

## EARLY JUDGES OF SUPREME COURT - 1841 to 1849.

The record of the supreme court of Oregon is only complete from and after the year 1849. Prior to that time the history of the supreme court is difficult to trace. There were, however, a number of supreme judges prior to 1849. The first official record of the election of a supreme judge appears in the archives.

History of the judiciary of Oregon is divided into four periods, according to Judge Lawrence T. Harris, who has made considerable research and study of the subject, and he designates those periods under the following captions:

1. Anterior to the provisional government
2. The provisional government
3. The territorial government
4. Statehood

The provisional government had its origin in a meeting near Champooick on February 16 and 17, 1841, following the death of Ewing Young on February 15, 1841. Young was one of the wealthiest American citizens living in the Willamette Valley at that time, and so far as then known he left no will or heirs. The question arose as to what should be done with his estate.

According to the record made at the time "some of the inhabitants of the Willamette Valley" met pursuant to adjournment on February 17, 1841, "for consultation concerning steps necessary to be taken for the formation of laws, and the election of officers to execute the same, for better preservation of peace and good order", and it was resolved that a committee of seven be elected for the purpose of drafting a constitution and code of laws for the government of the settlements south of the Columbia River.

Those present at the meeting proceeded to appoint Dr. Ira L. Babcock supreme judge with probate powers. He was not a lawyer but was a physician. He was instructed to act in accordance with the laws of the State of New York, until a code of laws could be adopted by the community.

On April 15, 1841, an order was made by I. L. Babcock, as Judge of Probate, appointing David Leslie administrator of the estate of Ewing Young, deceased. Funds from this estate were appropriated for building a jail located at Oregon City. The plans, specifications and contract for its construction are now on file with the clerk of the supreme court at Salem. The contract price was \$875. Afterwards the State of Oregon refunded the value of the property taken to a son Joaquin Young, living in New Mexico.

At a subsequent meeting at Champooick on July 5, 1843, the term of W. F. Wilson was continued until May 1844. Wilson was not a lawyer but a merchant who arrived in 1843 with a stock of goods. His name does not appear on any legal document or record, and apparently he either resigned or declined to serve as supreme judge, since the records show that in November, 1843, O. Russell occupied this position.

The legislative committee which convened on July 5, 1843, submitted a code of laws and sort of a constitution or organic law which was adopted. Article VII of this organic law provides:--

"That judicial power shall be vested in a supreme court consisting of a supreme judge and two justices of the peace. The jurisdiction of the supreme court shall be both appellate and original." The section further provides the powers and duties of the justices of the peace, giving them probate powers. Article XVI of the same code provides as follows: "The supreme court shall hold two sessions annually, upon the third Tuesdays in April and September; the first session to be held at Champooick on the third Tuesday of September, 1843, and the second session at Twality Plains on the third Tuesday of April, 1844. At the sessions of the supreme court the supreme judge shall preside, assisted by two justices." The article further specifies: "The supreme court shall have original jurisdiction in cases of treason, felony and breaches of the peace and in civil cases where the sum in controversy does not exceed fifty dollars, provided that no judge shall assist in trying any case that has been brought before the court by appeal from his judgment."

The law of Iowa Territory was adopted, and in the absence of any statute applicable, the principles of the common law and equity governed.

In the journal of the legislative assembly of 1845, under the date of August 9, there is this entry: "The house went into secret session for the election of officers. Proceeded by ballot to elect a supreme judge of Oregon, which resulted in the choice of Nathaniel Ford, of Yamhill county."

In the same journal, under date of August 18, Governor Abernethy sent a message to the legislative assembly announcing that Mr. Ford declined to serve as supreme judge, whereupon the house immediately went into secret session again and elected Hon. P. H. Burnett supreme judge for the term of four years as provided in the new provisional constitution of 1845.

In the records of the legislative assemblies for the years 1846, 1847 and 1848, there is no mention of the election of supreme judges. There is on file, however, in the department of state, the oath of office of Hon. J. Quinn Thornton as supreme Judge of Oregon, taken before Secretary of State Frederick Prigg, February 11, 1847.

On November 13, 1847, Hon. Columbia Lancaster took the oath of office as supreme judge of Oregon, and the same is now on file in the

department of state, at Salem, Oregon.

The records during the provisional period are very incomplete and not indexed or arranged in any system. It is, therefore, very difficult to ascertain definitely the exact proceedings of the different legislative assemblies. It is possible that other persons than those above mentioned served as supreme judges prior to the appointing of Messrs. Bryant and Nelson in the latter part of the year 1849, these gentlemen being first appointed after the formation of Oregon into a territory of the United States.

From the incomplete records it is presumed that Hon. P. H. Burnett, when elected supreme judge in 1845, held office during 1845 and 1846 and perhaps resigned early in 1847. Then it seems that Hon. J. Quinn Thornton was appointed and held only for a few months, when he left for Washington, D. C., and Hon. Columbia Lancaster succeeded to the office of supreme judge. According to the record he was succeeded in 1849 by Hon. A. L. Lovejoy, who only held a few months, as Oregon had already been made a territory by congress and Supreme Judges William P. Bryant and Thomas Nelson had already been appointed by the president to the office of supreme judges of Oregon Territory. They arrived in Oregon in 1849 and succeeded Hon. A. L. Lovejoy.

There is no record of any session of court north of the Columbia River during the existence of the provisional government. During the latter part of September 1849, a term of court was held in Stillacoom, by Chief Justice William P. Bryant, to try some Snoqualmie Indians who had killed two white men some months before. This is the first court session north of the Columbia River of which any record has been preserved in Oregon history. No counties other than Vancouver and Lewis were created north of the Columbia River during the existence of the provisional government. In 1849 the legislature of Oregon changed the name of Vancouver County to Clark County. Lewis, Vancouver and Clatsop Counties were at one time associated in the same legislative district.

William P. Bryant resigned as Chief Justice in and returned to Indiana.

The Constitution provided for an election of four supreme judges. The state was divided into four judicial districts by the constitution. Each district elected one judge and the four justices constituted the supreme court. The first four elected allotted the terms among themselves so that the term of one would expire in two years, one in four years, and two in six years, and their successors were to hold for a term of six years; the judge having the shortest term to serve, or the oldest of several having the shortest term, and not serving by appointment, acted as Chief Justice. Each was obliged to perform circuit duty in each of the counties of their several districts. Matthew P. Deady, R. E. Stratton, R. P. Boise and A. E. Waite were elected to their offices at the first election in 1858, but before the term commenced in the following year, Judge Deady had been appointed to the federal bench and did not qualify

for the state office. P. P. Prim was appointed in place of Deady and was afterward elected by the people at the regular election held in 1860. Boise and Stratton drew the six-year term and the four-year term fell to Waite, who by virtue of the Constitution became Chief Justice. In 1862 a new district was created, and a fifth judge, in the person of Joseph G. Wilson, was added to the four judges first selected when Oregon was granted statehood.

When the supreme court was made a distinct organization in 1878, the Governor appointed James K. Kelly, P. P. Prim and R. P. Boise as justices.

In 1907, Will R. King and W. T. Slater were appointed commissioners, and in 1909 when the legislature increased the membership of the court to five justices, King and Slater were appointed by Governor Chamberlin to fill the newly created positions.

In 1913 the membership of the court was again enlarged by the addition of two justices and Governor West appointed William M. Ramsey and Charles L. McNary.

- "Political and Official History of Oregon"  
by Harrison R. Kincaid.