

NOTICIAS del PUERTO de MONTEREY

A Quarterly Bulletin of Historic Monterey Issued by
The Monterey History and Art Association

VOLUME 2, NUMBER 3

SEPTEMBER, 1958

New Light on California's First Jury Trial

"If there is one thing on earth besides religion for which I would die, it is the right of trial by jury." Thus Walter Colton, first American Alcalde of Monterey, closed his diary on the entry for Friday, September 4, 1846.

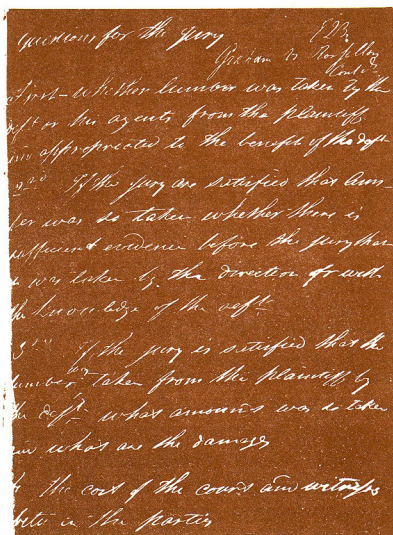
The sentence is almost audibly a sigh of relief and satisfaction. The Reverend Walter Colton, for the first time in his life, had empanelled a jury, the first seen in California, and as chief magistrate appointed by Commodore Stockton for all the jurisdiction of Monterey, capital of Upper California, he had sat as judge over its deliberations—and everything had turned out splendidly!

Alcalde Colton had become accustomed, in his short period in office, to a more intimate, even paternal, pattern of dispensing justice. Ordinarily, as he sat at his desk, the people of the pueblo simply walked in, presented their problems, domestic, commercial or criminal, received either good advice or immediate action and were satisfied. Common sense was his strong point; consciousness of responsibility and the demands of morality his guideposts.

But a jury trial—that was quite a different matter. In the first place, no Californian, except those foreigners who had become Mexican citizens, had had any experience with such a procedure. They were far more at ease with direct authority, either from the head of the family, or from the priest, or from the appointed or elected officials. In the second place, these strange new legalities were couched in English, a language unfamiliar to practically every native Californian, and to complicate matters in this particular case, the defendant spoke French. It was all very confusing.

In Colton's *Three Years in California*, pages 47 and 48, there is a description of the trial, concise, humorous and glowing with the knowledge that the job was well done and that the prestige of American justice had been upheld. A veil is drawn discreetly over the names of the participants and the details of the scene, but recently Mrs. William Kneass, Curator of the Pacific Building, and co-editor of the *Noticias*, uncovered in the archives of Monterey County some interesting material that sheds much more light on the affair. In these pages are photostatic copies of the new evidence, written either by Colton himself, or by William Garner, his clerk. And in Volume 8, page 798 et seq., of the Mexican Archives, carefully kept in the County Courthouse in Salinas, is the entire record of the trial.

The case officially came under Alcalde Colton's cognizance on August 30, 1846, when Isaac Graham entered his office and swore out a complaint of theft against Carlos Rosillion. Colton, for all that he was a magistrate and of strictest integrity, must have felt a sudden sympathy for anyone against whom Isaac Graham whetted his knife.



Photograph of original "questions of fact" given to the jury by Alcalde Colton. (Photo through the courtesy of Emmet McMenamin, County Clerk, from Mexican Archives in the County Courthouse, Salinas.)

*Isaac Graham versus
Carlos Rosillion*

Isaac Graham personally appeared before me at my office and after having been duly sworn, testified as follows:

That in July 1845 I found Carlos Rosillion hauling the last of a pile of lumber which had contained in the whole about ten thousand feet belonging to Graham and Nail to the beach to be ship'd off by him on board of the Ship Fama without my authority and for which said Rosillion has given me no satisfaction.

In July 1846 I had a pile of lumber containing five thousand feet near the beach in the vicinity of Santa Cruz, part of which I am informed was shipped off by Don Carlos Rosillion in July last without my knowledge or consent and for which no satisfaction has been given. I also had fifty Joyce and fifty-two rafters near the same place and which I have every reason to believe were taken by the same Don Carlos Rosillion, one of them having been found in his possession.

Isaac Graham offers in evidence of the above statement the following persons (vz) George Chapel, Vincent Bonnete, Francisco Alviso, Joseph L. Majors, Mr. Hewitt.

Once the wheels had been set in motion, Alcalde Colton saw to it that they kept turning. Within four days he had summoned a jury of twelve outstanding men of reputation and business experience in Monterey. Six of the jurors were of English or American background, six were Spanish-Californians of account. They were Jose Abrego, Charles Chase, Manuel Diaz, Talbot Green, William E. P. Hartnell, Milton Little, Juan Malarin (foreman), George Miner, Pedro Narvæz, Rafæl

Graham was a Kentucky ruffian, a loud, rowdy, dissolute ex-trapper whose distillery and drinking place at Natividad, near Salinas, was the hangout for all local desperados and loafers. He had been involved in one shady episode after another, was eight months in the chain gang for rustling cattle, was exiled for a year for plotting against the government, and in 1845, just a year previous to his suit, twenty of his foreign fellow-citizens petitioned the prefect of Monterey to expel him from the community as a lawless, quarrelsome corrupter of the public peace and morals—and Colton looked on whiskey and brandy as twin beacons at the door of hell.

Rosillion, the defendant, was a Frenchman, come as a trader back in the '30s. Both he and Graham had lumber mills near Santa Cruz and shipped their planks off the sandy beach over to Monterey and down the coast. And this led to the trouble. Read the complaint:

*Magistrate's Office, Monterey
Augt 30, 1846*

COMPLAINT OF THEFT

Sanchez, Florencio Serrano (whose adobe home the History and Art Association is trying to save as its headquarters), and Robert H. Thomes.

"The jury having been sworn and the case read to them by Mr. William Hartnell in English and Spanish," the trial proceeded, while the crowded room listened in rapt attention. It appeared that Francisco Alviso had been hauling lumber from Rosillion's stacks on the beach down to the water's edge. There boats lightered the planks and put them aboard a ship. Alviso had already hauled 6,000 feet of lumber when William Buckle, supercargo of the ship, calculated that 2,000 feet more would complete the loading.

Some bystander then pointed out to Alviso the pile from which he was to take the necessary planking. Alviso asked Rosillion what to do, and the mill-owner told him to go ahead and bring down the lumber from that stack.

According to another witness, there were piles of lumber all around the beach, and Graham's stack was only about twenty yards from Rosillion's. In going up the sandy shore Alviso evidently lost sight of his objective and when he pulled the next 2,000 feet down, it was from the wrong pile.

When the mistake was discovered, the lumber was aboard the vessel, and Nail, Graham's partner, spoke to Rosillion about it. Rosillion immediately offered to settle. Nail himself told two of the witnesses that the difficulty had been arranged amicably. One of the witnesses reminded Nail later, "I thought you had settled this long ago." "So I did," replied Nail unhappily, "but Graham has so heated my brain that I hardly know what I am about."

Jose Bolcoff, Santa Cruz's Alcalde in 1845, said that Don Carlos Rosillion had complained to him then that Nail had taken 1,000 feet of rafters from his stacks and sent them to Francisco Pacheco. The alcalde told both men "they had better clear up the matter between them, for it was bad to have to go to law about such things." Taking his advice, Nail and Rosillion reported to him within a few days that all was corrected. And here now was the dispute, still unsettled.

What of the stolen rafters and joists? Well, true enough, there were several large pieces of timber with Graham's mill-mark found near Rosillion's house, but Francis Poilor, another businessman, disposed of that claim. He declared that a ship's agent came to him to get 1,200 feet of heavy timbers. Poilor had gone with the agent and had pointed out a stack he had gotten from Graham. Thus the load was delivered to Don Carlos.

By this time it was obvious that a series of errors

First - Lumber was taken by the defendant or his agent, but was not appropriated for his use (defendant settled for with Nail) -

2nd - It was not by the direction of the defendant that the lumber was taken but through mistake which was settled by him at once.

3rd - Graham to Nail - Verdict of jury the amount which appears to have been taken was 3243 feet which at \$30 per thousand amounts to \$97.29

4 - The costs to be ~~deducted~~ paid by ~~Don Carlos~~ Graham as Don Carlos once offered to settle it amicably

5 - The jury are of opinion that 1000 feet taken by Graham's agent through mistake from Don Carlos should be deducted from \$97.29 which will leave a balance of \$67.29

The verdict of the jury, only six of whom had ever had previous acquaintance with the Anglo-American system of justice. (Photo courtesy of Monterey County Clerk Emmet McMenamin, from Mexican Archives, County Courthouse, Salinas.)

had furnished Graham with a weapon to use against a rival lumberman. Actually, such mistakes in shipments occurred quite often. In Larkin's papers there are several reports from his representatives that some of his stacks had been taken erroneously.

After five or six hours, when all testimony was in, Judge Colton presented these questions to the jury: First, Whether lumber had been taken by the defendant or his agents from the plaintiff and appropriated to the benefit of the defendant. 2nd If the jury are satisfied that lumber was so taken, whether there is sufficient evidence that it was taken by the direction or with the knowledge of the defendant. 3rd If the jury is satisfied that the lumber was so taken from the plaintiff by the defendant, what amount was so taken, and what are the damages. 4th The cost of the court and witnesses between the parties.

For an hour the jury debated the issue. When the twelve re-entered the main room, they had answered all the questions and made these judgments: First—Lumber was taken by the defendant or his agents but was not appropriated for his use until settled with Nail. 2nd—It was not by the direction of the defendant that the lumber was taken, but through mistake, which was settled by him at once. 3rd—The amount which appears to have been taken was 3,243 feet which at \$30 per thousand, amount to \$97.29. 4th The costs are to be paid by Graham, as Don Carlos once offered to settle it amicably. (*Note*: Evidently the jury changed its mind here, for item 4 originally read for "the costs to be paid between Graham and Don Carlos") 5th The jury are of the opinion that one thousand feet taken by Graham's agent through mistake from Don Carlos should be deducted from \$97.29, which will leave a balance of \$67.29.

In Colton's words, "To this verdict, both parties bowed without a word of dissent. The inhabitants who witnessed the trial said it was what they liked—that there could be no bribery in it—that the opinion of twelve honest men should set the case forever at rest. And so it did, though neither party completely triumphed in the issue. One recovered his property, which had been taken from him by mistake, the other his character, which had been slandered by design."

With his characteristic ironic humor, Colton credits three factors for this satisfactory conclusion: "the silent attention which prevailed, the tact of Mr. Hartnell, who acted as interpreter, and the absence of young lawyers." Immediately after the trial, Justice Colton notes in the official record that "Rosillion presented an accmpt current against the firm of Graham and Nail and paid \$30" on his indebtedness, and in California's first newspaper, *The Californian*, Monterey, September 12, 1846, Graham withdrew his remarks against Rosillion's honesty. All in all the Alcalde of Monterey had a right to feel proud, patriotic, and a little self-satisfied when he recorded the story of the first jury trial in California in his diary.

What became of Graham and Rosillion? Well, Graham, after a life of rascality, died peacefully in San Francisco in 1863, aged 70. Rosillion apparently went to the mines in '48 with two California friends, Amador and Sunol, ran away with the profits of all three and disappeared in Peru. No mistake in hauling this time; he got the right pile.

(*Editor's Note*: The defendant's name was probably Roussillon or Rossignon, but the English-born, Spanish-speaking clerk of the court consistently spelled it Rosillion. Bancroft used Roussillon and identified him with Rossignon elsewhere. Furthermore, we are greatly indebted to Monterey County Clerk Emmet McMena-min and his staff for their patience and helpfulness in getting the old records for us from storage in the attic of the Court House. This article would not have been possible without their interest in our proposal to bring Monterey's fascinating history and traditions to light.)

—DONALD M. CRAIG

WILLIAM CURTIS, PIONEER MERCHANT

by James F. Cosgrave

Continued from the June issue

The C & C accounts also mention a "Hog Farm," the account being a sizeable one and handled as if owned by the store or one of the partners.

Over and beyond the store records both partners were active around town, although no attempt has been made to trace the affairs of Conover for this article. Curtis was, along with Milton Little, D. R. Ashley and Phillip Roach, a member of the first tax-supported school board in 1853-54. He served two terms as County Treasurer, the first term as the third man to be elected to the position in 1854, succeeding James A. Wall and David Jacks, and the second term starting in 1864. Curtis was also the third United States Postmaster of Monterey, being appointed in 1855 and holding that office until 1861. William G. Marcy and A. Randall preceded him and Simpson Conover, his partner, was postmaster immediately afterward. With James H. Gleason, David S. Spence and D. R. Ashley, Curtis participated in forming the "Monterey Library," a "literary and scientific" corporation, in 1857. Albert Tresconi and Jacob Leese signed a bond as sureties for Curtis when he became an auctioneer for the City and County in 1858. About this time Curtis also obtained an appointment in charge of all federal public buildings in the town of Monterey and vicinity, including the Cuartel, by the Quartermaster's Department of the U. S. Army. Curtis was also in and about the Custom House to an undetermined extent, partly on his own account as a merchant, and partly as a deputy collector. An exsistant handwritten document of 1853 signed by his friend Customs Collector Wm. H. Russell, for example, gave his temporary authority during the absence of the other officers, together with the following:

Instructions

Should coasting and other American bottoms enter and clear at this port with foreign merchandise to the amount of \$400; Wm. Curtis so permit if all is regular by following the same form of other Collectors on their Manifests, and sign his own name as Deputy Collector—If Foreign vessels enter with cargoes to land he will employ such assistance as may be necessary & pursue the Revenue laws as found in Gordon's Digest of the Statutes at large . . . The rates of fees (are) stuck up on the office (wall).

Wm. H. Russell

Collector

Much that was of Curtis comes through his second wife, of maiden name Lydia Jane Rucker. This amiable and sweetly disposed woman was of some refinement, given to writing poetry and otherwise corresponding with her sisters. Some of the many letters have been carefully preserved. The inevitable diary of the period also gives some of the details of crossing the plains in the wagon of her father, a Methodist minister, in 1853, with her mother, three sisters and a brother. They settled on the Salinas plains, and in the following year, some 20 years of age, she married Curtis before the Hon. Josiah Merritt on May 19, 1854. Lydia Jane was of deep religious convictions, and her poetry displays a melancholy that can be described only as belonging to the sentimental age of which she was a part.

*Think not because the eye is bright
And smiles are playing there
The heart that beats within is light
And free from pain and care.*

Lydia, Salinas Plains, Nov 19, 1853

*If there be one o'er thy dead
Hath in grief born part
And watched in sickness by thy bed
Call that a kindred heart.*

LJC, Monterey, June 12, 1861

Although nine children came from this marriage, only four survived to adulthood: Edwin Emmet, 1856-1920; Lydia Beatrice, 1867-1948; Eugene Ambrose, 1869-1941 and Josephine Octavia, 1871-1949.

The first wife of Mr. Curtis was of Spanish descent and is believed to have died in 1853 in childbirth. Nothing is known of her. The child, Mary Curtis, was raised in the Curtis household and lived until 1928.

Curtis and Conover failed in 1866. Competition had increased during the sixties and of course the entire state of California was suffering from a drought which agriculturally ended an era. Mylar, *ibid.*, mentions farmers in the area pooling horses so that enough would be left to do the plowing in the following year. Very few transactions appear on the books in early 1866. Mr. Curtis ended his second term as County Treasurer in early March 1866. While the author is not in possession of any written account clearly depicting the circumstances, it appears that C & C were unable to make payment of certain State and County funds

being held by the store (there were no banks.) Demands were immediately made upon the bondsmen of Curtis, who were M. C. Ireland, S. B. Gordon, James Bardin, Geo. Graves, F. A. McDougall, B. V. Sargent and George Harris. The store's creditors in turn also acted to protect their interests by foreclosing on property owned by C & C which had been put up as collateral. Neither man was implicated directly; however on March 16, the *Monterey Gazette* commented thusly:

"Failed . . . The current event of the past week has been the failure of Curtis & Conover, a firm long and favorably known throughout the country. Our commercial circle has been profoundly agitated by this sad affair, as we cannot but characterize it. We cannot go into the details of the case, for they are so complicated to an outsider as to defy analysis, and indeed we speak of it only to regret, and to convey assurances of sympathy of the entire community

with Mr. Curtis and his estimable family in this double disaster. We have strong belief that all will yet be arranged to the satisfaction of everyone, and at least indulge a devout hope to that effect."

The store was auctioned off, the property as well as the goods. The bondsmen made a settlement with the County. Conover, some months later, filed as an insolvent debtor. He was met with some resistance on the part of his creditors and in court was accused of fraud. Later he left the community, his fate unknown and somewhat of a mystery, although his family remained to live and be respected in Watsonville.



Monterey's First Brick Store as it stands today. Originally the Curtis & Conover Store, this little building has also been the Smith & Bardin Store and the Rodriguez & Osio Store, before it was remodeled in 1912 by the Winston family.

William Curtis of Monterey died there January 28, 1875. The intervening years are not easy to trace, filled with sickness of his own and the death of children, although he remained well thought of and letters from Lydia Jane to her sisters indicate no more than passing concern over money problems. Perhaps the *Monterey Weekly Herald* of January 30th that year, even though partly owned by Curtis, sums it up best:

"We have to record this week the death of an old pioneer of Monterey, Mr. William Curtis . . . Lately he has been engaged in the lumber trade, but continued ill health for the past two or three years compelled his partial withdrawal from active duties of this life . . . In the memory of his old friends he will live long, as a citizen, generous and liberal to a fault."

The end was not easy. Lydia Jane, consumptive, and in fact dying herself, was unable to present herself at the largely attended funeral, and was dependent upon the help of her friend Florence Rumsey, school teacher and daughter of Judge Rumsey. And a little more. Later that year the mother and three small children journeyed by train and stage, the indelible imprint of Monterey and home on their minds, to a newly established town at the railhead on a barren, windswept, sun-baked plain, called Fresno. For Lydia Jane the end came December 2, 1875. The ties were severed. And yet, as in a lighter vein some twenty years before,

*There's a magical tie in the land of my home
Which the heart cannot break though the foot steps may wane;
Be that land where it may, at the line or the pole,
It still holds the magnet that draws back the soul.*

Lydia, December 10, 1863, Salinas Plains

ACKNOWLEDGEMENTS The assistance of Bancroft Library, the Society of California Pioneers, and the Monterey History and Art Association in making available source material is hereby gratefully acknowledged. The author is especially indebted to Mrs. William E. Kneass of the latter association for information and encouragement. (Editor's Note: Mr. James F. Cosgrave, now a resident of San Francisco, is the greatgrandson of William Curtis, whose biography he has traced here from family papers and research.)

COSAS DE INTERES PARA LOS SOCIOS

Within the last year Mrs. T. J. Barkle, wife of the owner of the museum on Polk Street, gave the Monterey Public Library a number of books, among which were several of local historical importance. One was the shipping record kept by the Monterey & Salinas Valley Railroad Co. from October 29, 1874 to August 6, 1877, giving the name of shipper, items shipped, etc.

There were also four volumes of the register of the Central Hotel in Monterey, covering the periods from July 3, 1883 to February 1, 1887, December 20, 1905 to April 2, 1906, and November 1, 1912 to September 15, 1917.

Twelve books were originally in a case in Reverend Barkle's museum, a label beside which was marked "From Monterey's first library." Because of their early publication dates, these books can be presumed to have been part of the collection of approximately 1,000 volumes purchased in 1849 by Walter Colton in New York and shipped around Cape Horn as the beginning of the Milton Little Library. Four others have, on the fly leaves, signatures of the early settlers of Monterey: Joaquin Serrano, Alberto Soler, Milton Little and Stephon Fulton.

Miss Ann Hadden
Forest Hill Manor
Pacific Grove, Calif.

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P. O. Box 1169
Monterey, California

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COSAS DE INTERES PARA LOS SOCIOS

TOURS: The adobe tour was a success in every way. We wish to thank the owners of the beautiful homes who opened them for the day. Also we wish we had space to list the names of the many members and friends who served as assistant hostesses, drivers of the transportation cars, parking lot managers at the College, etc. The small booklet written by Mrs. William O'Donnell with illustrations and descriptions of the homes proved to be a popular item. Our secretary reports that she has banked \$1,381.50 from the tour, and still has a few of the booklets to sell at 50¢.

The Hearst San Simeon tours will be held October 30 and 31. May we remind members to send in reservations early, and to read the reservation slip carefully. Space is limited on the tours.

The proceeds from the adobe tour and the Hearst San Simeon tours will be used to make a deposit on the Serrano adobe—if it is possible to purchase it.

Mary Greene left in August for San Miguel de Allende, Mexico, to paint, rest, and establish a base from which she will travel to Spain and other points.

The association purchased an old secretary-bookcase for the Pacific Building. It was originally the property of the mother of Benito Soberanes.

GIFTS: Mrs. William Pringle of Corral de Tierra gave a fine oil of the Custom House painted by Rollo Peters. Mrs. W. R. Holman presented three of the personal scrapbooks of Phillip Roach, last Alcalde and first Mayor of Monterey.

The lavender sachet project of Mrs. Marje Eliassen is proving popular. Also the post cards are selling well in the State Monuments through the courtesy of the curators.

NEW MEMBERS: Dr. and Mrs. Norman P. Andreson, Captain and Mrs. Paul Foley, Jr., Mrs. Ruth Ridenour, Mrs. L. E. Hulse, Miss Jean Williamson, Miss Marion Brown, Mr. and Mrs. Ashton Stanley, Mrs. Peter Kim, Miss Ana Ricarda, Mr. Russell Gowly, Mr. Frederick C. McNulty, Mrs. Roy Page, Mrs. Roy Barton, Dr. and Mrs. Frank Cusenza, Father Lawrence Farrell, Mr. Charles Tilden, Dr. and Mrs. J. D. Nidel, Commander and Mrs. L. J. Hudson, Mrs. Frances Andrews, Mr. and Mrs. Shreve Archer, Mrs. Kessiale Zanetta, Mrs. Josephine Fussell, Mr. and Mrs. Abelardo H. G. Cooper, Mrs. Raymond Grabill, Mr. and Mrs. John Marble, Mrs. Herbert Alward and Mr. and Mrs. George H. Leutzinger.

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