

HISTORY OF THE BENCH AND BAR OF OREGON

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History of the Bench and Bar of Oregon by C. E. S. Wood

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C. E. S. WOOD

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FOREWORD

ONE is embarrassed, not so much with the lack of material as the abundance of it, in the preparation of a work like the present. It is probable, that when all is written, there will be found some omissions, and it is also probable that some matters may be expressed herein that were better left unsaid; but "it is human to err." May we be forgiven if we have "done the things we ought not to have done."

It should be a matter of pride to remember that most of the great events of the world have had a lawyer somewhere connected with them. "It was a lawyer who moved the Declaration of Independence; it was a lawyer who wrote the Declaration; thirty out of fifty-five members constituting the constitutional convention were lawyers . . . the very web and woof of that instrument, every arch and key composing that wondrous structure, was proposed, polished and set in order by lawyers, most conspicuous of whom were James Madison and James Wilson." A lawyer it was whose brain evolved the Declaration of Independence of the Republic of Texas. It was Chief Justice Marshall's master mind that gave practical effect to our national constitution.

The Magna Charta that was wrested from King John was written by lawyers. To Sir Edward Coke is owing the Petition of Rights, and it was he who dared to declare that the king is not above the law. It is to a lawyer we are indebted for the drafting of the Habeas Corpus Act. The Statute of William I and Mary I, settling the succession of the crown and establishing the rights of the subject, was the work of a lawyer. Upon this statute was based the first eight amendments to the Federal Constitution, and from them, again, come the Declaration of Rights which are embodied in the constitution of every state in the Union.

The Reform Bill adopted in England in 1832 was the work of a lawyer, and it was a lawyer who proclaimed the present Republic of France, in 1870. Twenty American Presidents were lawyers, and the majority of the members of Congress are lawyers. Hamilton, Walker, Chase, Sherman and Carlisle, five of the United States Secretaries of the Treasury, were members of the legal profession. Phelps, Bayard, Choate, the great American ambassadors, were lawyers. So, too, were Presidents Polk, Lincoln and McKinley. The great names of Madison, Hamilton, Jay, Livingston, Ellsworth, Sherman, Johnson, Fisher, Ames, Parsons, Marshall, Wythe and scores

of other brilliant legal minds, add lustre to this honorable profession. It is true that "lawyers are, and have been in all ages, the chief defense and preservers of free institutions and of public and individual liberty."

Masterly in its simplicity, was the word picture of a court room, painted by Judge Martin L. Pipes, the well-known Portland lawyer, in his address delivered before the Oregon State Bar Association, November 17, 1909, in which he said:

"The court room is the one place where the citizen comes into daily contact with his Government. Other departments are more or less remote from him; their action affecting him more or less indirectly. But here he is in the presence of the dignity of the state, the corporeal symbol of justice, the beneficent tribunal that protects him in his legal rights; and when he approaches that bar, he need not come with bated breath to plead for favors, political or otherwise, nor bow his head to conciliate the frown of favor; but he stands in that presence shorn of every badge of station, high or low, and as free and as equal as he was born. In other places and in other situations the inequalities of life affect him.

"But when he enters the door of a court of justice, he leaves behind him all distinctions, all advantages and disadvantages, all questions of social or political influence, all the handicap of poverty, all the prestige of wealth, and stands mantled only with the invisible but impermeable robe of simple citizenship. It is so because he is in the place where the law must prevail. There is, therefore, no place in this ideal court for any other influence than the judge's sense of justice and of his loyalty to the law."

Many of the great lawyers and judges who have made Oregon famous, have passed from the earthly forum to the Great Bar of Judgment. They have left their record behind them. There they stand equal with all other men, yet in their work here they still speak, albeit they stand in "the silent halls of death." Oregon has reason to be proud of these men, for it is owing to their care and wisdom that we have our present rights so well safeguarded.

In a work of this kind there is little opportunity for absolutely strict originality, unless it may be in the form of expression, and therefore we should not be accused of plagiarism. Indeed, by its very nature, one must follow often the exact words of other writers. As to any possible charge of plagiarism, we would respectfully refer the reader to two distinct writers in the American school of literature—Ralph Waldo Emerson and Samuel L. Clemens (Mark Twain) in justification. Emerson says:

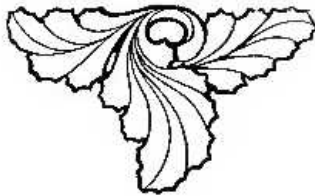
"It has come to be practically a sort of rule in literature, that a man, having once shown himself capable of original writing, is enti-

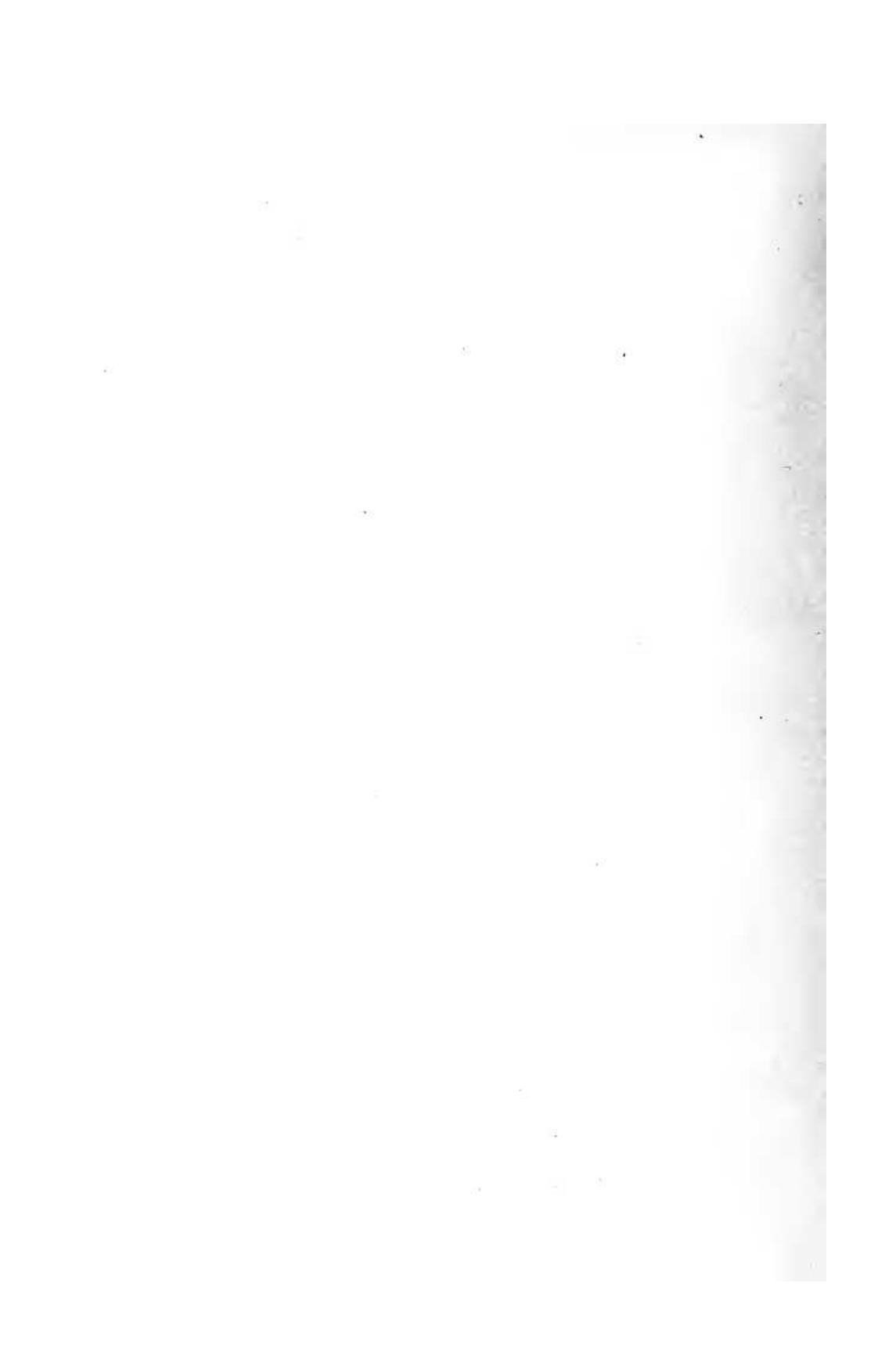
ried thenceforth to steal from the writings of others at discretion. Thought is the property of him who can entertain it, and of him who can adequately place it. A certain awkwardness marks the use of borrowed thoughts; but as soon as we have learned what to do with them, they become our own."

Mark Twain, in a letter to the editor of the Grants Pass Observer in 1887, said:

"A considerable part of every book is an unconscious plagiarism of some previous book. There is no sin about it. If there were, and it were of the deadly sort, it would eventually be necessary to restrict hell to authors—and then enlarge it."

From Homer's time to the present authors have borrowed from the writers who preceded them; yes, indeed, from the time "Omer struck his bloomin' lyre."





BENCH AND BAR OF OREGON

In a work like the present, one is not necessarily restricted by the title to a mere review of the great jurists, lawyers and statesmen whose names adorn the history of the state. Indeed, it is necessary and proper, if not absolutely unavoidable, to make frequent references to the history of Oregon, past and present, to properly delineate the boundaries of that vast stage upon which great characters have appeared.

The Oregon of today, large as it is, with its 96,030 square miles of area, is not the Oregon of the past. The original Oregon Country included the present Oregon, the states of Washington, Idaho, part of Montana and Wyoming, and all of British Columbia west of the Rocky Mountains and south of the Alaska line of 54 degrees and 40 minutes. It was greater than the combined areas of the thirteen colonies at the time of the Revolution, and included the entire territory between the Rocky Mountains and the Pacific Ocean, the Alaska boundary on the north and the California boundary on the south. Even in 1843, Senator McDuffie, of South Carolina, had so little discernment as to scoff in the Senate at the possibility of building a railroad to the mouth of the Columbia River, and thanked God for having placed the Rocky Mountains in the way so as to make this country unapproachable.

What was the opinion of Thomas Jefferson all know, especially after the Lewis and Clark expedition of 1805, whose centennial was so splendidly celebrated at Portland in 1905. With magnificent foresight, Senator Baylies, of Massachusetts, in 1823 uttered these words:

"Our natural boundary is the Pacific Ocean. The swelling tide of our population must and will roll on until that mighty ocean interposes its waters and limits our territorial empire. Then, with two oceans washing our shores, the commercial wealth of the world is ours, and our imagination can hardly conceive the greatness, the grandeur and the power that awaits us."

The present State of Oregon has a length of 395 miles from east to west, and a width, from north to south, of 278 miles. Should one combine the areas of New Hampshire, Vermont, Rhode Island, Connecticut and New York, he would find that Oregon contains 2,500,000 acres more than all these states together. Should the areas of