be permitted to act as an attorney and counsellor in any courts of the United States; and made it the duty of the judges, when it was suggested in open court, or when they had reason to believe that any person was thus debarred, to enquire and ascertain whether he had been so engaged, and if the court was of opinion that such was the fact, he was to be excluded. The court was thus, upon the suggestion of any one, to be turned into a tribunal for the summary trial of the accused without the ordinary safeguards for the protection of his rights. In introducing it Mr. Boutwell, referring to the decision of the Court, said that—

> "If there be five judges upon the bench of the highest tribunal who have not that respect for themselves to enact rules, and to enforce proper regulations, by which they will protect themselves from the contamination of conspirators and traitors against the government of the country, then the time has already arrived when the legislative department of the government should exercise its power to declare who shall be officers of the government in the administration of the law in the courts of the Union; and this bill is for that purpose."

And he called for the previous question upon it. In subsequently advocating its passage, he said:

> "I say here upon my responsibility, with reference to the recent decision of the Supreme Court, that it is an offence to the dignity and respectability of the nation that this tribunal, under the general authority vested in it under the Constitution and laws, does not protect itself from the contamination of rebels and traitors, until the rebellion itself shall be suppressed and those men shall be restored to their former rights as citizens of the country."

This language was used in 1867, and the last gun of the war had been fired in May, 1865. It showed the irritation of violent partisans of the North against the Court because it gave no sanction to their vindictive and proscriptive measures.

The bill was passed, under a suspension of the rules, by a vote of 111 to 40.[112]

The Reconstruction Acts, so-called—that is, "An act to provide for the more efficient government of the rebel States," of March 2d, 1867, and An act of the 23d of the same month, supplementary to the former—were at once attacked, as may well be supposed, as invalid, unconstitutional, and arbitrary measures of the government; and various steps were taken at an early day to bring them to the test of judicial examination and arrest their enforcement. Those acts divided the late insurgent States, except Tennessee, into five military districts, and placed them under military control to be exercised until constitutions, containing various provisions stated, were adopted and approved by Congress, and the States declared to be entitled to representation in that body. In the month of April following the State of Georgia filed a bill in the Supreme Court, invoking the exercise of its original jurisdiction, against Stanton, Secretary of War, Grant, General of the Army, and Pope, Major-General, assigned to the command of the Third Military District, consisting of the States of Georgia, Florida, and Alabama; to restrain those officers from carrying into effect the provisions of those acts. The bill set forth the existence of the State of Georgia as one of the States of the Union; the civil war in which she, with other States forming the Confederate States, had been engaged with the government of the United States; the surrender of the Confederate armies in 1865, and her submission afterwards to the Constitution and laws of the Union; the withdrawal of the military government from Georgia by the President as Commander-in-Chief of the Army of the United States; the re-organization of the civil government of the State under his direction and with his sanction; and that the government thus re-organized was in the full possession and enjoyment of all the rights and privileges, executive, legislative, and judicial, belonging to a State in the Union under the Constitution, with the exception of a representation in the Senate and House of Representatives. The bill alleged that the acts were designed to overthrow and annul the existing government of the State, and to erect another and a different government in its place, unauthorized by the Constitution and in defiance of its guarantees; that the defendants, acting under orders of the President, were about to set in motion a portion of the army to take military possession of the State, subvert her government, and subject her people to military rule. The presentation of this bill and the Argument on the motion of the Attorney-General to dismiss it produced a good deal of hostile comment against the Judges, which did not end when the motion was granted. It was held that the bill called for judgment upon a political question, which the Court had no jurisdiction to entertain.[113]

Soon afterwards the validity of the Reconstruction Acts was again presented in the celebrated McArdle case, and in such a form that the decision of the question could not well be avoided.[114] In November, 1867, McArdle had been arrested and held in custody by a military commission organized in Mississippi under the Reconstruction Acts, for trial upon charges of (1) disturbance of the public peace; (2) inciting to insurrection, disorder, and violence; (3) libel; and (4) impeding reconstruction. He thereupon applied to the Circuit Court of the United States for the District of Mississippi for a writ of habeas corpus, in order that he might be discharged from his alleged illegal imprisonment. The writ was accordingly issued, but on the return of the officer showing the authority under which the petitioner was held, he was ordered to be remanded. From that judgment he appealed to the Supreme Court. Of course, if the Reconstruction Acts were invalid, the petitioner could not be held, and he was entitled to his discharge. The case excited great interest throughout the country. Judge Sharkey and Robert J. Walker, of Mississippi, David Dudley Field and Charles O'Conor, of New York, and Jeremiah S. Black, of Pennsylvania, appeared for the appellant; and Matthew H. Carpenter, of Wisconsin, Lyman

Trumbull, of Illinois, and Henry Stanbery, the Attorney-General, appeared for the other side.[115] The hearing of it occupied four days, and seldom has it been my fortune during my judicial life, now (1877) of nearly twenty years, to listen to arguments equal in learning, ability, and eloquence. The whole subject was exhausted. As the arguments were widely published in the public journals, and read throughout the country, they produced a profound effect. The impression was general that the Reconstruction Acts could not be sustained; that they were revolutionary and destructive of a republican form of government in the States, which the Constitution required the Federal government to guarantee. I speak now merely of the general impression. I say nothing of the fact, as the Court never expressed its opinion in judgment. The argument was had on the 2d, 3d, 4th, and 9th of March, 1868, and it ought to have been decided in regular course of proceedings when it was reached on the second subsequent consultation day, the 21st. The Judges had all formed their conclusions, and no excuse was urged that more time was wanted for examination. In the meantime an act was quietly introduced into the House, and passed, repealing so much of the law of February 5th, 1867, as authorized an appeal to the Supreme Court from the judgment of the Circuit Court on writs of *habeas corpus,* or the exercise of jurisdiction on appeals already taken. The President vetoed the bill, but Congress passed it over his veto, and it became a law on the 27th of the month.[116] Whilst it was pending in Congress the attention of the Judges was called to it, and in consultation on the 21st they postponed the decision of the case until it should be disposed of. It was then that Mr. Justice Grier wrote the following protest, which he afterwards read in Court:

> In re Protest of Mr. Justice Grier
> McArdle
>
> This case was fully argued in the beginning of this month. It is a case that involves the liberty and rights not only of the appellant, but of millions of our fellow-citizens. The country and the parties had a right to expect that it would receive the immediate and solemn attention of this Court. By the postponement of the case we shall subject ourselves, whether justly or unjustly, to the imputation that we have evaded the performance of a duty imposed on us by the Constitution, and waited for legislation to interpose to supersede our action and relieve us from our responsibility. I am not willing to be a partaker either of the eulogy or opprobrium that may follow; and can only say:
>
> "Pudet haec opprobria nobis,
> Et dici potuisse;
> et non potuisse repelli."[117]
>
> R. C. Grier.
>
> I am of the same opinion with my brother Grier, and unite in his protest.
>
> Field, J.

After the passage of the repealing act, the case was continued; and at the ensuing term the appeal was dismissed for want of jurisdiction.[118]

The record had been filed early in the term, and, as the case involved the liberty of the citizen, it was advanced on the calendar on motion of the appellant. From that time until its final disposition the Judges were subjected to close observation, and most of them to unfriendly comment. Their every action and word were watched and canvassed as though national interests depended upon them. I was myself the subject of a most extraordinary exhibition of feeling on the part of members of the lower house of Congress, the immediate cause of which was a circumstance calculated to provoke merriment. Towards the close of January, 1868, I was invited to a dinner given by Mr. Samuel Ward to the Secretary of the Treasury, Mr. McCullough.[119] It was understood that the dinner was to be one of unusual

excellence, and that gentlemen of distinction in Congress would be present. As some of the invited guests desired to go to New York on the same evening, the hour was fixed at five. A distinguished party assembled at that time at the rooms of Welcker, a noted restaurateur in Washington. Our host, Mr. Ward, was a character deserving of special notice. He had been a member of the noted firm of bankers, Prime, Ward & King, of New York; and after-wards represented our government in Brazil. He was an accomplished linguist, familiar with several languages, ancient and modern. He was a profound mathematician, and had read, without the assistance of Bowditch's translation, Laplace's celebrated work, the "Mécanique Céleste." He passed most of his time during the sessions of Congress in Washington, looking after the interests of bankers and others in New York, as they might be affected by pending legislation. Though called "King of the Lobby," he had little of the character of the lobbyist. He was a gentleman in manners and education, and as such he always drew the company of gentlemen to his entertainments. On the occasion mentioned, some of the brightest spirits of Congress were present. As we took our seats at the table I noticed on the menu a choice collection of wines, Johannisberg among others. The dinner was sumptuous and admirably served. Our host saw that the appropriate wine accompanied the successive courses. As the dinner progressed, and the wine circulated, the wit of the guests sparkled. Story and anecdote, laughter and mirth abounded, and each guest seemed joyous and happy. At about eight song had been added to other manifestations of pleasure. I then concluded that I had better retire. So I said to my host, that if he would excuse me, I would seek the open air; and I left.

Just at this moment Mr. Rodman M. Price, formerly Governor of New Jersey, made his appearance and exclaimed, "How is this? I was invited to dinner at eight"—producing his card of invitation. "Look again," said Ward, "and you will see that your eight is a five." And so it was, "But never mind," said Ward; "the dinner is not over. Judge Field has just left. Take his seat." And so Price took my place. He had been travelling in the Southern States, and had been an observer of the proceedings of various State conventions then in session to frame constitutions under the Reconstruction Acts, which he termed "Congo Conventions." To the amusement of the party he gave an account of some curious scenes he had witnessed in these conventions; and wound up one or two of his stories by expressing his opinion that the whole reconstruction measures would soon be "smashed up" and sent to "kingdom come "by the Supreme Court. The loud mirth and the singing attracted the attention of news-hunters

Newspapers reported in 1868 that Justice Field, while attending a dinner party for members of Congress, publicly condemned the reconstruction measures taken by Congress while such measures were under review by the Supreme Court. In fact, Field had left the dinner early, and former New Jersey Governor Rodman M. Price (pictured) had taken his seat. (A waiter erroneously identified the vehement speaker to the press from the name on his seat's place card.) Judiciary Committee charges against Field were dropped once the matter was investigated.

for the Press—item gatherers in the rooms below. Unfortunately one of these gentlemen looked into the banquet-hall just as Price had predicted the fate of the reconstruction measures at the hands of the Supreme Court. He instantly smelt news, and enquired of one of the waiters the name of the gentleman who had thus proclaimed the action of the Court. The waiter quietly approached the seat of the Governor, and, whilst he was looking in another direction, abstracted the card near his plate which bore my name. Here was, indeed, a grand item for a sensational paragraph. Straightway the newsgatherer communicated it to a newspaper in Washington, and it appeared under an editorial notice. It was also telegraphed to a paper in Baltimore. But it was too good to be lost in the columns of a newspaper. Mr. Scofield, a member of Congress from Pennsylvania, on the 30th of January, 1868, asked and obtained unanimous consent of the House to present the following preamble and resolution:

> "Whereas it is editorially stated in the *Evening Express,* a newspaper published in this city, on the afternoon of Wednesday, January 29, as follows: 'At a private gathering of gentlemen of both political parties, one of the Justices of the Supreme Court spoke very freely concerning the reconstruction measures of Congress, and declared in the most positive terms that all those laws were unconstitutional, and that the Court would be sure to pronounce them so. Some of his friends near him suggested that it was quite indiscreet to speak so positively; when he at once repeated his views in a more emphatic manner; ' and whereas several cases under said reconstruction measures are now pending, in the Supreme Court: Therefore, be it—
>
> "*Resolved*, That the Committee on the Judiciary be directed to enquire into the truth of the declarations therein contained, and report whether the facts as ascertained constitute such a misdemeanor in office as to require this House to present to the Senate articles of impeachment against said Justice of the Supreme Court; and that the committee have power to send for persons and papers, and have leave to report at any time."

An excited debate at once sprung up in the House, and in the course of it I was stated to be the offending Justice referred to. Thereupon the members for California vouched for my loyalty during the war. Other members wished to know whether an anonymous article in a newspaper was to be considered sufficient evidence to authorize a committee of the House to enquire into the private conversation of members of the Supreme Court. The mover of the resolution, Mr. Scofield, declared that he knew nothing of the truth of the statement in the paper, but deemed it sufficient authority for his action, and moved the previous question on the resolution. Several of the members protested against the resolution, declaring that it was unworthy of the House to direct an investigation into the conduct of a judicial officer upon a mere newspaper statement. But it was of no use. The resolution was adopted by a vote of 97 to 57—34 not voting. Some members, indeed, voted for its passage, stating that it was due to myself that I should be vindicated from the charge implied in the debate; the force of which reason I have never been able to appreciate.

The resolution was evidently intended to intimidate me, and to act as a warning to all the Judges as to what they might expect if they presumed to question the wisdom or validity of the reconstruction measures of Congress. What little effect it had on me my subsequent course in the McArdle case probably showed to the House. I had only one feeling for the movement—that of profound contempt; and I believe that a similar feeling was entertained by

every right-thinking person having any knowledge of the proceeding.

The facts of the case soon became generally known, and created a good deal of merriment in Washington. But all through the country the wildest stories were circulated. Communications of a sensational character relating to the matter were published in the leading journals. Here is one which appeared in the New York *Evening Post* from its correspondent:

> "It is the intention of the committee to examine the matter thoroughly, and in view of this a large number of witnesses have been summoned to appear on Friday.
>
> "The friends of Justice Field are endeavoring to hush the matter up, and, if possible, to avert an investigation; but in this they will be disappointed, for the members of the Judiciary Committee express themselves firmly determined to sift the case, and will not hesitate to report articles of impeachment against Justice Field if the statements are proved."

Other papers called for the strictest scrutiny and the presentation of articles of impeachment, representing that I was terribly frightened by the threatened exposure. So for some months I was amused reading about my supposed terrible excitement in anticipation of a threatened removal from office. But, as soon as the author of the objectionable observations was ascertained, the ridiculous nature of the subsequent proceedings became manifest. The Chairman of the Judiciary Committee, Mr. Wilson, of Iowa, occupied a seat next to me at Mr. Ward's dinner, and knew, of course, that, so far as I was concerned, the whole story was without foundation. And so he said to his associates on the Judiciary Committee.

Near the close of the session—on June 18th, 1868—the committee were discharged from the further consideration of the resolution, and it was laid on the table—a proceeding which was equivalent to its indefinite postponement.

The amusing mistake which gave rise to this episode in the lower house of Congress would be unworthy of the notice I have taken of it, except that it illustrates the virulent and vindictive spirit which occasionally burst forth for some time after the close of the war, and which, it is to be greatly regretted, is not yet wholly extinguished.

The Moulin Vexation

Soon after my appointment to the Bench of the U.S. Supreme Court, I had a somewhat remarkable experience with a Frenchman by the name of Alfred Moulin. It seems that this man, sometime in the year 1864 had shipped several sacks of onions and potatoes on one of the mail steamers, from San Francisco to Panama. During the voyage the ship's store of fresh provisions ran out, and the captain appropriated the vegetables, and out of this appropriation originated a long and bitter prosecution, or rather persecution, on the part of Moulin, who proved to be not only one of the most malignant, but one of the most persevering and energetic men I have ever known.

Upon the return of the steamer from Panama to San Francisco, Moulin presented himself at the steamship company's office, and complained, as he properly might, of the appropriation of his property, and demanded compensation. The company admitted his claim and expressed a willingness to make him full compensation; but when it came to an adjustment of it, Moulin preferred one so extravagant that it could not be listened to. The property at the very most was not worth more than one or two hundred dollars, but Moulin demanded thousands; and when this was refused, he threatened Messrs. Forbes and Babcock, the agents of the company, with personal violence. These threats he repeated from time to time for two or three years, until at length becoming annoyed and alarmed by his fierce manner, they applied to the police court and had him bound over to keep the peace.

Notwithstanding he was thus put upon his good behavior, Moulin kept continually making his appearance and reiterating his demands at the steamship company's office. Forbes and Babcock repeatedly told him to go to a lawyer and commence suit for his claim; but Moulin refused to do so, saying that he could attend to his own business as well as, and he thought better than, any lawyer. At length, to get rid of further annoyance, they told him he had better go to New York and see Mr. Aspinwall, the owner of the vessel, about the matter; and, to enable him to do so, gave him a free ticket over the entire route from San Francisco to that city.[120]

Upon arriving in New York, Moulin presented himself to Mr. Aspinwall and asked that his claim should be allowed. Mr. Aspinwall said that he knew nothing about his claim and that he did not want to be bothered with it. Moulin still insisted, and Mr. Aspinwall told him to go away. Moulin thereupon became excited, said he was determined to be paid, and that he would not be put off. He thereupon commenced a regular system of annoyance. When Mr. Aspinwall started to go home from his office, Moulin walked by his side along the street. When Aspinwall got into an omnibus, Moulin got in also; when Aspinwall got out, Moulin got out too. On the following morning, when Aspinwall left his residence to go to his office, Moulin was on hand, and taking his place, marched along by his side as before. If Aspinwall hailed an omnibus and got in, Moulin got in at the same time. If Aspinwall got out and hailed a private carriage, Moulin got out and hailed another carriage, and ordered the driver to keep close to Mr. Aspinwall's carriage. In fact, wherever Aspinwall went Moulin went also, and it seemed as if nothing could tire him out or deter him from his purpose.

At length Mr. Aspinwall, who had become nervous from the man's actions, exclaimed, "My God, this man is crazy; he will kill me;" and calling him into the office, asked him what he wanted in thus following and persecuting him. Moulin answered that he wanted pay for his onions and potatoes. Aspinwall replied, "But I don't know anything about your onions and potatoes; how should I? Go back to my agents in California, and they will do what is right. I will direct them to do so." "But," said Moulin, "I have no ticket to go to California;" and thereupon Aspinwall gave him a free ticket back to San Francisco. Moulin departed, and in due course of time again presented himself to Forbes and Babcock, in San Francisco. At the re-appearance of the man, they were more annoyed than ever; but finally managed to induce him to commence a suit in the United States District Court. When the case was called, by an understanding between his lawyer and the lawyer of the steamship company, judgment was allowed to be entered in Moulin's favor for four hundred and three dollars and a half, besides costs. The amount thus awarded greatly exceeded the actual value of the onions and potatoes appropriated. It was thought by the defendant that on the payment of so large a sum, the whole matter would be ended. But Moulin was very far from being satisfied. He insisted that the judgment ought to have been for three thousand and nine hundred dollars, be-sides interest, swelling the amount to over six thousand dollars, and applied to Judge Hoffman of the District Court to set it aside. But as the judgment had been rendered for the full value of the property taken, as admitted by his lawyer, the Judge declined to interfere. This was in 1861.[121]

In 1863 I received my appointment as Judge of the Supreme Court of the United States, and was assigned to the circuit embracing the district of California. Moulin then appealed to the Circuit Court from the judgment in his favor, and at the first term I held, a motion was made to dismiss the appeal. I decided that the appeal was taken too late, and dismissed it. Moulin immediately went to Mr. Gorham, the clerk of the court, for a copy of the papers, insisting that there was something wrong in the decision. Gorham asked him what he meant, and he replied that I had no right

to send him out of court, and that there was something wrong in the matter, but he could not tell exactly what it was. At this insinuation, Gorham told him to leave the office, and in such a tone, that he thought proper to go at once and not stand upon the order of his going. The following year, after Mr. Delos Lake had been appointed United States District Attorney, Moulin went to his office to complain of Gorham and myself; but Lake, after listening to his story, told him to go away. Two or three years afterwards he again presented himself to Lake and demanded that Judge Hoffman, Gorham, and myself should be prosecuted. Lake drove him a second time from his office; and thereupon he went before the United States Grand Jury and complained of all four of us. As the grand jury, after listening to his story for a while, dismissed him in disgust, he presented himself before their successors at a subsequent term and complained of them. From the Federal Court he proceeded to the State tribunals; and first of all he went to the County Court of San Francisco with a large bundle of papers and detailed his grievances against the United States judges, clerks, district attorney and grand jury. Judge Stanley, who was then county judge, after listening to Moulin's story, told the bailiff to take possession of the papers, and when he had done so, directed him to put them into the stove, where they were soon burned to ashes. Moulin then complained of Stanley. At the same time, one of the city newspapers, the "Evening Bulletin," made some comments upon his ridiculous and absurd proceedings, and Moulin at once sued the editors. He also brought suit against the District Judge, District Attorney and his assistant, myself, the clerk of the court, the counsel against him in the suit with the steamship company and its agents, and numerous other parties who had been connected with his various legal movements. And whenever the United States Grand Jury met, he besieged it with narratives of his imaginary grievances; and, when they declined to listen to him, he complained of them. The courts soon became flooded with his voluminous and accumulated complaints against judges, clerks, attorneys, jurors, editors, and, in fact, everybody who had any connection with him, however remote, who refused to listen to them and accede to his demands. By this course Moulin attracted a good deal of attention, and an inquiry was suggested and made as to whether he was *compos mentis*. The parties who made the inquiry reported that he was not insane, but was actuated by a fiendish malignity, a love of notoriety and the expectation of extorting money by blackmail. For years—indeed until September, 1871—he continued to besiege and annoy the grand juries of the United States courts with his imaginary grievances, until he became an intolerable nuisance. His exemption from punishment had emboldened him to apply to the officers of the court—the judges, clerks, and jurors—the most offensive and insulting language. Papers filled with his billingsgate were scattered all through the rooms of the court, on the desks of the judges, and on the seats of jurors and spectators. It seemed impossible, under existing law, to punish him, for his case did not seem to fall within the class of contempts for which it provided. But in September of 1871 his insolence carried him beyond the limits of impunity. In that month he came to the United States Circuit Court, where Judge Sawyer (then United States Circuit Judge) and myself were sitting, and asked that the grand jury which was about to be discharged might be detained; as he proposed to have us indicted for corruption, and commenced reading a long string of vituperative and incoherent charges of criminal conduct. The proceeding was so outrageous that we could not overlook it.[122] We accordingly adjudged him guilty of contempt, fined him five hundred dollars, and ordered him to be committed to prison until the fine should be paid. Whilst in prison, and not long after his commitment, he was informed that upon making a proper apology for his conduct, he would be discharged. Instead, however, of submitting to this course, he commenced writing abusive articles to the newspapers, and sending

petitions to the Legislature charging us with arbitrary and criminal conduct. His articles were of such a character as to create quite erroneous impressions of our action. The newspapers, not waiting to ascertain the facts, at first took sides with him and assailed us. These attacks, of course, had no effect upon the man's case; but, after he had remained in prison for several weeks, on understanding that his health was infirm, and being satisfied that he had been sufficiently punished, we ordered his discharge.

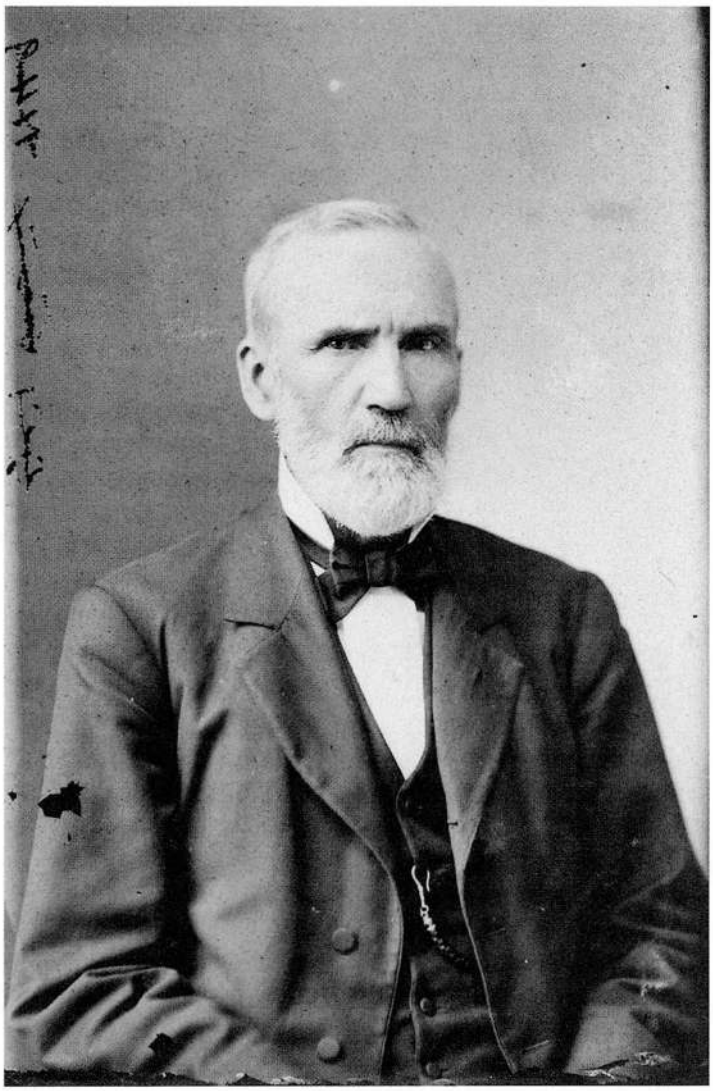
The Hastings Malignity

Whilst the Moulin matter was in progress, an individual by the name of William Hastings was practicing before the United States Courts. He had been, as I am told, a sailor, and was then what is known as a "sailor's lawyer." He was a typical specimen of that species of the profession called, in police court parlance, "shysters." He was always commencing suits for sailors who had wrongs to redress, and particularly for steerage passengers who complained that they had not had sufficient accommodations and proper fare. He generally took their cases on speculation, and succeeded very often in forcing large sums from vessels libelled [sic], as he was generally careful to bring his actions so as to arrest the vessels on the eve of their departure, when the payment of a few hundred dollars was a much cheaper mode of proceeding for the captains than detention even for a few days.

But in one of his suits in the United States District Court, in the year 1869, brought for a steerage passenger against a vessel from Australia, the captain declined to be blackmailed and defended himself. When the matter came on for hearing, Hastings was found to have no cause of action, and the case was thereupon dismissed by Judge Hoffman. Hastings then appealed to the United States Circuit Court, and that court affirmed the judgment of the District Court. This happened as I was about leaving for Europe; and I left supposing that I had heard the last of the case.

During my absence, Hastings moved Judge Hoffman, of the United States District Court, from whose decision the appeal had been taken, to vacate the decision of the United States Circuit Court. This, of course, Judge Hoffman refused. Hastings thereupon made a motion that my decision should be set aside, on the ground that it was rendered by fraud and corruption. When Judge Hoffman became aware of the charges thus made, he was indignant and immediately cited Hastings before him to show cause why he should not be disbarred and punished for contempt. Hastings refused to make any explanation or withdraw his offensive language; and thereupon Judge Hoffman expelled him from the bar and ordered his name to be stricken from the roll of attorneys. I was then absent in Europe, and knew nothing whatever of the proceedings.

About this time Mr. George W. Julian, a member of Congress from Indiana, came to California and pretended to be a great friend of the settlers.[123] He obtained the confidence of that large class of the community, and especially of those who were known as the Suscol claimants.[124] These were the men who, upon the rejection by the United States Supreme Court of the so-called Suscol grant, in Napa and Solano Counties, rushed in and squatted upon the most valuable land in the State. The title to this land had previously been considered as good as any in California; it had been held valid by the local tribunals, and also by the Board of Land Commissioners and by the District Court of the United States. On the strength of these confirmations the land had been divided into farms, upon which, besides cultivated fields, there were numerous orchards, vineyards, gardens, and two cities, each of which had been the capital of the State. The farms and city lots had been sold, in good faith, to purchasers at full value. But when the question came before the United States Supreme Court, and it appeared that the grant had been made to General Vallejo, in consideration of military services, and for moneys advanced to the Mexican government, and not for



Representative George W. Julian of Indiana (left) disputed the Supreme Court of California's denial of a land claim by squatters in the Napa and Solano counties, then considered the most valuable land in California. Julian charged Field and Chief Justice Hoffman with corruption before the Senate Judiciary Committee, but the charge was found to be without basis.

colonization purposes, it was held that there was no authority under the Mexican laws for such a disposition of the public domain, and that the grant was, therefore, invalid.[125] At the same time Judge Grier filed a dissenting opinion, in which he expressed a hope that Congress would not allow those who had purchased in good faith from Vallejo, and expended their money in improving the land, to be deprived of it.[126]

Congress at once acted upon the suggestion thus made and passed an act allowing the grantees of Vallejo to purchase the lands occupied by them at a specified sum per acre. Mr. John B. Frisbee, Vallejo's son-in-law, who had bought and sold large quantities, took immediate steps to secure himself and his grantees by purchasing the lands and obtaining patents for them. In the meanwhile the squatters had located themselves all over the property; most of them placing small shanties on the land in the night-time, near the houses, gardens, and vineyards, and on cultivated fields of the Vallejo grantees. They then filed claims in the Land Office as pre-emptioners, under the general land laws of the United States, and

insisted that, as their settlements were previous to the act of Congress, their rights to the land were secure. In this view Julian, when he came to California, encouraged them, and, as was generally reported and believed, in consideration of a portion of the land to be given to him in case of success, undertook to defend their possessions.[127]

When Frisbie applied, under the provisions of the act of Congress, for a patent to the land, a man named Whitney, one of the squatters, protested against its issue, on the ground that under the pre-emption laws he, Whitney, having settled upon the land, had acquired a vested right, of which Congress could not deprive him. But the Land Department took a different view of the matter and issued the patent to Frisbie. Whitney thereupon commenced a suit against Frisbie in the Supreme Court of the District of Columbia to have him declared a trustee of the land thus patented, and to compel him, as such trustee, to execute a conveyance to the complainant. The Supreme Court of the District of Columbia decided the case in favor of Whitney, and ordered Frisbie to execute a conveyance; but on appeal to the Supreme Court the decision was reversed; and it was held that a pre-emptioner did not acquire any vested right as against the United States by making his settlement, nor until he had complied with all the requirements of the law, including the payment of the purchase-money; and that until then Congress could reserve the land from settlement, appropriate it to the uses of the government, or make any other disposition thereof which it pleased. The court, therefore, adjudged that the Suscol act was valid, that the purchasers from Vallejo had the first right of entry, and that Frisbie was accordingly the owner of the land purchased by him. Soon after the decision was rendered Julian rose in his seat in the House of Representatives and denounced it as a second Dred Scott decision, and applied to the members of the court remarks that were anything but complimentary. It so happened that previous to this decision a similar suit had been decided in favor of Frisbie by the Supreme Court of California, in which a very able and elaborate opinion was rendered by the Chief Justice. I did not see the opinion until long after it was delivered, and had nothing whatever to do with it; but in some way or other, utterly inexplicable to me, it was rumored that I had been consulted by the Chief Justice with respect to that case, and that the decision had been made through my instrumentality. With this absurd rumor Hastings, after he had been disbarred by Judge Hoffman, went on to Washington. There he joined Julian; and after concocting a long series of charges against Judge Hoffman and myself, he placed them in Julian's hands, who took charge of them with alacrity. The two worthies were now to have their vengeance—Hastings for his supposed personal grievances and Julian for the Suscol decision, which injured his pocket.

These charges on being signed by Hastings were presented to Congress by Julian; and at his request they were referred to the Judiciary Committee. That committee investigated them, considered the whole affair a farce, and paid no further attention to it. But the next year Mr. Holman, of Indiana, who succeeded Julian, the latter having failed of a re-election, re-introduced Hastings' memorial at Julian's request and had it referred to the Judiciary Committee, with express instructions to report upon it.[128] Hastings appeared for the second time before that committee and presented a long array of denunciatory statements, in which Judge Hoffman, myself, and others were charged with all sorts of misdemeanors. The committee permitted him to go to any length he pleased, untrammelled by any rules of evidence; and he availed himself of the license to the fullest extent. There was hardly an angry word that had been spoken by a disappointed or malicious litigant against whom we had ever decided, that Hastings did not rake up and reproduce; and there was hardly an epithet or a term of villification which he did not in some manner or other manage to lug into his wholesale charges. As a specimen of his incoherent and wild ravings, he charged that

"the affairs of the federal courts for the District of California were managed principally in the interests of foreign capitalists, and their co-conspirators, and that the judges thereof appeared to be under the control of said foreign capitalists, and that the said courts and the process thereof were being used or abused to deprive the government of the United States and the citizens thereof of the property that legally and equitably belonged to them respectively, and to transfer the same, in violation of law and through a perversion of public justice, to said foreign capitalists and their confederates and co-conspirators, and that nearly the whole of the sovereign powers of the State were under the control and management of said foreign capitalists and their confederates and co-conspirators;" and he alleged that he "was aware of the existence in the United States of a well-organized, oath-bound band of confederated public officials who are in league with the subjects of foreign powers, and who conspire against the peace, prosperity, and best interests of the United States, and who prey upon and plunder the government of the United States and the city and county governments thereof, and also upon private citizens, and who now are carrying into practice gigantic schemes of plunder through fraud, usurpation, and other villainy, in order to enrich themselves, bankrupt the nation, and destroy our government, and that their power is so great that they can and do obstruct the administration of public justice, corrupt its fountains, and paralyze to some extent the sovereign powers of the government of the United States and the people thereof." The Judiciary Committee after having patiently listened to this rigmarole, absurd and ludicrous as it was, unanimously reported that Hastings' memorial should be laid upon the table and the committee discharged from any further consideration of the subject. The House adopted the report, and, so far as Congress was concerned, there the matter dropped. But in the meanwhile it had been telegraphed all over the country that articles of impeachment were pending against the judges, and sensational newspaper articles appeared in different parts of the country. Some expressed regret that the conduct of the judges had been of a character to necessitate such proceedings. Others said it was not to be wondered at that the judicial ermine should be soiled in a country of such loose morals as California. Still others thought it no more than proper to impeach a few of the judges, in order to teach the remainder of them a salutary lesson. These articles were paraded in large type and with the most sensational headings.

When the action of the House on the memorial was announced, Hastings and Julian became furious. It then appeared that the only charge which had made any impression upon the minds of the committee was that relating to Moulin, the Frenchman. Three, indeed, of the members, (Messrs Voorhees, of Indiana, Potter, of New York, and Peters, of Maine,) said it was a shame and disgrace that such ridiculous and monstrous twaddle should be listened to for a moment; but a majority considered it their duty, under the order of reference, to hear the matter patiently.[129] They had, therefore, allowed Hastings the widest latitude and listened to everything that his malice could invent.

As a comical conclusion to these extraordinary proceedings, Hastings commenced a suit in the U.S. Circuit Court for the State of New York against the Judiciary Committee for dismissing his memorial. Being a non-resident he was required by that court to give security for costs, and as that was not given the action was dismissed. This result was so distasteful to him that he presented a petition to the Chief Justice of the U.S. Supreme Court, stating that Judge Hunt had too much to do with churches, banks, and rings, and asking that some other judge might be appointed to hold the court.[130] The petition was regarded as unique in its character, and caused a great deal of merriment. But the Chief Justice sent it back, with an answer that he had no jurisdiction of the matter. After this Hastings took up his residence in New York, and at different times worried the judges there by suits against them—Judge Blatchford,

among others—generally charging in his peculiar way a conspiracy between them and others to injure him and the rest of mankind.[131]

The above was written upon my dictation in the summer of 1877. In November of that year Hastings again appeared at Washington and applied to a Senator to move his admission to the Supreme Court. The Senator inquired if he was acquainted with any of the Judges, and was informed in reply of that gentleman's proceedings against myself; whereupon the Senator declined to make the motion. Hastings then presented to the House of Representatives a petition to be relieved from his allegiance as a citizen of the United States. As illustrative of the demented character of the man's brain, some portions of the petition are given. After setting forth his admission to the Supreme Court of California as an attorney and counsellor-at-law, and his taking the oath then required, he proceeded to state that on the 6th of November, 1877, he entered the chamber of the Supreme Court of the United States to apply for admission as an attorney and counsellor of that court; that he was introduced by a friend to a Senator, with a request that the Senator would move his admission; that the Senator asked him if he knew a certain Justice of the Supreme Court, and upon being informed that he did, and that his relations with said Justice were not friendly, as he had endeavored to get him impeached, and that the damaging evidence he produced against such Justice had been secreted and covered up by the Judiciary Committee of the House, whom he had accordingly sued, the petition continued as follows: "Whereupon said Senator replied, I have a cause to argue as counsel before this court this morning, and I would, therefore, prefer not to move your admission. Said Senator then and there arose and took his seat in front of the bench of said court; and your petitioner remained in said U.S. Supreme Court until one application for admission was made and granted on motion of one S. P. Nash, of Tweed-Sweeney Ring settlement fame [thereby demonstrating poetic injustice], and until the Chief Justice of the United States—shadow not shade of Selden—called the first case on the docket for that day, and a moment or two after the argument of said cause commenced, your petitioner arose and left the court-room of said United States Supreme Court, (to which the genius of a Marshall and a Story has bid a long farewell), and as your petitioner journeyed towards his hotel, your petitioner soliloquized thus: 'Senator W—is evidently afraid of Justice—, with whom I have had a difficulty, and he possesses neither the manly independence of a freeman, nor moral nor physical courage, and he is, therefore, an improper person (possibly infamous) for such a high and responsible position, and my rights as a citizen are not safe in the keeping of such a poltroon and conniving attorney, and he is probably disqualified to hold the high and responsible office of Senator of the United States—that he improperly accepts fees from clients, possibly in part for the influence which his exalted position as Senator gives him as counsel for parties having cases before the U.S. Supreme Court, and which practice is wholly inconsistent with the faithful, impartial performance of his sworn duty as such Senator; and by thus accepting fees he has placed himself in a position where his personal interests conflict with the obligations of his oath of office; while the Justices of the Supreme Court are, I conceive, derelict in the performance of their sworn duty, for permitting such practices to be inaugurated and continued.'

"Cowardice taints the character with moral turpitude; and I believe the facts related above show that said Senator is a coward; at all events he lacks moral courage, and is afraid of the Justices of the United States Supreme Court, whose judge the Senator-attorney of the court becomes in case of trial of any of said Justices by impeachment; surely this is one unclean body incestuously holding illicit commerce with another unclean body, and both become interchangeably soiled, and too impure to touch the spotless robes of the judicial ermine;

still, as this government has ceased to be a government of law and justice, and has become a foul and unclean machine of corrupt compromises, carried on by colluding and conniving shyster bartering attorneys, the practice of said Supreme Court of the United States, above referred to, is strictly in accord therewith."

The petition continued in a similar strain, and wound up by asking the passage of a concurrent resolution of the Houses releasing him from his allegiance to the United States!

The preceding Personal Reminiscences of Early Days in California by Judge Field, with other sketches, were dictated by him to a stenographer in the summer of 1877, at San Francisco. They were afterwards printed for a few friends, but not published. The edition was small and soon exhausted, and each year since the Judge has been asked for copies. The reprint is therefore made.

The history of the attempt at his assassination by a former associate on the supreme bench of California is added. It is written by Hon. George C. Gorham, a warm personal friend of the Judge for many years, who is thoroughly informed of the events described.

ENDNOTES

[1]Abbreviations for common footnotes:

ANB John H. Garraty and Mark C. Carnes, eds., **American National Biography,** 24 vols. (New York: Oxford University Press, 1999). **American National Biography** offers an extremely useful online version at http://www.anb.org/articles/home.html (last accessed 2 December 2003) that can be searched by the subject's name. Some subjects found in the online version are not in the print version. I will refer to this as ANB online.

Bancroft Hubert Howe Bancroft, **The Works of Hubert Howe Bancroft**, 7 vols. (San Francisco: The History Company, Publishers, 1890).

Hall Kermit L. Hall, James W. Ely, Joel B. Grossman, and William M. Wiecek, eds. **Oxford Companion to the Supreme Court of the United States** (New York: Oxford University Press, 1992).

Hittell Theodore H. Hittell, **History of California**, 4 vols. (San Francisco: N. J. Stone and Company, 1898).

Kens Paul Kens, **Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age** (Lawrence: University Press of Kansas, 1997).

Swisher Carl Brent Swisher, **Stephen J. Field: Craftsman of the Law** (1930; reprinted Hamden, Conn: Archon Books, 1963).

[2]David Dudley Field was a prominent attorney and an abolitionist. For background, *see* Henry M. Field, **The Life of David Dudley Field** (New York: Charles Scribner's Sons, 1898); Duan van Ee, **David Dudley Field and the Reconstruction of the Law** (New York: Garland, 1986). The articles to which Field refers are "The Oregon Question," *The Democratic Review* XVI (June 1845) 523–33 and "The Edinburgh and Foreign Quarterly on the Oregon Question," *The Democratic Review* XVII (November 1845) 323–31.

[3]Robert Greenhow was a historian and civil servant. In 1839, while working at the Department of State, he wrote a report on the Pacific Northwest. In 1844, Congress published a revised version of the report under the title "The History of Oregon and California."

[4]Colonel Jonathan Drake Stevenson led a regiment of New York volunteers for service in California during the War with Mexico. He was involved in the early administration of California under military rule. Stevenson successfully speculated in real estate. He gave financial aid to another Californian who arrived penniless and eventually became an important political figure when he loaned David Broderick a few thousand dollars. Hittell II: 629–34, 666, 670–72; III: 324, 357; IV: 53, 72, 141; Bancroft V, 499.

[5]President James Polk's annual message of December 5, 1848 announced the discovery of gold in California and is thought to have been a major factor in setting off the Gold Rush. Hittell II, 695.

[6]Forty-niners made their way to California via one of three routes. Many traveled overland, setting off from St. Louis or another city on the Mississippi and then crossing the "Great American Desert" by foot, horse, or covered wagon. Others took passage on ships sailing around Cape Horn. The Panama Route, which Field took, was the fastest way to the San Francisco, but also the most expensive.

[7]The Pacific Mail Steamship Line was supposed to have sent several steamers around Cape Horn. Passengers taking the Panama Route would land on Panama's east coast. They would then travel by foot and dugout canoe to Panama City on the west coast. There they were to meet the west-coast steamers that ran between Panama and San Francisco. The problem for Field and his fellow early travelers was that the west-coast steamers did not make it around the Horn in time. As a result, many travelers were stranded in Panama and were willing to take any kind of

passage to San Francisco that they could find. When the steamers did arrive and began their work, they often took on many more passengers than were allowed by law. Field says in a footnote that "[T]he number of passengers reported in the journals of San Francisco on the arrival of the steamer was much less than this, probably to avoid drawing attention to the violation of the statute which restricted the number."

[8]Thousands of the travelers fell victim to malaria and yellow fever. They may have lumped these together under the term "Panama fever."

[9]Much of what is now the San Francisco waterfront was under water when Field arrived. Some of the bay was filled in a few years later to make room for the expanding city. Upon his arrival, Field faced a scene of chaos. There were only a few crude docks, and many new arrivals had to be ferried to the shore in small boats. The harbor was filled with ships that had been abandoned by crews anxious to get to the gold fields. Later, some of these ships were converted into stores and warehouses. A few wood buildings had been constructed, but most of the buildings and housing were shacks and lean-tos made of wood and calico. Field was lucky to have gotten a room at all.

[10]Cyrus Field was an entrepreneur best known for laying the first transatlantic cable. For background, *see* Henry M. Field, **The Story of the Atlantic Telegraph** (New York: Charles Scribner's Sons, 1892).

[11]Theodore Augustus Barry and Benjamin Ada Patten, **Men and Memories of San Francisco in the Spring of 1850** (San Francisco: A. L. Bancroft, 1873). A portemonnaie is a flat purse or pocketbook.

[12]*See* note 4 for a sketch of Stevenson.

[13]Laid out in 1849, Vernon had 600–700 inhabitants. It was a county seat for a short time, but floods in 1849–1850 and extension of steamship service to Marysville caused it to decline. Bancroft VI, 488.

[14]In 1842 John Sutter gave Theodore Cordura a nine-year lease to a parcel of land that included what was to become Marysville. In 1848, Cordura sold one-half of his interest to a French fur trapper named Charles Covillaud. The remainder of Cordura's interest changed hands several times during the next two years. Eventually, another Frenchman, Theodore Sicard, became Covillaud's partner. But the only property interest any of these people owned was the interest in the lease from Sutter to Cordura. When Field arrive in Marysville in 1850, the Covillaud partnership was selling lots on land they did not own. They had purchased the rights to a lease that had only about two years to run. About a month later they did purchase the land from John Sutter. Field drew up the deed. Kens, 26–27.

[15]Government in California at the time was in a transition. Under the 1848 Treaty of Guadalupe Hidalgo, ending the war with the United States, Mexico had ceded the territory to the United States, but American institutions had not yet been put in place. The Mexican model of government of remained, with Americans or recent immigrants often occupying the offices.

[16]The Donner Party was a group of immigrants to California who were snowbound and trapped in the mountains during the winter of 1846–1847. Some resorted to cannibalism to survive. Bancroft V, 527–44.

[17]Elisha O. Crosby was a lawyer and later the minister to Guatemala. He served in the Constitutional Convention of 1849 and was a member of the first State Senate of California. Bancroft, VI, 286; Hittell, II, 298–99.

[18]Peter H. Burnett was a leader in the movement for California statehood. He was the territorial governor from November 13, 1849 to March 21, 1850. He was then elected the first governor of the state, resigning on January 9, 1851. Burnett was the founder and president of the Pacific Bank of San Francisco. Bancroft VI, 277, 279, 447–49, 305–06; VII, 220–21.

[19]Best known because the discovery of gold in California occurred on his property at Sutter's Mill, John Sutter was one of the early Anglo settlers in California. His 50,000-acre land grant from the Mexican government included not only Marysville, but also much of the area near Sacramento. Sutter failed in his attempt to develop the city himself, and much of his property fell into the hands of speculators. A dispute over the land led to the so-called squatter uprising in 1850. W. W. Robinson, **Land in California** (1948; reprinted Berkeley: University of California Press, 1979), 114–16.

[20]John Gildersleeve was a celebrated runner. In September 1851, for example, he participated in a footrace that promised U.S.$1,000 to the man who could run 10 miles in one hour or less. Gildersleeve completed the distance in 63 minutes 37 seconds and was awarded the money in any case. **ANB** online, citing the *Daily Alta California*, September 15, 1851.

[21]John White Geary was an officer in the War with Mexico and was later appointed the first postmaster of San Francisco. He was elected the first alcalde of San Francisco in 1849 and, when the city was chartered, became its first mayor. In 1856, President Franklin Pearce appointed Geary the first territorial governor of Kansas. He fought for the Union in the Civil War and was promoted to brevet major-general. In 1866, Geary became the first governor of the state of Kansas. Bancroft VI, 212–18, 280–81, 304–5, 311.

[22]George C. Gorham became Field's lifelong friend. After serving as Field's clerk, he worked for a while as a journalist and, at one time, owned the *Marysville Democrat*. He was active in politics and was appointed to various patronage positions. He became clerk to the U.S. Circuit Court in 1863. In 1864, he was the private secretary to California Governor Fredrick F. Low. Bancroft VII, 323, n. 7.

[23]Fredrick F. Low came to California in 1849. After spending some time mining, he engaged in business and banking in San Francisco and Marysville. He served in the U.S.

Congress in 1862 and 1863, and as Governor from 1863 to 1865. He later became minister to China. Bancroft VII, 303–6.

[24]Beginning in June 1850, the California legislature passed a series of laws abolishing the Mexican-style judicial offices. The state was divided into nine judicial districts, each headed by a district court. In June 1850, William Turner became the district court judge for the district that included Marysville. He thus replaced Field as the highest judicial authority in the area.

[25]Jesse O. Goodwin became a state senator from Yuba County in 1857. He served in the state assembly in 1865 and was nominated for the U.S. Senate in 1873. Hittell IV, 196, 202, 398, 528.

[26]Henry P. Haun later became a United States senator when Governor Weller appointed him to fill a vacancy in 1859. He served in the Senate only one year. Bancroft VI, 737–38; Hittell IV, 335.

[27]*People ex rel. Mulford v. Turner*, 1 Cal. 143 (1850); *People ex rel. Field v. Turner*, 1 Cal. 152 (1850).

[28]*Ex parte Field*, 1 Cal. 187 (1850).

[29]*Ex parte Robinson*, 86 U.S. (19 Wall.) 505 (1873). In Robinson, we see an early version of Field's belief in a "right to pursue a lawful profession." This was the key to his famous dissent in the *Slaughter-House* cases, 83 U.S. (16 Wall.) 36 (1873), and later developed into the "liberty of contract" theory. Field was not fully committed to the right, however. In 1873, he concurred in a decision that allowed Illinois to prohibit women from practicing law. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 140 (1873).

[30]Nathanial Bennett was elected by the legislature in 1849 to serve as associate justice on the first California Supreme Court. Hittell II, 789, IV, 142.

[31]The address to which Field refers may be reflected in William Turner, **Documents in Relation to Charges Preferred by Stephen J. Field and Others Before the House of Assembly of the State of California Against Wm. R. Turner**, 2nd ed. (San Francisco: Whittin Towne and Company, 1856). The publication accuses Field of making "vile and slanderous" speeches against Turner and encouraging a mob to attack him. It includes testimonials and newspaper clips that speak highly of Turner or negatively of Field.

[32]John E. Anderson was a general in the state militia. Bancroft VI, 319.

[33]John T. McCarty was a young lawyer from Indiana who had earlier been a leader of a settler's organization. Earl Ramey, "The Beginnings of Marysville," *California Historical Quarterly*, 3 parts, 14 (September 1935): 195–229; 14 (December 1935): 375–407; 15 (March 1936): 21–57, part 2, 390–91.

[34]The Free Soiler was undoubtedly David Dudley Field. The slave-holding brother from Tennessee may have been Matthew Field, an engineer who was building bridges in Tennessee at the time. Swisher, 45, note 62.

[35]James Walsh was an early pioneer who built a sawmill in Grass Valley in 1849. He was later involved in gold and silver discoveries in Nevada. Hittell III, 86, 158.

[36]*People ex rel. Field v. Turner*, 1 Cal. 188 (1850); *People ex rel. Field v. Turner*, 1 Cal. 190 (1850).

[37]Field's brother David Dudley was a prominent advocate of codifying the common law. He designed model codes for New York that became known as the Field Codes. Stephen Field's California codes were based on his brother's models. *See* van Ee, **David Dudley Field and the Reconstruction of the Law**.

[38]Benjamin F. Moore, a noted criminal lawyer, was a delegate to the California Constitutional Convention of 1849. According to Bancroft, he had migrated from Florida through Texas, carried a huge Bowie knife, and was usually half drunk. Bancroft VI, 287; Hittell II 760, 764, 789.

[39]I found little on Samuel A. Merritt except that as a member of the California Assembly in 1851, he opposed a bill that would exempt homesteads from forced sale. This was a type of legislation that Field says he proposed. Hittell IV, 69.

[40]The reference is probably to H. S. Richardson. Hittell IV, 72.

[41]David C. Broderick was arguably the most powerful politician in 1850s California, a leader of the California Democratic Party and a U.S. Senator. He died in 1859 as a result of gunshot wounds received in a duel with Supreme Court Justice David Terry. I will write more about Broderick and the duel in the next installment of Field's memoirs. *See* Jeremiah Lynch, **The Life of David C. Broderick: A Senator for the Fifties** (New York: Baker and Taylor, 1911); David A. Williams, **David C. Broderick: A Political Portrait** (San Marino, Calif.: Huntington Library, 1969).

[42]Joseph C. McKibbin was state senator in 1852 and was elected to the U.S. Congress in 1856. He was one of Broderick's seconds in the duel with Terry. Bancroft VI, 722–23; Hittell III, 418; IV, 82, 123–24, 194, 217–18.

[43]Charles H. Bryan was appointed to the California Supreme Court in 1854. He was the Democratic candidate for Supreme Court in 1855, but was defeated when Know Nothing Party candidates David Terry and Hugh C. Murry won seats to the Court. Hittell IV, 174–75, 213, 217.

[44]William Walker was a filibusterer who, in 1853, attempted to establish an American colony in the Mexican territory of Baja California. Mexican troops drove Walker and his followers out of the territory. In 1855, Walker led a force of American adventurers that aided one faction in a civil war in Nicaragua. When Walker's troops captured the Capital, he named himself president. Although Edward Wheeler, the U.S. Minister to Nicaragua, initially recognized Walker's government, Walker was eventually driven out of the country and was captured and executed when he tried to return. James A. Stout, Jr. **ANB**, vol. 22, 521–23; Hittell III, chs. 5 and 6; Bancroft VI, 593–600.

[45]Edward D. Wheeler became U.S. Minister to Nicaragua. In 1856, as minister, he recognized the government established by William Walker (*see* note 44). In doing so, he acted contrary to President Pearce's instructions. Consequently, the U.S. government later repudiated Wheeler's actions. Hittell III, 782, 794.

[46]Isaac S. Belcher was appointed to the California Supreme Court in 1872 to fill a vacancy. Governor William Irwin later appointed Belcher to a committee to revise the state's statutes to conform to the Constitution of 1879.

[47]Edward C. Marshall later became California Attorney General. In the *Railroad Tax* cases of 1884, he arranged the controversial settlement with the Southern Pacific Railroad Company that released the railroad from paying interest and penalties on overdue taxes. Hittell IV, 680–89, 706–07.

[48]This appears to have been a case of "claim-jumping." Most mining took place on what was perceived to be public land. Thus, disputes over mining rights were not property rights cases per se, but rather disputes over the exclusive right to work a certain area. In early California, an individual's assertion of the exclusive right to such a claim was governed by informal rules of mining camps. The classic study of the laws of the mining camps is Howard Shinn, **Mining Camps: A Study of American Frontier Government** (New York: Alfred A. Knopf, 1948).

[49]John V. Berry was later a member of the California Constitutional Convention of 1879–1880. Bancroft VII, 622; Hittell IV, 638. I did not find more information on Gordon N. Mott.

[50]*People, ex rel. Barbour v. Mott*, 3 Cal.502 (1851). I found little information on Barbour other than that in 1851, he was an Indian peace commissioner involved in negotiations with Indians in Mariposa County, near Yosemite Valley. Hittell III, 840.

[51]Charles S. Fairfax was born in Fairfax County, Virginia. He was said to be English nobility, entitled to succession as the tenth Lord Fairfax. Fairfax came to California in 1849 and served in the state assembly in 1854 and as clerk to the California Supreme Court for five years after that. He was a delegate to the Democratic National Convention in New York in 1868. Bancroft VI, 682.

[52]Field is probably referring to James A. McDougall, who was the California Attorney General in 1850 and was elected to Congress in 1853. In 1860, a coalition of Republicans and Union Democrats in the state legislature elected McDougall to the U.S. Senate. Bancroft VII, 273–4.

[53]I found little on Samuel B. Smith other than he was a member of the Commission on Indian War Claims in 1850–1851. Hittell IV, 186.

[54]John S. Hager was a district judge and state senator. In 1873, he introduced into the state senate a resolution against the adoption of the Fifteenth Amendment to the United States Constitution (guaranteeing that the right to vote shall not be denied on account of race, color, or previous condition of servitude). He was elected to the U.S. Senate in 1873. He was a member of the California Constitutional Convention of 1879–80 and voted against the new constitution. Hager also served as a regent of the University of California. Bancroft VII, 366–67; Hittell II, 800; IV, 147, 398, 430, 528–30.

[55]Field added the following footnote: "The exact vote was as follows:

For myself	55,216
For Nathaniel Bennett	18,944
For J. P. Ralston	19,068
Total vote	93,228
Majority over Bennett	36,272
Majority over Ralston	36,148
Majority over both	17,204"

[56]Terry is a main character in the next installment of Field's memoirs. I will treat him and the duel in detail there. Although dueling was not uncommon, it was officially outlawed in California. In fact the Broderick–Terry duel was delayed when the San Francisco chief of police threatened to arrest the participants. Russell A. Buchanan, **David Terry of California** (San Marino, Calif.: Huntington Library, 1956).

[57]Baldwin and Field were the best of friends and saw eye to eye on just about every issue. Baldwin named his son Sydney Field Baldwin after Field. Kens, 85, 91.

[58]Edward Norton had been judge of the 12th District Court in San Francisco. Hittell III, 501.

[59]Field adds the note: "These sketches were in the main dictated to a short-hand writer at the request of Mr. Theodore Hittell, of San Francisco."

[60]Although we have chosen not to include letters and testimonials Field attached as appendices, we have included this letter (somewhat later in the text here) because Field placed it within the text of his memoirs.

[61]*Saunders v. Haynes*, 13 Cal. 145 (1859). The election was held in 1858, with the winner to take office on January 1, 1859. After Turner won the suit, he received his commission on May 13, 1859. He then sued the state comptroller for back pay from January. *Turner v. Melony*, 13 Cal.621 (1859).

[62]Field was in the Legislature for only one session.

[63]Before becoming the circuit judge, Matthew Hall McAllister had been a San Francisco lawyer. He represented the prisoners held by the Vigilance Committee of 1851. He was a friend of David Terry's and was allowed to meet and negotiate with Terry when Terry was a prisoner of the Vigilance Committee of 1856. Hittell II, 726, III 316, 586, IV 147.

[64]The rare-books collection of the Library of Congress holds a facsimile letter from California senators Milton S. Latham and J. S. McDougal and congressmen A. A. Sargent, F. F. Low, and T. W. Phelps to Lincoln, urging Field's appointment.

[65]Field included the following note: "Although I had informed the Attorney-General of my action and delay in taking the oath of office, the salary of the office was sent to me from the date of my commission, March 10th, 1863. I immediately deposited with sub-treasurer at San Francisco, to the credit of the United States, the portion for the time between that date and the 20th of May, and informed the Secretary of the Treasury of the deposit, enclosing to him the sub-treasurer's receipt."

[66]"Vicinage" is defined as "neighborhood or neighboring district."

[67]In Article 8 of the Treaty of Guadalupe Hidalgo, the United States promised that "[p]roperty of every kind now established [in the ceded territory], shall be inviolably respected." Charles I. Bevans, ed., **Treaties and Other International Agreements, 1776–1949** (Washington, DC: Department of State, 1972), 9: 791–806.

[68]*United States v. Sutherland*, 60 U.S. (19 How.) 636 (1856).

[69]The reference is to Justice Nathan Clifford, Associate Justice 1858 to 1881, appointed by President James Buchanan. President Polk named Clifford Ambassador to Mexico in 1846. At the end of the war, he was sent back to Mexico to help negotiate the treaty. Edwin C. Surrency in Hall, 161.

[70]In this and the next paragraph, Field paraphrases the brief of Mr. Black, attorney for Larios. *In re Fossat*, 69 U.S. (2 Wall.) 649, 689–703 (1864). The reference is probably to Jeremiah S. Black, who was a member of the Pennsylvania Supreme Court, a U.S. Attorney General, and an unconfirmed nominee to the U.S. Supreme Court. Elizabeth B. Monroe, "Black, Jeremiah Sullivan," in Hall, et al., eds., **The Oxford Companion to the Supreme Court of the United States**, 75.

[71]Field may be referring here to *Ferris v. Coover*, 10 Cal. 588 (1858).

[72]Field cites *Cornwall v. Culver*, 16 Cal. 429 (1860).

[73]Regarding the approval of the Supreme Court of the United States, Field cites *Van Reynegan vs. Bolton*, 95 U.S. 33 (1877).

[74]Field cites *Coryell v. Cain*, 16 Cal. 567, 572 (1860).

[75]*Hicks v. Bell*, 3 Cal. 219 (1853).

[76]Field cites *id.* at 220.

[77]Field cites *Stoakes v. Barnett*, 5 Cal. 37 (1855).

[78]*Biddle Boggs v. Merced Mining Company I* and *Biddle Boggs v. Merced Mining Company II* are reported together at 14 Cal. 279 (1859).

[79]*Moore v. Smaw* and *Frémont v. Fowler*, 17 Cal. 199 (1861).

[80]*Hart v. Burnett*, 15 Cal. 530 (1860).

[81]James Van Ness was the mayor of San Francisco in 1955 and 1856. Hittell III, 485; IV, 237; Bancroft VI, 759–67; VII, 229–30, 245.

[82]Joseph G. Baldwin joined the California Supreme Court in 1858 and served until 1862.

[83]John Conness, a Democrat who remained loyal to the Union, was elected to the United States Senate in 1863. Bancroft VI, 301.

[84]"An Act to Expedite the Settlement of Titles to Lands in the State of California," approved July 1, 1864. Field provides the full text of the act in his appendix.

[85]*San Francisco v. United States*, 21 Fed. Cas. (Cir. Ct.; N.D. Cal., 1864).

[86]*United States v. Circuit Judges*, 70 U.S. (3 Wall.) 673 (1865).

[87]Delos Lake was the U.S. Attorney in charge of the San Francisco land cases.

[88]On June 2, 1859, Field, then 41 years of age, married Sue Virginia Swearingen. She was the daughter of Isabel Swearingen, a widow who ran a boarding house where Field stayed in San Francisco. Although the couple had no children, Field became very close to his wife's family. Sarah Swearingen, one of Mrs. Field's sisters, lived with the Fields for many years. Field also took a keen interest in the children of another of Mrs. Field's sisters. Swisher, 109–10, 437–38.

[89]Edwin M. Stanton was Secretary of State under President Buchanan and Secretary of War under Presidents Lincoln and Andrew Johnson. In 1869, President Grant appointed him to fill a vacancy on the Supreme Court, but Stanton died before assuming office. William B. Skelton, **ANB** 20, 558–62. Henry Wagner Halleck was a West Point graduate. He was sent to California at the onset of the War with Mexico in 1846. The United States established a military government in California with Hallack serving as Secretary of the Territory. Halleck later studied law in California and became a member of the bar. He returned to military service in the Union army during the Civil War and became an important military figure. Hittell II, 630, 669, 713, 732, 738–43, 761–71, 786; Bancroft VI, 285, 311, 536–37.

[90]Donald C. McRuer, a member of the Union Party, was elected to Congress in 1864. Hittell IV, 388, 390.

[91]"An Act to Quiet Title to Certain Lands Within the Corporate Limits of the City of San Francisco," 14 Stat. 4 (March 8, 1866).

[92]Field cites *Townsend v. Greeley*, 72 U.S. (5 Wall.) 326, 337 (1866); *Grisar v. McDowell*, 73 U.S. (6 Wall.) 363, 379 (1867).

[93]Frank McCoppin was mayor of San Francisco in 1867. He became a state senator in 1877. Hittell IV, 540, 588–89, 609.

[94]The Civil War began on April 12, 1861 when Confederate troops attacked Fort Sumter. General Lee surrendered at Appomattox on April 9, 1865. The Reconstruction Acts of 1867 established a process by which former Confederate states would be admitted to the Union. A part of these laws that is important to Field's story here is that they divided the South into five military districts, each commanded by a general of the Union Army.

[95]President Abraham Lincoln was assassinated on April 14, 1865.

[96]Andrew Johnson succeeded Lincoln on April 15, 1865 and served as president until 1869.

[97]The Thirteenth Amendment abolished slavery. It passed Congress in 1865 and was ratified that same year.

[98]*Dred Scott v. Sanford*, 60 U.S (19 How.) 393 (1856).

[99]*Hepburn v. Griswold*, 75 U.S. (8 Wall.) 603, 625 (1870).

[100]*Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866).

[101]James S. Garfield, of course, became twentieth president of the United States. His service as president was cut short by assassination, however. Garfield was inaugurated in January 1881; he was shot in July 1881 and died in September. Jeremiah S. Black has been mentioned earlier in connection with California land cases. He later argued the *Slaughter-House* cases for the state of Louisiana. David Dudley Field argued several cases before the Supreme Court while Stephen Field was on the bench. General Benjamin Franklin Butler served as governor of Massachusetts, a Civil War general, and a member of Congress. He headed military rule in New Orleans after the war. A supporter of radical reconstruction, Butler drew up the articles of impeachment against President Andrew Johnson. Hans L. Trefousse, **ANB** 4, 91–93. Henry Stanbery was a member of Congress from Ohio. He was Andrew Johnson's Attorney General and was among the lawyers who represented Johnson in his impeachment. Bruce Tap, **ANB** 4, 533–35.

[102]David Davis was an Associate Justice from 1862 to 1877, appointed by Lincoln. Gregory Leyh, in Hall, 218–19.

[103]Samuel Nelson was an Associate Justice from 1845 to 1872, appointed by President John Tyler. Howard T. Sprow, in Hall, 583–84. Robert Cooper Grier was an Associate Justice from 1846 to 1870, appointed by Polk. Michael B. Dougan, in Hall, 349–51.

[104]John Forney was a newspaper owner and editor who served as clerk of the House of Representatives from 1858 to 1861, then as Secretary of the Senate from 1861 to 1868. Forney published the campaign biography of Winfield Scott Hancock, one of Field's rivals and the eventual winner of the Democratic nomination in 1880. Daniel W. Pfaff, **ANB** 8, 258–59.

[105]*Cummings v. Missouri*, 71 U.S. (4 Wall.) 277 (1867).

[106]Montgomery Blair was a prominent attorney who represented Dred Scott and served as Lincoln's Postmaster General. His brother Francis Blair, a loyal but conservative Missouri politician, helped make *Cummings* a test case. Jean H. Baker, **ANB** 2, 916–17. Reverdy Johnson was one of the nation's most prominent constitutional lawyers. He served as U.S. Attorney General and in the U.S. Senate. William L. Barney, **ANB** 12, 116–18. John B. Henderson was a U.S. senator from Missouri from 1862 to 1869. William E. Parrish, **ANB** 10, 569–70.

[107]*Ex parte Garland*, 71 U.S. (4 Wall.) 333 (1867).

[108]Augustus Hill Garland was elected governor of Arkansas in 1874. He served in the U.S. Senate from 1877 until 1885, when he became Grover Cleveland's Attorney General. William B. Gatewood, **ANB** 8, 724–25.

[109]Matthew Hale Carpenter later became a U.S. senator from Wisconsin. Brooks D. Simpson, **ANB** 4, 431–33. The reference to Mr. Speeed is probably to James Speed, a Kentucky attorney who opposed slavery. Lincoln appointed Speed Attorney General in 1864. He later served as attorney for the Freedman's Bureau. Phyllis F. Field, **ANB** 20, 431–32.

[110]James Moore Wayne was an Associate Justice from 1835 to 1867, appointed by President Andrew Jackson. Robert T. Diamond, in Hall, 920–21.

[111]George Sewall Boutwell was a governor, senator, and congressman from Massachusetts. Boutwell was a leading advocate of black suffrage and played an important role in drafting the Fifteenth Amendment. He was also involved in drafting the Fourteenth Amendment provisions that guaranteed to citizens of the states the privileges and immunities of citizens of the United States and provided that no state shall deny any person due process of the law or equal protection of the laws. Later in life, he was active in the Anti-Imperialist League. Silvana Siddal, **ANB** 3, 260–61.

[112]Field added the following footnote: "*Congressional Globe*, 39th Congress, 2d Session, Part I, 646–49. When the bill reached the Senate it was referred to the Judiciary Committee, and by them to a sub-committee of which Mr. Stewart, Senator from Nevada, was chairman. He retained it until late in the session, and upon his advice, the committee then recommended its indefinite postponement. The bill was thus disposed of."

[113]*Georgia v. Stanton*, 73 U.S. (6 Wall.) 50 (1868).

[114]*Ex parte McCardle*, 73 U.S. (6 Wall.) 318 (1867).

[115]William Lewis Sharkey served as chief justice of the Mississippi High Court of Errors and Appeals. A southerner who opposed secession, he believed in the Union, property rights, and white supremacy. Thomas D. Morris, **ANB** 19, 718–19. Robert J. Walker was a U.S. Senator from Mississippi. Walker is remembered for his argument that the annexation of Texas would draw the black population to Texas and Mexico and away from the South and Northeast. He served as Secretary of Treasury under Polk and as Governor of Kansas Territory. James A. Rawley, **ANB** 22, 511–13. Field may be referring to Charles O'Coner, a New York attorney who later ran against Greeley and Grant as the Straightforward Democrat candidate for president. Richard L. Aynes, **ANB** 16, 610–11. Lyman Trumbull was a congressman and U.S. senator from Illinois. A moderate Republican, he sponsored the Thirteenth Amendment, but was one of seven Republican senators to vote against impeachment of President Johnson. David Osborn, **ANB** 21, 877–79.

[116]Field cites 15 Stat. 44.

[117]Field translates: "It fills us with shame that these reproaches can be uttered, and cannot be repelled." He explains that, "[t]he words are found in Ovid's Metamorphoses, Book I, lines 758–9. In some editions the last word is printed refelli."

[118]Field cites *McCardle*, 73 U.S. (7 Wall.) at 506.

[119]Samuel Ward, sometimes called the "King of the Lobby," represented railroads, commercial interests, and foreign officials. William M. Ferraro, **ANB** 22, 648–49.

[120]Field is probably referring to John Lloyd Aspinwall, who took over the Pacific Mail Steamship Company after his older brother, William Henry Aspinwall, retired in 1856. *See* James P. Delgado, "William Henry Aspinwall," **ANB** 1, 691–92.

[121]Ogden Hoffman was a U.S. district court judge in California. *See* Christian G. Fritz, **Federal Justice in California: The Court of Ogden Hoffman 1851–1891** (Lincoln: University of Nebraska Press, 1991).

[122]Lorenzo Sawyer was a U.S. circuit court judge in California. *See* Linda C. A. Przybyszewski, "Judge Lorenzo Sawyer and the Chinese Civil Rights Decisions in the Ninth Circuit," *Western Legal History* (Winter/Spring 1998): 23–56.

[123]George W. Julian was an abolitionist and early Free Soil Party supporter. He was influential in the formation of the Republican Party in Indiana. Elected to Congress in 1860, he was one of the country's most prominent land reformers. Fredrick J. Blue, **ANB** 12, 315–16; *see also* George W. Julian, **Speeches on Political Questions** (New York: Hurd and Houghton, 1872).

[124]Field is referring to people claiming title under a Mexican land grant called the Suscol Grant. The case he will discuss in the next few paragraphs is *Frisbie v. Whitney*, 76 U.S. (9 Wall.) 187 (1869).

[125]*United States v. Vallejo*, 66 U.S. (1 Black) 541 (1861).

[126]Grier's dissent begins in 66 U.S. at 555.

[127]Field attaches a report of the Commissioner of the General Land Office as an appendix.

[128]William Steele Holman served in Congress for forty-four years. Silvana Siddali, **ANB** 11, 77–78.

[129]Daniel Wolsey Voorhees, a Republican from Indiana, served in the House of Representatives from 1860 to 1866 and in the Senate from 1877 to 1897. Philip R. VanderMeer, **ANB** 22, 408–9. John Andrew Peters later became the chief justice of the Supreme Judicial Court of Maine. David M. Gold, **ANB** 17, 392–93. I was unable to find anything more on Potter.

[130]Ward Hunt was an Associate Justice from 1873 to 1872, appointed by President Ulysses S. Grant. Marian C. McKenna, in Hall, 417.

[131]Samuel Blatchford was an Associate Justice from 1882 to 1893, appointed by President Chester B. Arthur. Blatchford served as a federal district judge in New York from 1867 to 1878, and a federal circuit court judge from 1878 to 1882, when he was appointed to the Supreme Court. Aviam Soifer, in Hall, 78–79.

Contributors

Justice Stephen J. Field served as an Associate Justice from 1863 to 1897.

Paul Kens is a professor of political science and history at Southwest Texas State University in San Marcos, Texas and the author of **Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age** (University Press of Kansas, 1997).

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Corrections:
Chief Justice Salmon P. Chase's portrait was mistakenly used to illustrate a caption pertaining to Associate Justice Samuel Chase on p. 219 of the previous issue. We greatly regret the error.

In that same issue the article by John M. Ferren, "Military Curfew, Race-Based Internment, and Mr. Justice Rutledge," had several words missing near the bottom of the first column on page 264, which should have comprised two sentences as follows: "This failure to insist on a more satisfactory record was a serious default. Such insistence might have revealed what Justice Department lawyers knew at the time but were pressured not to disclose to the Court: that DeWitt had documented military necessity for the evacuation program with false claims of subversive activities."

Cover: Advertisement for the steamship *California* on which Field sailed from Panama to San Francisco in 1849. Courtesy of the Bancroft Library, University of California, Berkeley, Honeyman Collection, Banc Pic 1963.002:1556: 014-A.