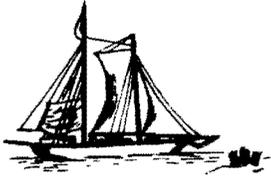


SAN JOAQUIN HISTORIAN



PUBLISHED QUARTERLY BY
SAN JOAQUIN COUNTY HISTORICAL SOCIETY



VOLUME XVI

JULY-SEPTEMBER 1980

NUMBER 3

MINUTE BOOK A - COURT OF SESSIONS (Civil) SAN JOAQUIN COUNTY - CALIFORNIA - 1850-52

Annotations by Robert Bonta

(Continued from the April-June 1980 Issue)

The following Grand Jury report, issued early in 1852, covers the period from the time of the organization of county government through December 31, 1851. It is interesting to note that their major concern centered around county expenditures and income - still a major concern 130 years later. And a second major concern was crime and its cost to the taxpayers - also a major problem in San Joaquin County today.

"To the Court of Sessions of the County of San Joaquin:

The undersigned, composing the Grand Inquest of said county upon the matters to which their attention has been called, submit the following REPORT.

They find imprisoned in the county gaol,
under sentence..... 4
Awaiting trial..... 1
They would recommend the removal of the gaol to the building now occupied as a court house. 1

The Grand Jury are not insensible to the fact that the increase of violations of the public peace, by personal affrays, is attracting the notice of the community in which we live, and of those abroad. A vigilant enforcement of our preventive and remedial laws may accomplish much towards the correction of the evil; but a material improvement in society in this respect can be expected only from a more correct and law-abiding public opinion. They believe that our courts of justice, as now constituted, meet as far as such tribunals can, the wants of the community, and that from the present administration of our jurisprudence, both civil and criminal offenders have but little to hope, while no HONEST man can have anything to fear.

In investigating the financial condition of the county, the Grand Jury, for their own information, have compiled the following table of expenditures

for public purposes. For the fiscal year ending April 1st, 1851, the county disbursed in scrip-for,

Salaries about,.....	\$5,000.00
Guarding and feeding prisoners,.....	10,000.00
Fees in criminal cases,.....	12,000.00
Per diem of sheriff for attending courts and grand juries,.....	3,000.00
Expenses of collecting and disbursing,.....	3,000.00
Fees of grand jurors,.....	2,007.00
Fees of petit jurors in criminal cases,.....	2,119.00
Expenses of fitting up offices,.....	2,000.00
Old debts,.....	1,205.00
Clerks' fees,.....	3,000.00
Rents,.....	3,500.00

The remaining appropriations for that year belong to a great variety of classes, and could not be classified without an examination of the vouchers on file--a labor which this body did not think proper to undertake. Nor, indeed, does it become necessary in the prosecution of the object for which this investigation was had.

From April 1, 1851, to January 1, 1852, the expenses of the county have been nearly as follows:

Salaries,.....	\$ 2,700.00
Guarding and feeding prisoners,.....	5,000.00
Fees in criminal cases, about.....	2,500.00
Per diem of Sheriff, as before, about.....	2,500.00
Rents,.....	3,070.00
Clerk's fees,.....	1,000.00
And miscellaneous expenses, amounting--as nearly as can be estimated--for without an amount of labor which was not demanded by the importance of the subject, the exact amount could not be ascertained--to the sum of seventeen thousand dollars.	

Relying upon their own construction of the acts of the last Legislature, the court of sessions, in May last, appropriated, specifically, the revenues of the county that might thereafter accrue, to meet the current expenses of the county, leaving the old debt

MINUTE BOOK A - COURT OF SESSIONS (Civil) (con't)

as it then stood. A recent decision of the Supreme Court of this State has established the legality of this policy. At the time of the appropriation referred to, the estimates of the court of sessions for the current year were as follows:

Revenue.....	\$17,000.00
Expenses.....	20,000.00

These estimates are probably nearly correct, and at the expiration of the present fiscal year, on the first day of April next, the debt of the county will be nearly as follows:

Old debts.....	\$45,000.00
Debts of the present year.....	3,000.00
Total.....	48,000.00

To devise the means of paying this debt, and to economize, if possible, in the current expenses of the county, are considerations which have commanded the serious deliberations of the Grand Jury.

It will be observed that much of the large amount appropriated for the first year, was for extraordinary purposes, and such as [as such?] have ceased to be a burden upon the county. Such, for instance, is the item of \$2,000, the estimated expense incurred in fitting up the county offices in a manner suitable for business purposes; the item of \$1,205, appropriated for the relief of persons having claims against the county for money expended and services rendered in criminal cases, principally prior to April 1st, 1850, and the sum of \$4,186.00 disbursed to grand jurors, and to petit jurors in criminal cases. Indeed, in reference to the last item, a sum equal to one-fourth of our present yearly revenue, the Grand Jury have been unable to find any legal provision to authorize such an appropriation. As well as can at present be ascertained, the certificate of attendance to grand jurors and petit jurors in the cases referred to, were issued by the order of the District Judge, and upon presentation, audited by the County Auditor. In this way they did not come under the observation of those having the control of the fiscal affairs of the county, and it is a subject of no little regret that the matter, for so long a period, should have escaped their notice. 2

Although none of the items in the expenditure of the present year can be entirely dispensed with in the same manner, yet in the opinion of this body, an important retrenchment [?] may be made therein. The expense of guarding and feeding prisoners will be fifty per cent less during the next, than it has been during the last, nine months. The amount appropriated for rents, by the removal of the gaol, may be materially reduced. The per diem of \$10 allowed the sheriff for his attendance on the courts, and \$15 for attending upon grand jurors, is extravagant, and the aggregate amount a serious item. This allowance is fixed by an order of the Supreme Court. In the opinion of this body the readjustment of this matter is a subject that calls for prompt legislative action. 3

For the redemption of the outstanding debt, the great reliance of the county must be upon the license fund. The legislation of last winter upon this subject is, in the opinion of this body, not only

unwise and impolitic as a financial measure, but unjust and oppressive to individuals in its operation. An adjustment of the license system upon the old basis, leaving to the court of sessions, under proper restrictions, the power of assessing a discriminating license tax, would greatly augment the revenue, and obviate a well-grounded cause by complaint. By increasing the licenses upon the large establishments, and MAKING COUNTY SCRIP RECEIVABLE IN PAYMENT FOR THE SAME, our debt might be rapidly absorbed, while the current expenses might be supplied from the remaining ordinary sources of revenue. Indeed, though the same may have been justifiable on the ground of necessity, this body can only regard the act of the last Legislature, requiring all taxes to be paid in money, as wrong in principle and unwholesome in practice. A judicious system of funding the old debt, too, would doubtless tend to re-establish the credit of the county, and give to our floating scrip, which is now almost worthless, a fixed market value. 4

There can be but little doubt that a careful valuation of ALL the taxable property in the county, followed up by an active and vigilant system of collections, would at the present rate of taxation, one-half of one per cent, create a revenue very nearly equal to the current expenses of the county. 5

The Grand Jury are compelled to acknowledge their regret at the very unsatisfactory result of their investigations into the relation of the county to the lot of land within the corporate limits of this city, generally known as the Court House Square. Deeming this a matter of importance, in order that the attention of the community, as well as of the court of sessions may be directed to the subject.-- The following facts, that came to their knowledge are herewith submitted.

Previous to and at the time of the organization of the county government, it was generally understood that the proprietor of the city of Stockton had set apart Block No. 3, East, for the benefit of the county. At the first term of the court of sessions, the intention of the supposed donor was called to the matter, and he readily signified his willingness to make the county a title to the same. A deed was accordingly made and delivered to the County Judge, but the paper proving upon examination not to be in the form contemplated by the statute, it was directly returned to the grantor, and along with it a deed in proper form.-- Whether the deed last mentioned was ever signed, is not now recollected. But about this time a circumstance occurred which compelled the court to delay all action in the matter. This was the occupation of the Public Square Block, in question, by a magistrate of this city, claiming under title adverse to the grantor--the title of the government of the United States.

Regarding the land as the property of the county, the court of sessions desired to avail themselves of the readiest legal remedy for the assertion of their rights. This was a possessory action. But as the county had never had possession of the property, this action in its behalf could not be maintained. The

MINUTE BOOK A - COURT OF SESSIONS (Civil) (con't)



1881 lithograph drawing of the home and ranch buildings developed by Sheriff Ashe (following his retirement from county service) near "Key's Switch" on the Central Pacific Railroad line about twelve miles southeast of Modesto. At the time of Ashe's

death the family owned 2,720 acres. Sheriff Ashe was one of a significant number of San Joaquin County residents who moved into Stanislaus County soon after its creation in 1854.

From Elliott and Moore's 1881
History of Stanislaus County, California . . .

grantor was again consulted, and it was agreed that the execution of the conveyance should be suspended, and an action brought in his name. At the same time the grantor was advised that in the prosecution of this suit, the court would employ their own counsel. None of these proceedings, however, appear upon the records of the court of sessions, for the reason assigned, that the real defendant in the action was himself a member of that court. ⁶

Counsel was employed accordingly, and the suit, under the direction of the court, prosecuted to a successful termination. The counsel were paid by the county for their services \$1,000.00. It is a matter of no little regret to the body, that, after the recovery in this suit, active steps were not promptly taken to perfect the title of the county to the property in question. This, however, was not done, and in the month of August of that year, without the knowledge of the court, as we are advised, the property was conveyed by Mr. Weber to the mayor, recorder and common council of the city of Stockton, for a county court house, and for such other public buildings for public benefit, as may be deemed advisable by the

proper authorities. The Grand Jury is advised that the terms of this conveyance do not clearly express the intentions of the grantor, and that the entire block was designed for the benefit of the county. Earnestly inviting the attention of the court of sessions to this matter, but without recommending any particular line of policy, these facts are submitted as the basis of a more enlightened deliberation." Signed,

John W. O'Neal, Foreman; F. E. Corcoran; Wm. Hunter, Chas. F. Lipmas, John Hanna, W. W. Stevenson, W. Winn, J. F. Stephens, William H. Geddes, James M. Warner, Edw. M. Howison, James M. Morrison, James Vantine, Benj. Williams, C. L. Benedict, J. C. Morris. ⁷

EDITOR'S NOTES:

1. When the 1851 Grand Jury report was made public in February of the following year the sheriff's office and the jail occupied the lower story of the Dickenson Building. This structure had been commonly referred to as the "courthouse" as the second floor housed the county's offices and the courtroom until they were removed to the MacNish building on the northwest corner of Hunter and

MINUTE BOOK A - COURT OF SESSIONS (Civil) (con't)

Channel streets in November of 1851. As a result of the Grand Jury's recommendation the Court of Sessions, on February 26, 1852, ordered the county's prisoners and the sheriff's office moved to the MacNish Building as well. This then consolidated all the county government facilities in the one building.

2. A careful perusal of the four expenditure tables and the accompanying commentary, authored by the Grand Jury itself, makes it readily obvious that even they were unable or unwilling to accurately ascertain the total expenditures or to whom payments were made. Probably this was due to the lack of proper and complete record-keeping on the part of these pioneer county officials, but one cannot help wonder just how much of the total revenue each year was rather loosely disbursed. It is true, as noted in the paragraph following the fourth table, that besides the usual debts incurred by the new county government there were the additional, one-time-only debts necessary in establishing the new county offices. But in addition to these two categories, a third category--referred to as the "Old Debts" in the first table--consisted of bills received for "services rendered" prior to the establishment of county government. No doubt that a sizeable portion of the expenditures which the Grand Jury did not feel were important enough to spend the time and effort in auditing--expended between April 1, 1850 and December 31, 1851--were also consumed in meeting financial obligations encumbered between the time of the termination of Mexican rule (summer of 1846) and the inception of county government in June, 1850.

The question arises, Why were debt obligations incurred in the area that now encompasses San Joaquin County before the counties were even created? To answer this question, we need to digress briefly in order to review the state of affairs in Alta California between the summer of 1846 when Commodore John D. Sloat had declared it an American territory (free of Mexican control) and the middle of 1850 when San Joaquin County was created by the new state legislature and became a self-governing entity within the new state.

Under Mexican rule (and indeed, until after the news of the January, 1848, discovery of gold in northern California's "Mother Lode" had reached the outside world) what was then called Alta California was very sparsely settled. The need for government was minimal, and so little government existed within this vast province. Nominal head of the government was the civil governor, and the province was divided into several large districts, each under the authority of an official called a *prefect*. The few pueblos then in existence along the California coast were under the jurisdiction of officials known as *alcaldes*. Together these agents of the Mexican Government ruled with full authority, holding to a great extent the legislative, executive, and judicial powers all in one--unlike the American system which is based upon a distinct separation of these powers.

When Commodore Sloat had declared Alta California free of Mexican rule in 1846, having failed to receive from the U. S. Congress or the military any direction regarding the establishment of civil government for the territory, he wisely also announced that the existing form of government would continue. Basically the only change that would be noticeable under American jurisdiction was that the military commander would now also serve as its civil governor, and the prefects and *alcaldes* would be appointed by him and would be responsible to him.

At that time the entire area east of the Sacramento and San Joaquin rivers, from the Oregon boundary south to the portion of the San Joaquin River that flows west out of the Sierra Nevada Mountains, comprised the Sacramento District. It was a vast area, practically uninhabited (exclusive of the native Indians) and much of it unexplored in any depth. John Sutter had settled at his now famous fort, in

present day Sacramento, some seven years before California changed hands, but even as late as December of 1847 he reported only 289 non-Indians living in the vicinity of his settlement. Despite their small numbers an *alcalde* and a sheriff, American-style, had been appointed to administer the affairs of the settlement and mete out justice. To the south, Sutter's nearest neighbor, Charles Weber, had just moved onto his land grant (in August, 1847) after several previous attempts at establishing a settlement there had failed. Between the two land barons about a half-dozen families had finally established themselves on lands along Dry Creek and the Cosumnes, Mokelumne and Calaveras rivers. This, then, was the extent of European and American colonization in the vast Sacramento District when the fateful year of 1848 dawned.

Commodore Sloat was followed by a succession of American military officers, each of whom acted simultaneously as the civil governor of the territory and maintained a semblance of government, American-style superimposed on a Mexican political system. With the discovery of gold at Coloma in January of 1848, and the subsequent influx of thousands of gold seekers, everything was destined to change shortly. In the meantime, Weber had taken physical possession of his land grant back in August of 1847 (as noted above), but despite his best efforts his attempts at getting families to settle on his grant proved almost fruitless. As late as November of the following year (1848) Weber's settlement still had not grown significantly as news of the gold discovery traveled slowly--as did the thousands of Americans and Europeans who then set out for the developing "Mother Lode." Walter Colton, passing through on the 15th, noted in his diary that Stockton (that was already the recognized name for Weber's settlement) consisted of but a few buildings--a "nucleus of a town," in his own words.

But by the time General Bennett Riley assumed command of the military forces in California in April of 1849, immigrants were beginning to literally pour into the state by both overland and sea routes. Stockton began to mushroom as thousands came through from the Bay Area on their way to the "Southern Mines"; other settlements throughout the central valley and the mining areas along the western slope of the Sierra Nevada likewise came into being, or suddenly came to life. The need for a better system of government could no longer be ignored.

Still without direction from the Congress as to a course of action, Riley finally took it upon himself to divide the state into ten military districts and to call upon the people of California to hold elections within each district for the election of delegates to a state constitutional convention at Monterey for the purpose of formulating a basic document of government. This was on June 3, 1849. The San Joaquin District, consisting of the area now encompassing the counties of San Joaquin, Mariposa, Tuolumne and Calaveras, was one of these new political entities. In order to provide a stronger interim government, Riley then set about the task of naming prefects and sheriffs to govern the districts, as well as *alcaldes* to govern the many new towns--including Weber's Stockton settlement.

This move on the part of General Riley thus provided our immediate local area with not only a prefect, but a town *alcalde* as well. This then was the first semblance of local government for the northern section of the San Joaquin Valley.

Having no legal basis for the raising of revenue during these interim years, the military command in California had resorted to siphoning off what little was collected in the form of import taxes from foreign ships unloading at ports along the coast, but this at best was in itself only a hit-and-miss affair. In the meantime, the prefects and *alcaldes* did the best they could, relying on financial aid from the

MINUTE BOOK A - COURT OF SESSIONS (Civil) (con't)

military or from an occasional fine. The end result was a rather loose system of government to say nothing of justice--a system that from the summer of 1849 until the inception of county government the following summer was slowly but surely accumulating a debt that would have to be dealt with some time in the future.

Following the election of November 13, 1849--at which time the proposed constitution was accepted and members of a bicameral legislature elected--steps were taken to organize the state through the creation of counties and to provide for the election of county officials to replace the prefects and alcaldes. This election was held in April (1850) and in San Joaquin County its newly-formed governing body--the Court of Sessions--was sworn into office on June 3. This automatically brought to an end government by the prefects and alcaldes, but sadly enough the debts incurred by these officials did not go away. Hence the Grand Jury's concern with the "Old Debt." According to their own account, in the first year of operation alone \$1,205.00 was appropriated to cover claims of services rendered before the inception of county government, and no doubt a large portion of the \$4,186.00 [someone's math was not too accurate] paid to petit and grand jurors also belongs to the same category. What percent of the expenditures of the nine months of the second year (April 1, 1851-January 1, 1852) also went to cover old claims cannot be ascertained from the figures given by the Grand Jury, but no doubt it was a significant portion of the un-audited \$17,000.00.

For a more complete review of government in this area during the Mexican War period and the subsequent transition through military rule to the organization of county government under the new state constitution, the reader should refer back to Vol. X, No. 4 (October-December, 1971) and Vol. XIV, No. 1 (January-March 1978) of the **San Joaquin Historian**.

San Joaquin County became a part of the state's Fifth Judicial District, along with Calaveras, Tuolumne, and the huge Mariposa counties when the district court was created and opened in May of 1850 under Judge Charles M. Creaner of Stockton. Gallant D. Dickenson was automatically relieved of his duties as Prefect of the original San Joaquin District by Judge Creaner who then issued the "certificates of attendance" referred to in this section of the Grand Jury report. By presenting them directly to the County Auditor the payments were then processed by the County Treasurer and paid out directly from his office--thereby bypassing the Court of Sessions. These payments were to cover the fees paid to jurors called to serve in court cases presided over by Prefect Dickenson before the creation of the county. Obviously these claims were not only exaggerated, but Judge Creaner, the auditor, and the treasurer were equally at fault for the improper handling of these claims. By the time the Grand Jury became aware of what had occurred, they could do nothing but bemoan the fact that this practice had gone on so long and had cost the county so much.

3. The post of county sheriff was obviously a lucrative one so it is not surprising when we learn that the county's first sheriff--Richard P. Ashe-- was a well-educated and competent physician. In addition to his salary, the sheriff was allowed per diem "expenses" for his attendance at court--on both the local and district levels, and for housing and feeding county prisoners. The system invited unnecessary abuses--as a glance at the first two disbursement tables plainly indicates. (See also Vol. XIV, No. 2 April-June, 1978 issue, pages 162-63.)

4. For lack of cash the county often found itself in the position of having to pay its obligations in the form of scrip--promissory notes which could then be exchanged for cash at a later date. By the end of the first fiscal year (April 1, 1851) over \$42,000 worth of scrip had already been issued

for lack of county funds to cover salaries and for services rendered. Of that amount almost \$21,000 had been redeemed (as license fees and various taxes came in to the treasurer's office), leaving a scrip debt of over \$21,000 to be covered at a future date! While the county paid for services and goods with scrip, the recipients in turn could not pay their county taxes and business license fees with the same scrip. This led to a "devaluation" of the face value of the scrip, in effect, as the local business firms were reluctant to sell their goods or services to individuals in exchange for scrip--unless these scraps of paper were heavily discounted. By the time the Grand Jury had finished its work in January of 1852, the **San Joaquin Republican** noted that the amount of scrip then in circulation had a face value of approximately \$40,000--but that the older scrip not yet redeemed was worth only about ten cents on every dollar, and the new scrip (since April of 1851) was negotiable locally at the rate of about fifty cents on the dollar.

5. Taxes, through all the history of organized government, have never been popular obviously--probably no one has ever been completely convinced of the need for any certain amount of revenue being collected. The tax burden has always in the past--and still is today--carried largely by a relatively small segment of the society supposedly being served by those taxes. It was especially difficult for the Court of Sessions to come up with a fair and **collectible** system of taxation in a county whose population was so fluid and volatile. But revenue had to be raised and the Court of Sessions finally tackled the problem in earnest in June of 1850--almost three full months after that body took office.

On June 24 a tax of $\frac{1}{4}$ of one percent was assessed on each hundred dollars of taxable property to help cover the cost of county government for the fiscal year (April 1, 1850-March 31, 1851). This was followed by the imposition of an annual \$5.00 poll tax assessed against each male in the county between 21 and 50 years of age and a whole series of specific license fees on all retail vendors as well as fees assessed against tradesmen doing business within the county. The fees assessed were arbitrarily set without distinction as to the gross annual proceeds--small businesses were to pay as much as the large operators. Ferry operators were assessed comparatively heavily, but at least the amount due was set relative to their estimated gross income. In May of the following year (1851) the $\frac{1}{4}$ of one percent tax per \$100 of assessed value on property was renewed, but an additional $\frac{1}{4}$ percent was assessed to help defray the previous year's indebtedness. As the 1851-52 fiscal year ground on the income-to-expenses ratio continued to deteriorate, so that the Grand Jury predicted that by the end of that year (March 31, 1852) the total county debt would stand somewhere in the neighborhood of \$48,000--a staggering amount at that time. The seriousness of the problem was not missed by the Grand Jury, which noted, among other possible remedies, that "A judicious system of funding the old debt...would doubtless tend to re-establish the credit of the county, and give to our floating scrip, which is now almost worthless, a fixed market value."

In April 1852, the State Legislature passed "**An Act to provide for funding the debt of San Joaquin County, for the payment of the interest thereon, and for the gradual liquidation of the debt.**" This enabled the county to print and sell bonds as a means of paying its outstanding debts in the amount of approximately \$44,800. It was literally years and several more bond issues before the county was able to clear its debts. But that is another story.

6. The defendant in this July, 1850, Courthouse Square litigation was none other than Judge Hairston Amyx, then a member of the three-man county Court of Sessions. At the time Amyx commenced fencing the portion of the block he claimed, Weber was negotiating the transfer of the parcel to

MINUTE BOOK A - COURT OF SESSIONS (Civil) (con't)

the county. Because it was common knowledge that he was in the process of deeding it to the county, the latter paid the lawyers' fees involved in Amyx's trial, although Weber initiated the suit as legal owner. (Weber later deeded the property to the new city of Stockton shortly after its incorporation.)

As the Grand Jury noted, Amyx managed to keep the record of the court litigation out of the minutes of the Court of Sessions. It is also interesting to note that despite his involvement in the case, he continued to serve as one of the two Stockton justices of the peace as well as a member of the Court of Sessions until his resignation the following October. See Vol. XIV, No. 2, pp. 163-64 and Vol. XV, No. 2, pp. 193-94 of the *San Joaquin Historian* for references to Amyx and to the Courthouse Square.

The following is the verbatim report of the trial as reported by the *Stockton Times* newspaper of July 20, 1850, with the *Historian* editor's notes in brackets:

SQUATTER CASE

Charles M. Weber vs. Thomas Amyx--Before J. VanCamp, Justice of [the] Peace

This was an action under the statute, concerning forcible entry and detainer commenced before Justice Endicott, of Stockton, and transferred, on act of alleged [conflict of] interest on the part of Endicott, to San Joaquin City. [VanCamp was the elected Justice of the Peace for township No. 2, the area west of the San Joaquin River including San Joaquin City.]

The plaintiff's petition alleged that he [Weber] was in the actual and peaceable possession of a certain tract of land, including the town tract of Stockton [El Rancho del Campo de las Franceses land grant, received from the Mexican Government in 1846], and that [the] defendant, on the 29th of May last [1850], entered upon and took possession of a certain block in said town, known as block 3, east of Centre Street [commonly referred to from 1850 on as the "Courthouse Square" because of Weber's intention to deed it to the county as a site for its courthouse and government offices], and illegally and forcibly detained the same. [Amyx actually commenced construction of a wooden fence around the parcel that he claimed on the southwest part of the block.]

The case came on for trial on the 10th of July. The defendant [Amyx] applied for a change of venue [a change in the location of the trial], founded upon an affidavit which stated that defendant could not get a fair and impartial trial in said township [Stockton], on account of the bias and prejudice of the citizens of said township, and moreover the plaintiff [Weber] had an undue influence in said township. The application was resisted by the counsel for plaintiff, for the reason that under the statute this ground of objection was only allowed in cases in which the adverse party [Amyx] had demanded a jury, and as no jury had been asked [for] by plaintiff in this case, the bias or prejudice of the citizens of the township was no cause for a change of venue. After argument of counsel, motion was overruled.

The defendant [then] filed an affidavit for a change of venue, on the ground of bias of the justice, which was overruled, the justice being of [the] opinion that the requirements of the statute was [sic] not complied with in said affidavit.

The defendant then filed an affidavit for a continuance, on the ground of the absence of material evidence, which

affidavit was objected to as insufficient by the plaintiff's counsel, for the following cause;

1st. That the affidavit did not state that the application was not made for delay.--

2nd. That it did not state that defendant expected to be able to produce the evidence of said witnesses at the time the cause was to be continued; and

3d. That the affidavit did not state that the defendant had a good defense which the statute requires in all cases where defendant opposes a continuance.

Application for continuance overruled.

A plea to the jurisdiction of the Court was then put in by [the] Defendant, supported [by an] affidavit [that stated] that title to real estate was necessarily involved, which under the [state] statute ousted the Court of Jurisdiction [the court of Stockton's justice of the peace--a township court]. After argument of Counsel, numerous authorities being quoted, the Court decided that inasmuch as no title had been alleged in Plaintiff's petition nor any title set up in Defendant's [petition] that the mere allegation that title was involved was not sufficient to send the case to the District Court, but that the Defendant should point out some fact which would show to the Court that title was involved.

The plea was overruled.

After a long and patient explanation of the evidence occupying part of 2 days, and testimony, with the most exemplary patience to the argument of Counsel, the Justice gave judgement for Plaintiff and awarded a writ of restitution with \$600 damages, one hundred and five [dollars] and costs of Court which writ was executed by the Sheriff who put Plaintiff in possession of the property in dispute and levied upon the House and Tent of Defendant on said lot for costs and damages.

Thus ended a case which has caused most excitement in the community for some time past, and with this decision of the case ended the bright anticipations of those who expected to enrich themselves by appropriating without cost valuable lots in our Town. [Mr. Weber had a constant problem with squatters on his property--particularly during those early years of settlement. He was a generous man, but became somewhat embittered as the years went by because of these constant conflicts over land titles and property abuse in the form of trespassing.]

7. San Joaquin County's first Grand Jury members had at least several things in common: they were citizens, residents, and voters in the county, and all obviously were Caucasian males. They were basically business men or professionals, and relatively young. The foreman, John W. O'Neal, was probably the same O'Neal who served as county sheriff from 1857 to 1861. Tinkham, in his 1923 history of the county, stated that O'Neal Township in San Joaquin County was named for this same "popular southern man" and sheriff. The problem with this supposition is that when the Court of Sessions created new townships in 1853 the name was entered in their *Minute Book* as "O'Neill"--not O'Neal. But the confusion does not end there as Thompson and West (1879) declared that the O'Neil township had been named for an area pioneer, Edward O'Neil. Tinkham, in his *History of Stockton* (1880) noted that one John W. O'Neal, before becoming sheriff, was the proprietor of a local (Stockton) gambling house and saloon. But in 1852 *Stockton Directory*, on page 138, ran a full-page advertisement for the El Dorado Saloon; the proprietor--John O'Neill! Thompson and West included a John W. O'Neal among the list of aldermen for the new city of Stockton, elected October 7, 1850. The same name appears on another page as the county clerk in 1855. And then there was a "Colonel O'Neil" mentioned in relation to the Langdon-Reyer duel of 1856 (see Vol. XV, No. 1, page 190). But this was probably Dr. John K. O'Neil, a pioneer Stockton physician and native

MINUTE BOOK A - COURT OF SESSIONS (Civil) (con't)

of Georgia. And to add to the confusion, we find reference to "O'Neal's Ranche" being used as the polling place in township No. 4 in April of 1850 (see XVI, No. 1, page 155), but in the election of November 20, 1852, it had become O'Neil's Ranch. Anyway, at this point, the reader is free to presume anything he wants regarding the jury's foreman!

Charles Lipmas was a Stockton business man, listed in the **Stockton Directory** of 1852 as a liquor dealer on Main Street, near El Dorado Street. John Hanna, like Lipmas, was included in the **Directory**, where he was listed as a merchant on Hunter Street. A John O. Hanna was buried in Rural Cemetery in May, 1917, at the age of 89--which would have made him approximately 24 years old at the time of the Grand Jury Report if this is the same man. Although nothing was found on W. W. Stevenson, we do know that he was in Stockton as early as December, 1850, as he served as a witness in a local marriage ceremony. He was listed in May, 1855, as a charter member of the Morning Star Lodge of Masons. Walter Winn was listed in the 1850 census as a 24-year-old speculator from Texas. By 1852 he was a partner with an Angelo Olivia in the proprietorship of the Angelo House Saloon on the Levee, near Center Street, and "opposite Steamboat Landing." William H. Geddes was listed in the 1850 census as a "Coffee House Keeper," 25 years of age, from Pennsylvania. He was elected County Recorder in 1857, and re-elected two years later for a second term.

James M. Warner was listed in the 1850 census as a 35-year-old native of Rhode Island, and a merchant by profession. He was elected an alderman (councilman) in the first Stockton election, being sworn into office on August 5, 1850. An advertisement in the 1852 **Directory** lists "J. M. Warner--General Merchant, on Penninsula, opposite the bridge, and next door to the Stockton House...." E. M. Howison, a native of Virginia, was an accountant by profession and served a long time as Captain Weber's clerk. He also served as a notary public, and evidently maintained an office (about the time of the **Report**) on Channel Street. Howison owned the land where the Rural Cemetery is now located. Weber purchased the parcel from him and then donated it to the cemetery association. He died in February of 1870 at the early age of 43.

A James M. Morrison was listed in the local census of 1850 as a 39-year-old native of Pennsylvania, and a sign painter by profession. James Vantine, prominent county resident and partner with William Knight in the operation of Knight's Ferry on the Stanislaus River (present site of Knight's Ferry in today's Stanislaus County), was a native of New York. The Dent brothers, George and Lewis, bought out Knight's interest in the lucrative ferry (on the Stockton-Sonora route) in mid-1850, and the new partnership became known as Dent, Vantine, and Company.

Benjamin Williams had been elected County Judge in April of 1850, and as such was automatically the judge of the Court of Sessions. He was serving in this capacity in July, 1851, when the grand jury was impaneled. He apparently remained on the grand jury despite his resignation from office in disgrace the following October. There was no public or official record of his resignation (from the Grand Jury) and he obviously was a signatory to the document upon its release in February, 1852. (For a review of Williams' difficulties at the time of his resignation, see Vol. XVI, No. 1, pp. 222-23.)

C. L. Benedict, a native of Ohio, was in San Joaquin County at least in early 1850, ranching on the north side of the Mokelumne River in the present-day Lodi area. He operated Benedict's Ferry on the ranch site. He died in Central America in 1871. J. C. Morris was a Stockton businessman, and was listed in the 1852 **Directory** as the proprietor of the popular Magnolia House on Channel Street. This hotel was a bit unusual, even for its time and location,

in that it was basically a renovated ship brought up Stockton Channel and beached at the head of the channel just east of El Dorado Street. Morris had two floors added on to it and gave the entire structure a southern design on the exterior. It burned down in 1871, long after Morris had sold his interest in it.

A cursory search for information on jury members F. E. Corcoran, William Hunter, and J. G. Stephens failed to turn up any leads; they were not even listed in the 1852 census of San Joaquin County.

Discerning readers will probably note that the contents of this issue--the verbatim report of the 1851 San Joaquin County Grand Jury to the Court of Sessions--is not actually a part of the Court of Sessions records even though the subject title of the previous issues has been used. This was done intentionally as succeeding issues will once again carry MINUTE BOOK A entries (beginning with January, 1852), and because of the obvious relationship of the contents of this first Grand Jury REPORT to the accomplishments and failures of the men who sat on San Joaquin County's first COURT OF SESSIONS.

The following miscellaneous articles, most of which (unless otherwise noted) have been quoted from the early statutes of California, not only help the reader understand better the era of the 1850's but also make for rather delightful reading when we contrast the simplicity and relative brevity of these laws with the ponderous and often unintelligible complexity of our modern legislation. The first of these appeared in the previous HISTORIAN (XVI-2; April-June, 1980) and will continue to be included in the subsequent issues covering the 1852 civil MINUTES of the Court of Sessions.

MISCELLANEOUS

AN ACT concerning Jails and Jailors.

Passed March 27, 1850.

The People of the State of California, represented in Senate and Assembly, do enact as follows:

1. The Court of Sessions of each County of this State shall cause a County Jail to be erected at the seat of Justice for their [sic] County, or procure some suitable place for the safe keeping of prisoners and to be kept in good condition and repair.

2. The Sheriff of each County shall have charge of the Jail of his County and the custody of all prisoners in such Jail; he may appoint a Jailor for whose conduct he shall be responsible.

3. It shall be the duty of the Sheriff and Jailor to receive from Constables and other Peace Officers,

MINUTE BOOK A - COURT OF SESSIONS (Civil) (con't)

and confine in Jail, all persons who shall be apprehended by them for any public offence, or who may be committed to such Jail by any competent authority; upon refusal to do so, any Sheriff or Jailor shall be deemed guilty of a misdemeanor, and on conviction, may be fined in any sum not exceeding one thousand dollars.

4. Female prisoners shall be confined and kept separate from male prisoners.

5. The Sheriff shall provide every prisoner with necessary food, for which he shall be allowed a reasonable compensation, to be ascertained by the Court of Sessions, and paid as other County charges. If, from the inclemency of the season, the sickness of a prisoner, or other cause, the Sheriff shall be of opinion that additional clothes or bedding are necessary for such prisoner, and such prisoner shall be unable to obtain them, the Sheriff shall furnish the same for the use of such prisoner, for which he shall be allowed a just compensation to be paid as aforesaid.

6. All necessary expenses incurred in arresting and conveying a prisoner to Jail, and in supporting him while in Jail, shall, in cases of conviction, be charged as costs against the person convicted, and, when collected, they shall be paid into the County Treasury.

7. It shall be the duty of the Sheriff or Jailor, in any County within this State, to receive into his custody any prisoner who may be committed to his charge under the authority of the United States, and to keep such prisoner safely until he is discharged by due course of law; such Sheriff or Jailor shall be subject to the same penalties for any neglect or failure of duty herein, as he would be subject to, by the Laws of this State, for the like neglect or failure in case of a prisoner committed under the authority of said Laws; Provided, provision be made by the United States for the support of such prisoner.

8. Whenever the Sheriff of any County shall be of opinion that the Jail of his County is insufficient, or there shall be no Jail in his County, he may commit the person in his custody to the nearest Jail in some other County; and it is made the duty of the Sheriff or Jailor of such County to receive such person, and keep him safely, subject to the order of the proper Court of the County from which such prisoner is brought. The expenses of supporting such prisoner shall be borne by the County from which such prisoner is brought.

9. The Sheriff may be imprisoned in the Jail of his own County; and, for the time that he shall be confined, the Coroner shall have the custody, rule, keeping, and charge of the said Jail, and by himself and his sureties be answerable for the faithful discharge of his duties in that office.

10. The Court of Sessions of each County shall allow to the Sheriff or Jailor for their services in keeping and attending to the Jail of their County, such compensation as they shall deem proper.

Back issues of the **San Joaquin Historian** are available from the Corresponding Secretary:

Vol. I, No. 1--Vol. VIII, No. 4--50c each.
 Vol. IX, No. 1--to date--\$1.00 each

Subject Index (Jan., 1963 to present) will be sent gratis upon request.

**JOIN AND SUPPORT YOUR
 SAN JOAQUIN COUNTY HISTORICAL SOCIETY**

Persons interested in doing research on local history, whether members of the Society or not, are invited to submit their manuscripts for publication in the **Historian**. The editor must, however, reserve the right to accept or reject and/or edit all material and photographs submitted.

While none of the original material printed in the quarterly is copyrighted, we would appreciate acknowledgement of the source by anyone using any portion thereof.

The Quarterly of the
SAN JOAQUIN COUNTY HISTORICAL SOCIETY, INC.
 Published Four Times Each Year
 P.O. Box 21, Lodi, California 95240

Editor: Robert Bonta

The San Joaquin County Historical Society, a non-profit corporation, meets the fourth Monday of each month except for July and August. Annual memberships are: Individual - \$5.00, Corporate - \$8.00, and Junior - \$1.00, and include a subscription to the **San Joaquin Historian**. Non-members may purchase individual copies from the Society's Secretary at \$1.00 per copy. The Society also operates the San Joaquin County Historical Museum at Micke Grove. Persons wishing to donate items should contact the Museum Director.

**Officers of the
 SAN JOAQUIN COUNTY HISTORICAL SOCIETY
 [1979-80]**

Mrs. Dorothy Hays	President
Mrs. Elinor Wakefield.....	1st Vice-President
Mrs. Olive Davis.....	2nd Vice-President
Mrs. Betty Zimmerman.....	Recording Secretary
Mrs. Celia Myers.....	Corresponding Secretary
Mrs. Vivian Hughes.....	Treasurer

DIRECTORS

Dan Boone	Frank Nunes
Lloyd Dale	Chester Wildman

SAN JOAQUIN COUNTY HISTORICAL MUSEUM
 Michael W. Bennett..... Director
 Micke Grove Park
 11793 N. Micke Grove Road, Lodi, California
 Phone area 209 368-9154 P.O. Box 21, Lodi, Calif. 95240