

WILLIAM P. BRYANT

William P. Bryant was the first Chief Justice appointed under the territorial organization of Oregon -- 1849 to 1850.

He was appointed by President Polk as Chief Justice of the Supreme Court of Oregon. He arrived at Oregon City in March 1848 and the first session of the Supreme Court was held.

Within a few months his health became impaired and he left Oregon, returning to Indiana, resigned, and soon after died.

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With the great migration of 1843 had come Peter H. Burnett, a lawyer from Missouri, with a reputation for ability and integrity. (The Oregon Provisional government made him Chief Justice. When Oregon became an United States territory, he was appointed an Associate Justice of its Supreme Court. Moving to California in 1849, he was elected first governor of that state, and served afterwards upon its Supreme bench). Dr. McLoughlin retained him as counsel. Under his advice, Waller, though still an occupant of the claim, was not disturbed, as Waller could acquire no adverse right against his landlord, under whom, as tenant, he had entered. The milling company was notified that Dr. McLoughlin would assert his right to the island, as soon as courts of law should be established with jurisdiction to adjudicate land titles.

The election, in 1844, of Mr. Polk as President, on the Oregon issue of "fifty-four, forty or fight," created excitement in Oregon. War was supposed to be imminent, if not at that time declared. Dr. McLoughlin had estates in Canada. To change his allegiance in time of war might be attended with most serious personal consequences. Neither could he, in such a condition of affairs, as a British subject, hope to retain Oregon City. As soon as the war-bubble had been dispelled, he had resolved to sever his connection with the Hudson's Bay Co. and become a citizen of the United States. His former legal adviser had become Chief Justice of the Oregon Provisional government. Dr. McLoughlin appeared before him to declare his intention to become an American citizen, and to renounce all allegiance to the British Crown. But Judge Burnett was powerless to receive that declaration. He had neither authority of law to administer such an oath, nor was his court authorized by law to receive, file, or attest such declaration. Scrupulous and conscientious, he denied the application. The Provisional government might not be recognized; clearly its courts were not among those courts upon which Congress had conferred jurisdiction to naturalize aliens. The Oregon controversy had been settled between the two nations. Dr. McLoughlin had resigned the service of the Hudson's Bay Company, and was residing at Oregon City. Governor Joseph Lane, first governor of Oregon Territory, had arrived, and, on March 3, 1849, issued a proclamation formally announcing the extension of Federal jurisdiction over the territory. Hon. William P. Bryant, commissioned as Chief Justice of the Oregon Supreme Court, had entered upon the discharge of his judicial duties. A court competent to try the title to Abernethy Island had been furnished; but Chief Justice Bryant and Governor Lane had become purchasers of the island. On the 30th of May, 1849, John McLoughlin declared his intention to become a citizen of the United States, in what was called the United States District Court of the county of Clackamas, Oregon Territory. Those territorial courts have ceased to be regarded as United States courts; but their jurisdiction to naturalize was exercised and sanctioned by authority.

Upon the adjournment of Congress in August, 1848, soi-disant Delegate J. Quinn Thornton embarked from New York for Oregon, in the Sylvie de Grasse, where he arrived in May, 1849. His companion, not colleague, was more fortunate in securing an appointment under the newly created territorial government. Joseph L. Meek was the first United States Marshal for Oregon Territory. To General James Shields,

of Illinois, the President tendered the commission of governor, but he declined; and the office was conferred upon, and accepted by, General Joseph Lane of Indiana. Kintzing Pritchett, of Penn. was appointed secretary of the territory. To the Supreme Bench were commissioned William P. Bryant of Indiana, Chief Justice; James Turney of Illinois, and Peter H. Burnett of Oregon, Associate Justices. * * * Mr. Turney declined the office of Associate Justice of the Supreme Bench; and the President appointed Orville C. Pratt, a native of New York, residing in Illinois, but at that time in the service of the government in California. He was the first of the corps of territorial appointees to reach the territory. (Feb. 1848). * * * * *

On the 15th of May, the territory was divided by Governor Lane into three judicial districts; and the Judges of the Supreme Court of the territory were respectively assigned. The first district embraced Vancouver county and adjacent counties south of the Columbia river, to which Hon. Wm. P. Bryant, Chief Justice, was assigned. The second district, all other counties south of the Columbia river; and to it was assigned Hon. Orville C. Pratt, Associate Justice. All of Oregon, north of the Columbia river, except Vancouver county, that is to say, Lewis county as then defined, formed the third judicial district. As Hon. Peter H. Burnett, appointed Associate Justice, had never qualified, and no successor had been appointed, there was no assignment of a judge to hold the district courts in the third district.

In the meantime, the commissions of Robert Newell, George C. Preston and J. Quinn Thornton, appointed United States Sub Indian Agents for Oregon Territory, had been received by the Superintendent of Indian affairs. Mr. Preston did not accept. As there remained but two sub-agents, Supt. Lane divided the territory by the Columbia river into a northern and southern district, assigning charge of the northern district to J. Quinn Thornton. * * * * *

As before stated, there was no judge to hold courts in Lewis county, within which was Nisqually, where the murder of Wallace had been committed, and the district in which the murderers must be tried. To obviate this difficulty, the legislature, then in session, at the request of Governor Lane, passed a special act providing for a term of court at Fort Steilacoom, in Lewis county. That county was attached to the first district for such purpose; and Chief Justice Bryant was empowered to hold a term of court at Fort Steilacoom on the first Monday of October. The report of that first trial at the first court held upon Puget Sound was furnished by Bryant, Chief Justice, to Governor Lane.

In September 1849, President Zachary Taylor had appointed as officers for the territory: Major John P. Gaines of Kentucky, Governor; General Edward Hamilton of Ohio, Secretary; William Strong of Ohio, Associate Justice of territorial Supreme Court, in place of Peter H. Burnett, who had declined appointment tendered by President Polk. * * * Reached Astoria in August 14, 1850.

The territory had been without a governor since June 18, 1850. In consequence of impaired health, Chief Justice Bryant had resigned and

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been compelled to return to Indiana. Associate Justice O. C. Pratt had been called to San Francisco to sit in several admiralty causes, thus leaving the territory without a judge. * * * * *

On the 21st of April, Thomas Nelson of New York, who had been appointed Chief Justice of the Supreme Court of the territory in place of William P. Bryant, resigned, arrived at Oregon City. He was accompanied by Associate Justice Pratt, who had returned from San Francisco. For the first time since the organization of the territory, a full bench was present; the three judicial districts had assigned judges on duty within their respective districts.

The "Location Question" had permeated, saturated and poisoned the politics of the territory; it had been an issue in the election. The Whigs in the main acted in sympathy with the Whig Executive. Democrats as naturally opposed, and hence the location controversy to a great extent became a party issue; but here and there local interest made it a local rather than a political question. As the time for the meeting of the Legislative Assembly and the Supreme Court approached, the feeling, not to say excitement, intensified. The question "where was the seat of government?" in the very nature of things had to be met and answered. Judges of the Supreme Court and members of the legislature alike were compelled to choose before entering upon the performance of required public duties. Each for himself must go to the seat of government, either to Oregon City or to Salem. Thus personal attendance in itself at either place practically indicated the decision reached, or the individual construction of the law. According to law, the Supreme Court must hold its annual term at the seat of government. The same law was applicable to render legal the session of the Legislative Assembly. That body also, to make its acts effective, was required to have performed them at the seat of government, and to have assembled on the day fixed by law.

Nelson, Chief Justice, and Strong, Associate Justices, constituting the quorum, of the Supreme Court of the territory, assembled at Oregon City December 1, 1851, to hold its annual term. Thus and thereby they practically established that the Supreme Court, or at least a majority of its members, were of the opinion that such place was the seat of government. So remarked Chief Justice Nelson to counsel, when the plea was interposed in the case of AMOS M. SHORT, plaintiff in error, vs. FREDERIC EMALINGER, defendant in error, objecting to the two Judges proceeding with the case at Oregon City, that "said cause

can be heard, determined and acted upon only by a majority of the Judges of the Supreme Court convened for the purpose of holding a term thereof at the seat of government, which said seat of government has been duly and legally established and now is at Salem." Argument on the plea was heard; the next day the plea was overruled, both Judges filing lengthy written opinions holding the Location Law invalid because of violating section six of the Organic Act. Pratt, Associate Justice, had opened court at Salem, he there waited for his brethren, maintaining that city to be the legally established seat of government.