

## Interesting Early Day Court History In Polk

Between the same age-honored paper-board covers that enclose the record of proceedings in Polk county's first justice court, the provisional circuit court, are the records of 64 years ago, those interesting tabulations of troubles and trials that were aired in the first United States district court to meet in Polk county. The provisional county circuit court, created in 1846, was superseded in 1851 by the U. S. district court, the first session of which was held in the court house at Cynthian, the county seat, beginning on October 6 of that year and lasting throughout four days. Judge A. A. Skinner had been succeeded by O. C. Pratt, United States district judge for the second judicial district of the territory of Oregon. In the few years between the establishment of the old provisional court and the creation of the judicial district the territory had gained many residents. The times were those of the rough olden days of the west and are dead except in the memories of a remaining dozen trail blazers whose early lives have enriched and made vivid the bulky histories of nation and state. Today only the offsprings of those pioneers who figured in the courts of justice of 1851 are alive to tell the stories, but some few of these were boys in their teens at that time and can recall the names and faces of the lawyers, the judges and the other good and bad citizens of the day. The third and fourth generations, since the men who were then prominent, now conduct the courts, the politics and the business of their sires on a modern and increased scale made possible only by the energies, the trials and the triumphs of that ancient period of conflict. It is a pleasant history to read, although in court records one must read largely between the lines to glean knowledge of the hardship, the perseverance and the crimes, if the three can be associated, as they confronted Oregon territory's first citizens 64 years ago. It is a history of quick action, a life story of men who staked their being on brawn rather than brain; men whose fenses were defined by their guns, and whose right to distinction was nil, money having not the slightest influence in controlling the destinies of the community, the worth of a man being measured by his ability to mind his own business without personal damage to his neighbors. Boots, gingsams, overalls, crackers, bacon and liquor came under the head of general merchandise, and cough syrup paraded on a high shelf in a funny package; the doctor had a high hat and a grey beard, and the dentist was a peg on the wall, while the little grave yard "topped the neighboring hill." Deer gambled in the woods behind the barn, and wheat was threshed with oxen tramping round a corral.

### Early Day Court.

But 'mid all this that was good, bad and indifferent, an element of dignity expressed itself in the efforts of the scattered settlers to control the human equation, to bring law into the land, through the establishment of a court of justice that was at all times worthy of the title. The first expression of this element was in the creation of the old provisional court, and as greater legal knowledge was acquired, and lawyers from other parts of the country drifted this way to cast their various lots with Oregon's honorable pioneers, it took on added dignity and distinction under the title of the "District Court of the United States of America, for the Second Judicial District of the Territory of Oregon." The trials and hearings in that court, beginning with October 1851, were, though perhaps on a smaller scale than in larger communities, organized and executed according to laws prescribed by the federal government; they imparted justice in the fullest meaning of the word, giving everything from freedom to death in the first two years of the operation of the court, disposing of the case at hand as its evidence demanded. Judge O. C. Pratt was the first district judge to sit in Polk county. The county seat and court house were then at Cynthian, a small settlement of farmers housed in homes and stores of rough fir shakes, and rudely hewn lumber from the great trees that covered the hills. John E. Lyle, who was the first court clerk of the provisional court, continued in that position in the district court and his records are plain, well-written, and very readable expositions of the proceedings. In the volume containing these records on its blue pages Mr. Lyle noted the opening of the first session of the district court in this way:

"Be it remembered that at a term of the district court of the United States, in and for the county of Polk and territory of Oregon, began and holden at the court house in Cynthian, within and for the county of Polk and territory aforesaid, pursuant to the statute in such case made and provided, on the first Monday of October, the same being the sixth day of October, in the year of our Lord one thousand eight hundred and fifty-one: Present the honorable O. C. Pratt, judge of the said court, court was opened in due form by proclamation, after which the sheriff returned into court the venire previously issued for a grand jury. Thereupon the following named persons were duly impanelled, as well on behalf of the United States as for the territory,

sworn and charged by the court, previous to entering upon their duties as grand jurors, to-wit: Samuel Buren, foreman; Thomas Hart, William Myer, H. Hawkins, James J. Holman, Joshua Shaw, A. J. Duke, William Morgan, John McCarty, T. W. Prather, J. L. Martin, S. T. Gilliam, Benj. F. Nichols, N. Lee, C. D. Embree, Ira S. Townsend and Ira P. Smith."

### Some Cases Tried.

John H. Lewis, sheriff of the provisional court, was considered and appointed to the position of bailiff by the new jury for this occasion. Among the first hearings by this jury, and before Judge O. C. Pratt, were those that admitted to practice law in the second judicial district James McCabe, "an attorney of record in the state of Michigan," Benjamin F. Harding and A. B. P. Wood, both of Illinois, and J. W. Nesmith and William G. T. Vault, (or W. G. T. Vault) Nesmith and perhaps Vault also, had practiced their profession before the provisional court. The court, at its first session, granted naturalization papers to William Myer, one of the jurors, on the testimony of Silas Miller and John Orchard. The certificates and oath of allegiance to the starry banner were also given to B. Ritner, Swiss, and Francis Moffet, British. Nathaniel Ford was appointed court crier and special constable to relieve the sheriff who was absent so much of the time in the execution of his duty. The sheriff of the county was the same who had held that position during part of the life of the provisional court, Benjamin F. Nichols. Joseph L. Meek was at that time United States marshal for the district. Among the first cases tried were those transferred from the docket of the provisional court to the district court, and included those of William Wilson vs. Nathaniel Ford, Thomas Reed vs. David D. Stroud, Stephen Jenkins vs. H. C. Lewis, James Taylor vs. A. Liggitt, Major Horner vs. Nathaniel Ford, Isaac Flint vs. Sarah E. Flint, Charles Martin vs. William Bowman, (selling liquor to an Indian, carried on provisional docket for long time,) and Jessie Lovelady vs. Marietta Lovelady.

### Oregon vs. Nesmith.

To recall to mind the first case on the regular docket of the district court will perhaps be amusing to those few who still live from that time, and interesting to any who knew the principals in their latter years. This was the case of the territory of Oregon vs. J. W. Nesmith and Henry C. Owen. Owen was indicted by the provisional court, several years before this time, for "giving ardent spirits to an Indian," and Nesmith, who lived near Dallas for many years after this trial, and until his death a few years ago, had been admitted to practice law on the first day of this same session of the district court. Owen was also an attorney, and the two were characteristic men of their time, intellectual, yet as commonly good and worthy as the soil that produced their living. It was a day of socialism in the territory; men had strong blood in their veins and much marrow in their bones. Though they were superior to some in intelligence, as these two men seem to have been, or had more of the gold of the realm, it offered them no excuse to be better than their brother, and gunman, gambler, judge and preacher clasped hands on common ground. They were like a keg of nails, one as good as another. The grand jury of 1851 indicted J. W. Nesmith, (grandfather of the present congressman, C. A. McArthur, and himself a United States senator,) and Henry C. Owen "for playing at a game of cards for an article of value, (the same being money,) in a certain store, said being a public place." Nesmith and Owen pleaded guilty to the charge of gambling and were fined \$20 each, which it appears they paid at once. A levy of \$50 was made "against the several goods and chattels" of the two men, and they were bound to their good behavior for a term of one year. "Now if they and each of them," say the records, "shall respectively abstain from the commission of a similar offense for one year from this date then this obligation will be void. Otherwise it is to remain in force." Immediately after this trial was over John H. Lewis, bailiff of the court, and J. W. Nesmith, just fined for gambling, and on probation for one year, were appointed by the court to serve as county commissioners, showing, if nothing else, that the times were pretty free and easy, and that gambling was not much out of the ordinary for the prominent citizens of the day, but being caught at it cost money, a tribute to the court of law.

The first record book containing the proceedings of the original Polk county court, the provisional circuit court, and those of the United States district court, take the former from its beginning to its end, and the records of the latter are inscribed from 1851 to 1865, and therein are many cases mentioning the names of old timers in this section, and their connection with every imaginable charge from divorce to murder. The second session of the district court was held in April of 1852, and was practically turned over to a murder trial. The records are interesting and hugely amusing if one can read between the lines, where are registered that

wealth of little things that make life worth the living.

### MEAGER CROP INDICATED.

Greater Portion of Hop Harvest Completed Near McMinnville.

With the greater portion of the meager crop of hops in Yamhill county this year under cover, a 50 per cent yield is indicated. W. L. Hembres, owner of a splendid hopyard near McMinnville, reports that his yard of 15 acres that last year produced 14,000 pounds, has yielded only 6,000. This was the best out of four yards picked by the same crew. The Tom Rogers yard, that last year yielded 18,000 pounds, will make about 5,000 pounds. Other yards have run in about the same fashion. The George Ball yard, near Ballston, which usually requires two weeks to harvest, was cleaned in five days.

A Willamette river bottom yard, owned by Walter Kirkwood, had nine kilns this year, compared with 14 in 1914. The old Schumate yard, near Whiteson, managed by John Hackett, Jr., has 18 acres of hops, all sprayed early. It will produce perhaps 75 per cent of last year's yield, according to hop experts visiting the field.

### SKIMMER OBSERVES.

That some of the "old boys" can give some of the younger ones "cards and spades" and then beat them out. If you don't believe it, see how gracefully Abe Uglov smashes that bicycle and with what ease he manipulates it.

That for the convenience of the residents on the east side of Church street, near Mill, and in keeping with perfect uniformity of things in the city, the council or the street commissioner, or whoever the duty devolves upon, to see that the gap in the sidewalk is made good.

That the ladies who go out in the big car should see that the same is supplied with sufficient gasoline to assure their return home the same night they start, or get a Ford machine. It is embarrassing to be compelled to sit in a car by the roadside all night, or be compelled to walk home.

That you "cant tell how far a frog can jump from the looks of him." For instance: Dean Collins is one of the most ordinary looking individuals you ever saw; and yet he possesses one of the brightest intellects in Oregon; and Dallas and Polk county are mighty proud of their native son.

That he has no particular objection to fellows shooting pheasants out of season; but would be much obliged to them if they would be a trifle careful to see that there is no one in line with their shooting. To be peppered with bird shot is all-fired objectionable, to not say uncomforable.

That the hill lands about Dallas that can be bought for \$25 to \$50 an acre produce more and better fruit than the high priced lands of the valley or state, and he doesn't believe he's posing as a crank when he says he thinks people very foolish to pay fancy prices for land upon which to plant orchards.

That when Doc Cherrington, Bill White or Frank H. Morrison say they could beat that Winchester woman shoot, they've got another guess coming. Standing with her back to the target, with a mirror in front of her, any one of the three would not know he had been to a shooting match when he got through.

That he can't see why citizens are talking so much about going to the trouble and expense of macadamizing Court street from Hayter west to the bottling or soda works; that it's a part of a street and had a right to be improved as well as any other, even if it is not traveled by but one or two parties.

SKIMMER.

### WOULD RECALL JUDGE BUSHEY

Petitions Will Be Circulated in Marion County Soon.

And now comes the information from Woodburn that, owing to dissatisfaction with the manner in which county affairs are conducted in Marion county, a movement has been inaugurated to recall Judge Bushey. The Woodburn Independent says the principal allegations against the judge are "general mismanagement of county affairs; improper expenditure of county funds; fight against granting widows' pensions; improper handling of road funds; temperamental unfit and lets his passion and prejudice blind him, and his fight against the district attorney."

It is expected that petitions will be out within a few days, and this authority believes that they will meet with hearty reception. There is no one mentioned to supplant Judge Bushey.

### Polk Raises Good Corn.

A. H. Dodd brought some fine specimens of corn to the News office Wednesday that he had raised on his farm, one mile and a quarter north-east of Falls City. The corn is of the Flint variety and matures quickly. The ears measured 11 inches long, 6 inches at the small end and 7 inches at the large end, containing 8 fully developed rows on the cob. This is excellent corn and shows what Polk county can produce.—Falls City News.

### Planning New Industry.

The government of Japan is planning to start a factory for the production of carbonic acid from coal tar. Incidents are sidelights.

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