

Part Two: TIMOTHY TUCKER, ESQ.

. *some infernal Spirit seen*

Squat like a toad, close to the ear of Eve,
Assaying by his devilish art to reach
The organs of her fancy

Him thus intent Ithuriel with his spear
Touched lightly; for no falsehood can endure
Touch of celestial temper, but returns
Of force to its own likeness. Up he starts,
Discovered and surprised

John Milton. *Paradise Lost.*

5. Ithuriel's Paradise

Disputes over land titles furnished Walker with convenient California targets for his magic spear of projection. The first target came within range in the wake of his arrival. It had been in the making for some time, since Captain William Alexander Leidesdorff, a resident of San Francisco for several years, had died intestate in May, 1848.¹

Leidesdorff was a naturalized American citizen, born in the Danish West Indies. At the time of death, he owned considerable real estate in the commercial center of town, which skyrocketed in value during the Gold Rush. With no heirs in sight, the estate passed into the hands of the Public Administrator.

After more than twelve months had elapsed, without anyone appearing to claim the property, Assistant Quartermaster Joseph L. Folsom left San Francisco for the West Indies to look for Leidesdorff's relatives. At the island of St. Croix he found the mother of the deceased, who "for a valuable consideration" willed an interest in the estate to Folsom, and gave him full powers of attorney to represent her in California.

On his return to San Francisco, Folsom filed an application for the transfer of the estate, and the judge appointed by the Military Governor turned the property over to him in

¹The available collections of the *San Francisco Herald* hold only one-third of the issues published in 1850, leaving wide gaps at the onset of Walker's journalistic career in California. For the background of the Leidesdorff case, the following sources were consulted: "Interesting from Our New Territory in the Pacific," *New York Herald* 9/27/1848, p.4 c.3; "The Leidesdorff Estate," *Ibid.* 8/27/1850, p.7 c.1; "The Leidesdorff Estate," *San Francisco Herald* 8/1/1850, p.1 c.1; "The Leidesdorff Estate," *Alta* 7/17/1850, p.2 c.3; 7/18, p.2 c.1; "The Leidesdorff Affair," *Ibid.* 7/23/1850, p.2 c.1; "Trial of Judge Morrison for Malfeasance," *Ibid.* 8/28/1850, p.2 c.3; "Trial of Roderick W. Morrison for Malfeasance," *Ibid.* 8/29/1850, p.2 c.3; "Trial of Judge Morrison," *Ibid.* 8/31/1850, p.2 c.3; "District Court," *Ibid.* 9/1/1850, p.2 c.3.

February, 1850. The California Legislature shortly afterwards organized the judicial system under the Constitution. New Judges were appointed. Roderick N. Morrison, Esq., County Judge sitting in Probate, on July 1st declared illegal the previous Leidesdorff proceedings and awarded the estate back into the hands of the Public Administrator.

Public Administrator Joseph Henriquez promptly instituted suit to receive the property. Simultaneously, his attorney sent a confidential message to Folsom, intimating that the sum of \$20,000 would guarantee a ruling from Judge Morrison in his favor. Folsom not only rejected the proposition, but denounced it in an open letter in the *Herald*. Precisely then, Nugent became sole owner of the paper, with the financial backing of Folsom.

The attorney's offer to receive a bribe aroused public indignation, and Judge Morrison was indicted for malfeasance. His trial was held late in August at Judge Levi Parsons' District Court. Witnesses confirmed the facts of the bribe, but the prosecution failed to prove that any of the money would have gone to Morrison, for which reason he was acquitted by Judge Parsons.

On September 4, the *Herald* published a very long article criticizing the Morrison trial. Though unsigned, its contents identify William Walker as the author:

. . . We shall now proceed to cite in support of our position, a case which may be in the memory of many of our readers. We allude to the case of the State of Louisiana vs. Joseph Bradley.

The defendant was indicted on the 18th of April, 1849, for the murder of Fanny Daly. The accusation depended entirely on circumstantial evidence. On a certain day the defendant had been found lying weltering in his blood in the room occupied by the deceased, the latter also being found dead, with several stabs and cuts inflicted evidently by somebody with whom she had struggled when attacked. The suspicion was that the prisoner had murdered her, and had afterwards attempted to commit suicide.

Two letters were produced in the trial, signed with the name of the defendant. They had been found

in the pocket of the vest he wore at the time he was found lying bleeding by the side of the deceased. One stated that "this deed was committed on account of trouble and deceit — that his hand had been wavering over it for some days; it mentioned the name of his agent and wished that the schooner "Friendship," of which he was Captain, might be despatched as soon as possible."

The other which was to a private friend, declared that "he never expected to come to this; wished that this young woman might be buried, but as for himself, he might be left for the buzzards to eat."²

Those comments on the murder of a beautiful young girl in New Orleans were irrelevant and utterly out of place in the Morrison case. But there was a reason behind them. The horrible death of Fanny Daley had occurred in New Orleans on March 5, 1849, and the trial of Joseph Bradley had made the news many times in the months ahead; yet, the only date recalled by the author of the article was the day that Bradley was indicted: April 18, 1849 (Doomsday for Walker, the day that Ellen died). The New Orleans Crescent had reported Bradley's indictment next morning, right under *Ellen Fever* in the "New Orleans" column.³

It is apparent that both tragedies became linked in Walker's unconscious; his recollections of the New Orleans murder transmitted in the *Herald* the dark, secret messages from his shadow. Joseph Bradley represented John Jones, and Fanny Daley, the deceased, stood for Ellen. The schooner "Friendship" summoned up the *Mary Ellen*, and it was Walker himself who "might be left for the buzzards to eat" after the young woman was buried.

When William Walker wrote that article in September, 1850, he was with Randolph's help also earning a living in San Francisco as a lawyer. The New Orleans Crescent's corre-

²"The Morrison Trial -- Exclusion of Evidence." *San Francisco Herald* 9/4/1850, p.2 c.4.

³"The Case of Bradley," *Crescent* 4/19/1849, p.3 c.5.

spondent reported on October 1st:

Talking of Orleanians, let me refer to a few friends. Wm. Walker, late of the *Crescent*, is enjoying a good practice in the law, and has already gathered around him as warm friends as he left in the sunny South. Randolph, too, stands in the foremost rank at the bar, and his picturesque little cottage on the outskirts of the city, looks as familiar as our own pleasant homesteads in the land "so far awa'."⁴

But William Walker had not moved to California to pursue his legal career, which he used rather as a tool to enter the political arena. Hence, at the Democratic Nominating Committee meeting held at the office of Justice Hoffman on September 21st, William Walker placed his name on the ballot for Member of the Assembly in the forthcoming elections. Out of twenty-five applicants, the Committee chose five candidates, but Walker was not one of them.

A number of citizens dissatisfied with the regular party selections met at the District Court Room a week later: an Independent Ticket was selected, but Walker was again overlooked. He then advertised in the *Herald* that "Wm. Walker is a candidate for a seat in the Assembly of the next Legislature."⁵ Nobody paid attention, though, and his name did not appear on the ballot on election day, Monday, October 7, 1850.

In fact, Walker was disqualified by the California Constitution which stated: "No person shall be a member of the Senate or Assembly, who has not been a citizen of the State one year, and of the county or district for which he shall be chosen six months next before his election."⁶ With the door thus shut on Gabriel Gumbo's face, Timothy Tucker

⁴"California Correspondence," *Crescent* 11/7/1850, p.2 c.2.

⁵"Candidates," *San Francisco Herald* 9/28/1850, p.2 c.4; 10/1, p.3 c.1; 10/3, p.2 c.5.

⁶"Qualifications of an Assemblyman," *ibid.* 9/27/1850, p.2 c.1.

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thereafter worked full time as Nugent's assistant in the *Herald*. The cholera epidemic then raging in town furnished him an easy target in the form of the medical profession, whose members couldn't even agree among themselves as to whether the illness was cholera or not:

THE MEDICAL SOCIETY. — This body, composed as is well known, of distinguished and eminent practitioners in every branch of the profession — not even omitting farriery and corns — has amused itself of late by passing sundry resolutions meant to be terribly severe . . . exceedingly cutting and sarcastic. It is no doubt exceedingly provoking that Doctor Hastings has not condescended to notice the shafts of these Lilliputians.⁷

Folsom's financial ties with Nugent provided Tucker with the best targets for his spear. In the aftermath of the Leidesdorff case, he repeatedly attacked Morrison, Parsons, Henriquez, and their associates and attorneys as well as the *Pacific News* and other journals on their side. He likewise sharply criticized all judicial authorities and decisions directly or indirectly endangering Folsom's title. Following are some examples of Tucker's venomous pen:

. . . and this testimony was ruled out as irrelevant. Oh! sapient and ethical Judge Parsons!⁸

We have had the smooth and dulcet notes of Mr. Wm. Carey Jones given to the world in the shape of a report soft-soaping all land titles from the great "Mariposa claim" to all others upwards and downwards — if, mayhap, there be a "lower deep" than this last "lowest depth."⁹

⁷The Medical Society,° *Ibid.* 10/23/1850, p.2 c.2.

⁸The Morrison Trial -- Exclusion of Evidence.° *San Francisco Herald* 9/4/1850, p.2 c.4.

⁹The Supreme Court Squinting at Squatterism.° *Ibid.* 12/7/1850 [Baldwin's Report from the Select Committee, Exhibit #2, p.49].

He stands like a Titan ready to demolish with a frown or a glance of the eye any adversary that may dare attack him. We only wish that, like Jupiter, he would kick out of Heaven — that is, over the bar — some of the fauns and satyrs — not Vulcans — that have been playing around his pure and immaculate Venus, the Judge of the County Court.¹⁰

For God's sake, if we must have the inferior tribunals corrupt, at least let the fountain-head be undefiled. . . . The awful spectacle of a whole people, irate and vengeful, rising *en masse* to evict the polluters of the fountain of justice and scourge them from the seats they had disgraced, we hope this generation shall never be forced to witness.¹¹

. . . And furthermore, the solemn puppets the people have raised to the bench, can be very easily removed should they attempt to carry into practice such infamous dogmas as those of which they have given obscure intimation.¹²

. . . We know not what is to become of this unfortunate city. With a reckless, selfish, grasping, extravagant, sordid and stupid Council — with a bankrupt treasury and no prospect of amelioration — with a judiciary whose only object, with a few honorable exceptions, appears to be to enrich themselves . . .¹³

Silly and contemptible as is the attitude in which the tribunal is now exhibited to the public, we will not do it the injustice to charge upon any

10 *Ibid.*

11 "Land Titles in San Francisco." *Ibid.* 12/9/1850 [Exhibit #3, p.52].

12 "The Judges." *Ibid.* 12/11/1850 [Exhibit #4, p.53].

13 "The Judges." *Ibid.* 12/12/1850 [Exhibit #5, p.55].

of its members the canting, whining, hypocritical and abusive tirade which appeared in the *News* on yesterday. There are in every community unprincipled sycophants, who hug degradation to them as a warm garment — whose trade is to fawn and flatter, and falsify the truth — to uphold every corruption and defend every wrong, and to do the loathsome work their masters would not touch.¹⁴

Feeling acutely, as citizens, the humiliating position into which the Judges of the Supreme Court have brought themselves — obliged as they are to depend on the unprincipled and disreputable portion of the Press, and the still more unprincipled and disreputable hangers-on of the Courts, the corrupt practitioners and pettyfoggers, for that sympathy and defence no right thinking citizen can accord them; — flagrant as has been their offence against the public interests — arrant as has been the stupidity of the opinion they have intimated . . .¹⁵

Walker also vented his hostility on the city council when the aldermen generously bestowed on themselves appropriate gold medals commemorating the admission of California into the Union, which occurred on September 9, 1850 and was celebrated in San Francisco on October 19.¹⁶ The aldermen provided another easy target by voting themselves salaries of \$4,000 each at a time when city finances were one million dollars in the red. Walker instantly commented:

¹⁴"The Supreme Court in Dudgeon." *Ibid.* 12/14/1850 [Exhibit #6, p.56].

¹⁵"The Judiciary and the Press." *Ibid.* 12/20/1850 [Exhibit #7, p.59].

¹⁶"Finances of San Francisco." *New York Herald* 1/9/1851, p.3 c.5; "Summary of Two Weeks News." *Ibid.* 1/22/1851, p.2 c.2; "Our California Correspondence." *Ibid.* 1/29/1851, p.3 c.1; "The California Markets." *Ibid.* 2/8/1851, p.3 c.2; "The California Legislature." *Ibid.* 3/8/1851, p.1 c.6; "Medals." *San Francisco Herald* 12/20/1850, p.2 c.3; "Not Facing the Music." *Ibid.* 12/21/1850, p.2 c.2; "Who Ordered the Medals?" *Ibid.* 12/21/1850, p.2 c.1; "Medal Returned." *Ibid.* 12/23/1850, p.2 c.1.

Where will the impudence of these men stop? Have they rolled so long in the mire of infamy that cleanliness has become an eyesore to them and cold water makes them afraid that the mud may be washed from some portion of their polluted bodies? Have the sores of their iniquity so festered and mortified that popular indignation is absolutely pleasant to their corrupted nerves? Has the savor of their plundering practices become so sweet to their nostrils that without it they cannot bear the breath of life?

These men may escape summary punishment; they may be permitted to occupy their places until the term of their offices expires. But as long as they live the curses of the people will follow them; and to the third and fourth generation they will transmit the terrible inheritance of public wrath and public disgrace.

Bitterer than Marah's waters will be the memory of the acts they have accomplished; and lasting as the public archives will be the contempt with which men will hereafter regard the wicked juggles foisted on us under the sounding phrase "The People of the City of San Francisco do ordain."¹⁷

Next, he lowered his sights on the Sacramento City Council:

WARRANTS ISSUED. — The *Transcript* gives a list of the warrants already issued which amount to the sum of \$300,000. Pretty well for Sacramento. The people of that city however can expect nothing else than to be plundered and disgraced, as long as they suffer the mean, ravenous and sordid harpies who batten on their hard earnings to remain in office. They should have been tarred and feathered long since.¹⁸

¹⁷"Perseverance." *Ibid.* 12/24/1850, p.2 c.1.

¹⁸"Warrants Issued." *Ibid.* 12/18/1850, p.2 c.5.

The Sacramento aldermen answered in kind, threatening Walker with executing upon him a "little piece of pleasantry" should he visit their city.¹⁹ Walker's rejoinder, captioned "Personal," came on Christmas day, and two days later, another piece on the medals, which he closed with a reference to Oedipus:

. . . Alas! we thought the labyrinth was threaded, the enigma solved, by this adventurous Oedipus; but the inexorable secretary of the committee cuts the string — denies the fact of the solution — and again throws everything into confusion worse confounded. Who did order those medals?²⁰

At the end of 1850, William Walker's Oedipus enigma remained unsolved for him, and his Ithuriel spear of projection kept piercing various targets in California, as he had done in New Orleans in 1849. This time, however, it would almost cost him his life.

¹⁹"Personal," *Ibid.* 12/25/1850, p.2 c.2.

²⁰"The Medals Again," *Ibid.* 12/27/1850, p.2 c.2.

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6. Colt Revolvers at Ten Paces

The year 1850 set a new record for the production of gold in the world, and California was solely responsible for the soaring statistics, contributing 235,409 lbs. troy of yellow metal (worth twelve million pounds sterling) to the 130,541 lbs. troy produced in all other regions of the globe combined. Such skyrocketing material wealth gave rise to a typical Walker editorial:

GOLD AND GOVERNMENT

There is a common prejudice that increase in wealth brings weakness to a nation, and that luxury among a people is the sure forerunner of its speedy decline and ruin. The idea has been chiefly propagated by the poets and philosophers of the Roman Empire, who knew liberty only by the pages of history; and the Frenchmen of the last century, who drew their politics from Plutarch and their philosophy from Lucretius, have helped to spread this notion through modern Europe. And this school of writers, in their abuse of luxury and its attendant evils, have singled out gold as the special object of their contempt and hatred. In their opinion, the purest and most prized of the metals is but a Judas who kisses to betray, and the lustre of its shining scales a will-o'-the-wisp that leads over bog and fen for the destruction of the deluded follower.¹

He then went on, contradicting such ideas and praising the American way: "The American mind seems to have an abid-

¹"Gold and Government." *San Francisco Herald* 12/21/1850, p.2, c.1.

ing faith in the capacity of the country to survive the luxury engendered by the influx of gold, and the citizens of the republic have little fear that the strength of the States is to be diminished by an increase of wealth."²

In another editorial, Walker speculated on the relations between "Russia and Japan: If geographical position were chiefly instrumental in determining the political change of the world, we would be disposed to think that Russia was to be the agent for opening Japan to European trade and intercourse . . ."³ The following morning, he focused on "Russia and the United States":

We have heretofore remarked on the points of resemblance between the growth of the Russian and American empires. We have noticed in all the great movements Russia has been before us in point of time, and yet that in the end we appear to be before her in the race for strength and power. . . .

It is not difficult to find the reason for the facts we have detailed: . . . The Russian empire has never conquered any large tracts of territory by cultivation — it has never extended its fields by cutting down forests and reclaiming swamp lands. All its growth has been the result of conquests achieved over foreign tribes or provinces, and its increase has been more like the secretion of the mineral than the constant and daily development of a plant or an animal.

The United States, on the contrary, have grown almost altogether by their power of paving new fields of industry, and their conquests have been those of peace, and are the evidence of man's supremacy over nature. . . .

It takes some little time for us to perceive that the growth of Russia has been entirely apparent while that of the United States has been real and

²Ibid.

³"Russia and Japan," Ibid., 12/26/1850, p.2, c.1.

substantial — to understand that the increase of the Russian empire has really been no acquisition to the true wealth of the world, while the American has added immensely to the earth's production and to the comfort and enjoyment of its inhabitants.⁴

In another article, titled "Polynesian Politics," he expounded other facets of his Manifest Destiny philosophy:

The annals of Polynesia have been without interruption a record of conquests achieved by brute force . . . Unlike the Chinese, the islanders have had no Confucius to mould their minds to the subjection of despotism; nor has their love for their idols been so intense as to make them, like the Japanese, drive the Christian missionaries from their midst . . . But as the geologist, though the earth be cold and mute, can extract from its silent strata the tale of many a revolution by flood and fire, so the traveller in the South Sea Islands can read in the layers of races the story of many a battle fought and won — of many a conquest suffered and achieved.

Nor has the character of Polynesian history been much changed by their intercourse with Europeans. Cruelty and rapine and lust have marked the dealings of the whites with the savages; and as the yellow races have in some localities driven the black tribes from the coast to the mountains, so they are in their turn giving way before their white conquerors . . .

. . . the people of the United States assume to protect the people of Polynesia. Thus we instil into them the idea that we go among them, not to rob and plunder and steal, but for the benefit of all parties. Once let this idea prevail with them, and our power will soon appear as conspicuous to them as

⁴"Russia and the United States." Ibid., 12/27/1850. p.2. c.1.

is our justice and love of right.

Gradually, then, a circlet of Americans will be found along the coast of the various islands; and as the natives retire towards the mountains of the interior, they will rapidly diminish in number before the swelling tide of white immigrants. The last great flood of civilization will sweep away all the colored races and with them the only traces of the previous revolutions the islands have undergone.⁵

There we have, in Walker's own words, the fate of the American Indians in the United States ruled by Anglo-Saxon justice and love of right; the destiny awaiting the dark-skinned natives in the lands "liberated from oppression" by Manifest Destiny -- in the conquered countries in Walker's Southern Dream of a Caribbean Empire. And the lodestar of his future filibustering mission shone brightly in his "Christmas" editorial on December 25, 1850:

. . . and all the feeling which in the continental countries of Europe gathers around the feasts of the illustrious saints, seems, with the Anglo-Saxon race, to be concentrated into the Christmas holidays. . . . and as we stand on the shores of the Pacific the prophetic vision flits before us, that at a time not altogether remote, all the nations and tribes of the earth may feel the beneficence of the great doctrines of freedom and equality.⁶

At that time there was a lull in Walker's assaults against his fellow men. The execrations overflowing in previous articles are nowhere to be seen in the *Herald* towards the end of the year, as if a different personality had temporarily taken control of the Inner Crescent City. Even "The

⁵"Polynesian Politics," *Ibid.*, 12/23/1850, p.2, c.1.

⁶"Christmas," *Ibid.*, 12/25/1850, p.2, c.1.

Medals" received a subdued treatment on December 31st; the explosive subject of crime failed to kindle any outburst of passion in "Crime and High Rents" on January 6, 1851; and on that date Walker even praised the French in "Sunday Concerts":

The French Emigrants here have introduced amongst us the Sunday morning concerts, which have been for some time a peculiarity of Parisian life. The celebrated composer, Herz, has for some years given this description of concerts in the French capital, and they have been the most fashionably attended musical exhibitions Paris could boast of. Even the audiences of the Italians and of the Grand Opera yielded in elegance and refinement to those of the Herz Hall.

. . . The concerts at the California Exchange are, of course, a great improvement on the music we have hitherto had in San Francisco; and we hope M. de Monfort may derive profit while he confers pleasure on our citizens.⁷

But on the following weekend, "our citizens" in the Inner Crescent City were denied the pleasure of attending Monsieur de Monfort's performance at the California Exchange, for on that particular Sunday morning they were engaged in a crucial contest at a secluded spot off the road leading to the Mission Dolores. The affair was but another chapter in the Leidesdorff estate imbroglio, an additional episode that had commenced three months earlier with a quite ordinary demise of an unknown forty-niner in San Francisco.

During the fall of 1850, the cholera raged in California, killing thousands of people. Lost among the names published in the obituary lists was Eli Coleman, age 33, who died of typhoid fever in the city of San Francisco on October 10, 1850. Offsetting the obscurity surrounding Coleman's life, his chattels gained notoriety when after his death they were kept under the custody of Colonel James Collier, the

⁷"Sunday Concerts," *Ibid.*, 1/6/1851, p.2, c.1.--

Collector of the Port. Public Administrator Joseph Henríquez forthwith sued for possession, and naturally won the legal battle in Probate Judge Roderick N. Morrison's County Court.

In the meantime, Eli Coleman's heirs in Boston sent the necessary authorizations to an agent for securing conveyance of the property. The documents arrived in San Francisco aboard the Panama steamer on January 8, 1851. William Walker in the *Herald* promptly took advantage of the occasion to cast aspersions on his adversaries Henríquez and Morrison on Friday, January 10:

THE PUBLIC ADMINISTRATOR. — Our readers may recollect that some time since, the Probate Judge took the effects of one Coleman, a deceased foreigner, from the collector of the port, and delivered them to the Public Administrator. There is now in this city a power of attorney from the representatives of Coleman, authorizing persons here to act for them. In a few days, therefore, the public may have an opportunity of judging how the public administrator preserves vacant estates. There is some fear that the Coleman estate, may be found "pickled" instead of "preserved," and if so, the public shall know the facts.

We shall shortly understand why the Probate Judge and Public Administrator wanted to get Coleman's effects from Collector Collier. The agents of Coleman's heirs will see that the matter is thoroughly sifted.⁸

What happened next was reported by the *Alta*:

. . . The facts of the case are singular. In consequence of an article which appeared in the *Herald*, expressing fear that the Public Administrator and Probate Judge had pickled rather than preserved a certain estate, the Administrator, a young

⁸The Public Administrator." *Ibid.*, 1/10/1851, p.2, c.1.

man named Henriques, accompanied by a friend, visited the *Herald* office, for the purpose of cowhiding the editor, as he says. He did not, however, do it, as he announced to the public in a card next morning.

The next step in the proceedings was the despatching of a note by Mr. W. H. Graham, to the editor, said to contain the most abusive and insulting language, such language as one gentleman could not quietly receive from another. Mr. Walker then found himself in a singular position, insulted by a man with whom he had never had the slightest difficulty, and whom he had never seen in the whole course of his life. Driven into a corner completely, he challenged Mr. Graham, who at once accepted, having assumed the championship of the Probate Judge, in whose employ, if we are not misinformed, he had at one time been . . .⁹

Judge Roderick N. Morrison was over 50 years old, but his defender, William Hicks Graham, was a rash young Philadelphian who then served as Collector of the county license taxes. He being the challenged party, the terms, "almost unwarrantably savage," and the weapons, were of course arranged and selected to suit him: "Colt's revolvers at ten paces, and five were to be fired, advancing one pace at each shot, unless one of the parties was hit before."¹⁰

The duel took place at 10:30 a.m. on Sunday, January 12, 1851, in a clearing off the Mission road near Sheriff Hays' house, close to the present location of the San Francisco Civic Center. "Mr. Pixley and Dr. Nott" acted as seconds, assisted by Captain Folsom in loading the pistols, as they professed not to know how to load them properly. Two Supreme Court judges and the sheriff were among the select group of spectators, which also included a policeman, Mr. John K. Slidell, who concealed himself in the bushes to watch the

⁹"Muzzling the Press," *Alta* 1/14/1851, p.2, c.1.

¹⁰"Duel," *ibid.*, 1/13/1851, p.2, c.1

proceedings and later testified in court.

Two shots were exchanged. At the first fire Mr. Walker received his adversary's ball through the legs of his pantaloons, and at the second was shot through the fleshy part of the thigh, and fell. The wound, though severe, was not considered dangerous. The *Pacific News*, ardent defender of Judge Morrison and adversary of Walker, gave the following detailed account next morning:

ANOTHER DUEL — ONE OF THE PARTIES WOUNDED.

Another duel was fought yesterday morning between Wm. H. Graham, Esq., and Mr. William Walker, an attache of the *Herald*. The origin of the difficulty was an article which appeared in that paper of Friday morning, which reflected severely upon the Probate Judge, and which Mr. Graham, in a note to Mr. Walker, denounced as a tissue of falsehoods. The result was a challenge from Mr. Walker.

The parties met yesterday morning, at ten o'clock, in a little open space between the Half-way House and the Mission, with their seconds, surgeons, and friends. Mr. F. Pixley acted as the second of Mr. Graham, and Dr. Nott as the second of Mr. Walker. The distance chosen was ten paces, and the weapon's Colt's revolvers; the parties to advance one pace each shot until the five barrels had been discharged, unless the result was satisfactory to one or the other, before that number of shots were discharged.

The pistols were loaded by Captain Folsom, and at half past ten o'clock, the parties took the positions assigned them by their seconds, one of whom gave the signal, "Fire — one, two, three," the combatants to fire between the first and last words. Both discharged their pistols almost at the same instant, at the word "fire," the ball of Mr. Graham passing through the pantaloons of Mr. Walker, about half way between the knee and the ankle of the left leg, and slightly breaking the skin.

The parties then advanced one pace, and fired



COLT REVOLVERS AT TEN PACES

"IN 1851 WILLIAM WALKER, THE GRAY-EYED MAN OF DESTINY, OF NICARAGUAN FAME, WAS WRITING EDITORIALS FOR THE SAN FRANCISCO HERALD. IN ONE OF THESE HE ATTACKED AN ABSENT FRIEND OF W. H. GRAHAM, WHO AT ONCE MADE HIS FRIEND'S CAUSE HIS OWN. HE FORMALLY CHALLENGED WALKER TO A DUEL, AND THE LATTER, AS BRAVE A MAN AS EVER BREATHED, AT ONCE ACCEPTED. THE ENCOUNTER TOOK PLACE IN THE SUBURBS OF SAN FRANCISCO, WITH THE RESULT THAT WALKER WAS SEVERELY WOUNDED."

Maj. Ben Truman, "An Early California Duel." *The Grizzly Bear* Dec. 1883, p. 11.

again, Mr. Walker receiving a wound just below the left thigh, from the effect of which he staggered back, and was caught by his friends. The parties then left the ground, and returned to the city.

The wound of Mr. Walker, although somewhat severe, is not considered dangerous. Mr. Graham is from Philadelphia, and Mr. Walker from New Orleans. Both showed themselves men of coolness, courage and nerve, and we trust, as gentlemen, are both satisfied with the result.¹¹

On Monday morning the *Herald* failed to mention a single word about the duel. But that day it was publicly stated in San Francisco that "half a dozen young gentlemen, including a relative of Judge Morrison, who had been employed by him in various capacities, had banded themselves together for the purpose of chastising any audacious editor who should dare question his official acts."¹² The *Alta* called it "monstrous: almost too preposterous for belief," and Walker commented in the *Herald* on Tuesday:

. . . We need not say — for we do believe six at least of the seven editors of this city, — ninety-nine of every hundred men in the community would say the same under similar circumstances — we repeat, it is unnecessary to say that so far as this intimation is intended as a menace to deter us from the discharge of our duty, we regard it with scorn and defiance. It is not in a spirit of bravado, for such a thing is not to our taste — but it is in accordance with the sentiment of every man who has a spark of manhood in his breast that we say that be it five or six hundred instead of five or six of whom we are thus to run the gauntlet, our answer is the same. Whenever we regard the conduct of any

¹¹"Another Duel — One of the Parties Wounded," *Pacific News* (San Francisco), 1/13/1851 (reproduced by the *Narysville Herald* 1/17/1851, p.3. c.3).

¹²"Muzzling the Press," *Alta* 1/14/1851, p.2. c.1.

officer --whether a Judge of Probate or a Judge of the Supreme Court -- deserving of censure, it shall be unsparingly administered, whatever be the consequences. If for this we are to be assailed by five or six men, why, the game may as well commence at once.¹³

The six additional defenders of Judge Morrison did not find an opportunity to intervene, but Graham did not disappear from view. On July 1st, at high noon, he staged a gun fight with a Mr. George Frank Lemon at a crowded street corner on the Plaza. Nine shots were exchanged, two innocent bystanders were injured, and Graham was hit in the arm and the throat, but did not die. Upon recovery, Graham and Lemon held an affair of honor: "The parties met and fired seven shots. The last shot wounded Mr. Lemon seriously, and the affair was terminated."¹⁴

Graham was indicted and tried "for an assault with deadly weapon, in a duel with William Walker" and "for an assault with intent to kill" George Frank Lemon, but was acquitted in both occasions.¹⁵ Judge Morrison didn't fare as well. On March 29, he was forced to resign the office of County Judge, under pressure from a Grand Jury investigation advocated by Walker.

It turned out that Judge Morrison received a salary of \$6,000 a year, but it was paid in depreciated city scrip, which forced him to seek supplementary income. In its report to the District Court, the Grand Jury stated that William Graham, Assessor and Collector of the License Tax, was in the habit of paying Judge Morrison monies collected for the county, in exchange for county scrip at its par value, and returning the same into the Treasury -- a practice deemed by the Grand Jury to be highly reprehensible. And Public Admin-

¹³"Snaffling Public Sentiment," *San Francisco Herald* 1/14/1851, p.2, c.1.

¹⁴"Affair of Honor," *Alta* 9/15/1851, p.2, c.2.

¹⁵"Recorder's Court," *San Francisco Herald* 1/16/1851, p.2, c.5; "Law Intelligence -- Aug. 9," *Ibid.*, 8/11/1851, p.2, c.5; "Court of Sessions," *Alta* 7/26/1851, p.2, c.4.

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istrator Joseph Henríquez had divided the emoluments of his office with Judge Morrison.

Upon reporting the judge's resignation, Tucker mordantly appended a postscript from Hamlet:

Polonius. — Will you walk out of the air, my lord?

Hamlet. — Into my grave?

Polonius. — Indeed, that is out o' the air. How pregnant sometimes his replies are! a happiness that often madness hits on, which reason and sanity could not so prosperously delivered of. I will leave him and suddenly contrive the means of meeting between him and my daughter. My honorable lord, I will most humbly take my leave of you.

Hamlet. — You cannot, sir, take from me anything that I will more willingly part withal, except my life, except my life, except my life.

Polonius. — Fare you well, my lord,

Hamlet. — Those tedious old fools!¹⁶

That was the last thrust of Tucker's Ithuriel spear against Judge Morrison, whose image faded into the shadows of an indifferent legal practice only to flicker in the news again five years later. It was uncanny, for in November, 1855, Morrison was committed to the State Lunatic Asylum at Stockton, where he died on January 15, 1856, at the age of 60 years, his mind utterly destroyed after his unfortunate encounter with Tucker's magic weapon which had opened with the reference to the Fanny Daly murder in September, 1850.

¹⁶"Resignation of Judge Morrison," *San Francisco Herald*, 4/17/1851, p.2, c.3.

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7. A Way to Stop Crime

The lull in William Walker's assaults against his fellow men, which had begun on Christmas day, continued in the weeks following the duel with Graham. He commented on the land problems and criticized the judges, but without the level of invectives reached in December. He also wrote on "The Mineral Lands," "The Protectionists," "Commercial Legislation," "The Italian Opera," "The Arts," "The Marine Telegraph," "The County Prison," and other topics. The Divorce Law being debated in the California Legislature produced several Walker editorials. He expressed his views clearly:

It is certainly not desirable to have the marriage contract lightly or inconsiderately treated; but may not the consequences of making the tie indissoluble for any cause be as lamentable as the opposite extreme? Were there not as many faithless wives in France before the Revolution as in Rome under the emperors?¹

It is undoubtedly true that the law ought to make some distinction between marriage and an ordinary contract. But in order to do this, is it necessary to put over the nuptial chamber the inscription Dante saw over the gate of Hell "Leave all hope behind as you enter it?"²

A judicious divorce law — a law regarding marriage as something more than a civil contract and yet not rendering it an intolerable burden — is more in accordance with the Christian spirit than a

¹"Divorces," *San Francisco Herald* 1/30/1851, p.2 c.1.

²"Progress Backwards." *Ibid.*, 2/1/1851, p.2 c.1.

constitution declaring the marriage tie indissoluble by any form or proceeding. The Jewish law, which was a civil as well as religious code, permitted divorces for sundry causes; and as Christ said, the law was such because of the "hardness of their hearts" -- the weakness and imperfections of human nature -- it is necessary for governments to permit and legalize divorces.³

Meanwhile, John Nugent had gone to San Jose to cover the California Legislature which convened on January 6, and his "Editorial Correspondence" appeared regularly in the *Herald*. On Monday, February 17, Nugent reported on the Divorce Bill debate: Senator Green had introduced an amendment, inserting the words "on the part of the wife, providing the husband kills the man who violates his bed"; Senator Heydenfeldt had complained that certain Senators were forcing their bill through the Senate "in a covert manner"; and Senator Broderick had said that the delay in the bill was "owing to the stupidity of certain Senators." Walker's editorial that day showed his instant, unconscious reaction to Nugent's dispatch:

The scenes in the Senate for the last week have been anything but reputable to its members, or to the character of the State at large. Almost every day there were words used unworthy the Senators who uttered them, and of the place where they were spoken.

. . . our immediate representatives have been chief actors in scenes which we cannot characterize by any milder term than disgraceful. Not only have charges of ignorance and stupidity been made in open Senate; but there have not been lacking imputations of dishonest purposes and corrupt conduct. . . . it is to be feared that they may result in violence and bloodshed.

³"Divorces and Christianity," *Ibid.*, 2/11/1851, p.2 c.1.

. . . when the fever of public spirit phrenzies a politician into delirium, it becomes his friends to keep him in a dark room, and confined to his bed. . . it is unpardonable for men to do such wrong to their opponents, as to charge impure motives and corrupt practices, unless the proofs are clear and the testimony unimpeachable.

. . . It is unbecoming a man — much less a Senator — to utter by indirection what he would not speak openly and above chest.⁴

Next morning, a news item made reference to a letter "from Hon. Thomas H. Benton, to a friend in this city." Walker commented that the letter was probably to the "Great Explorer" Mr. Frémont, and that it deserved a prominent place in a series of papers "dealing with the Dead." Walker's words covertly alluded to the Frémont letter that penetrated into his unconscious early in the mourning process at the death of Ellen (Vol. 1, p. 149), and the reminiscence was accompanied by renewed assaults against his fellow men. On the same page, in the very next column, he unleashed attacks against the *San José Argus* and John C. Frémont in "Made to Order" and "Sublime Stupidity"; against the Senate, House of Assembly, and City Council in "Aldermanic Justices"; against the Senators and the *Alta* in "The Two Grizzlies"; and against the State Printer and the *Sentinel* in another item.

This sudden flurry of thrusts with his Ithuriel spear suggests Walker's oedipal conflict, apparently aroused by his reading the words "on the part of the wife, providing the husband kills the man who violates his bed," in Nugent's correspondence. And the thrusts continued on succeeding days, finding easy targets in the criminals and the authorities of California.

A petty robbery prompted him to comment on Wednesday, February 19:

⁴"Legislatorial Courtesies." *Ibid.*, 2/17/1851, p. 2, c. 1.

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It behooves our citizens to keep a sharp look-out against the depredators of all sorts that infest the city. We have those amongst us who have served a long apprenticeship at all sorts of crimes. They have become perfect masters at their trade.⁵

That evening, two men entered the store of C. J. Jansen in San Francisco, struck him on the head with a slung-shot and stole two thousand dollars. That prompted another Walker editorial the next morning, in which he alluded to "revolting atrocities that would disgrace a Seminole":

. . . What are we coming to next! If a man is not safe in his own house, with hundreds a few yards off, where is he safe! The increase of crime, and the audacity of criminals, have become frightful. Something must be done to strike terror into the hearts of these miscreants. There must be an example made.

But who ever heard of a man's being hung in California in due course of law for even the most atrocious, cold-blooded crimes. Talk of hanging men for grand larceny — hang them first for revolting atrocities that would disgrace a Seminole. We call upon the Courts and Juries to consider the state of crime in our midst, to remember that the lives of our citizens are at stake, and to mete out rigid justice to offenders. If Courts and Juries will not protect us, then let the people themselves take the matter into their own hands.⁶

Walker, in effect, was proposing an idea that anticipated the infamous San Francisco Vigilantes. Two days later, he argued that people should take justice into their own hands, in "A Way to Stop Crime":

⁵Robbery, *Ibid., 2/19/1851, p.2 c.6.

⁶Daring Attack and Robbery, *Ibid., 2/20/1851, p.2 c.2.

. . . What then are our resources for the prevention of crime? On whom must we depend for relieving the town from the desperate and abandoned scoundrels who now infest it?

There is clearly no remedy for the existing evil but in the strong arms and stout souls of the citizens themselves. But in order to be strong we must be organized, for the enemy we have to deal with is well drilled and disciplined. It behooves us, then, to take some steps for concentrated action in order to put a stop to the dark and atrocious crimes committed in our midst.

Let us then organize a band of two or three hundred "regulators," composed of such men as have a stake in the town, and who are interested in the welfare of this community. The very existence of such a band would terrify evildoers and drive the criminals from the city. If two or three of these robbers and burglars were caught and treated to "Lynch law" their fellows would be more careful about future depredations.⁷

Walker's prescription on how to stop crime was tried immediately in San Francisco. According to the same *Herald*, on Friday the Marshal had arrested one James Stuart, "on the complaint of the Sacramento police, that he was an escaped convict who had murdered the Sheriff of Auburn, and robbed him of \$4,000." At the same time, he had arrested a man named Windred, and on taking them before Mr. Jansen, he "instantly identified them as the villains who had attacked him. They appealed to him four times to look again, insisting that he was mistaken, but four times did Mr. Jansen assert positively that they were the men. Comment is unnecessary."⁸

The prisoners appeared in Court Saturday morning, when

⁷"A Way to Stop Crime," *Ibid.*, 2/22/1851, p.2 c.1.

⁸"Important Developments -- Arrest of the Assailants of Mr. Jansen," *Ibid.*, p.2 c.2.

the *Herald* with "A Way to Stop Crime" was on the streets. Before long, a large mob had congregated around the courthouse, and at the cry "Now's the time!" a general rush was made for the prisoners. Benches, desks, and railings gave way before the fury of the crowd, intent on lynching Stuart and Windred. They were saved in the nick of time by the Washington Guards, who a moment before had entered their armory in the next room, then rushed into the court-room, and in a few minutes cleared it of the crowd. Walker said this was "one of the most exciting scenes ever witnessed in San Francisco. . . . It was not a mob, but emphatically the people in motion."⁹

During the afternoon, the multitude grew "to five or six thousand," and after a variety of motions and speeches, a committee was finally appointed and the motion was made that the prisoners be hung: it was defeated by four ayes and six noes. A patrol of twenty citizens was then assigned "to guard the prisoners during the night" and the committee adjourned, to meet on the plaza the following morning.

"From eight to ten thousand men" reassembled on the plaza, in front of the Court House, on Sunday morning. The motion that the prisoners be hung was again made and lost. A "trial" was then enacted, and after many hours of heated debates, the appointed "jury" could not agree: nine were for conviction and three had doubts. The proceedings ended after midnight, amid shouts of "hang them, any how -- to the gibbet with them -- a majority rules." Walker's chronicle filled three whole columns in Monday's *Herald*, closing with: "Thus ended this exciting demonstration. It will not be forgotten by those who saw it. Its effects, even though more is not done, will be felt."¹⁰

On the same page, he appended an editorial entitled "Justice not Extinct":

At last the people are aroused. At last the men of San Francisco have shown that they are determined

⁹The Excitement in the City," *Ibid.*, 2/24/1851, p.2 c.3.

¹⁰*Ibid.*

on having justice administered in their midst —that though our courts may be weak and our officials corrupt, that though crime may be daring and law sickly and mealy mouthed, yet the immutable rules of right on which all true strength and prosperity depend must be maintained in this city.

. . . Bold and daring thieves, burglars and murderers, like the flies of Egypt, have followed us every where — tracked us in the crowd, tracked us in the solitary place; and for weeks we have relied on the constituted authorities to relieve us from evils which have continued to gather around us. But we have trusted to a broken reed . . .

. . . Now is the time for breaking up the dens of robbers who have been for months plundering the active and hard-working men of San Francisco; and we must now resolve to scourge the scoundrels from the city . . .

Terrible is the retribution which our citizens will visit on the unworthy public servants who have thus reduced them to the necessity of defending themselves from the convict colony emigrants and their associates. . . . Twelve months ago we had large means and untold energies for the support of a city government. Now we are prostrate . . .

Well may the men to whom has been entrusted the public welfare and the public safety, quail before the indignant masters who demand that justice shall be wrought on a criminal clearly guilty of heinous offences . . . If conscience is dead with them, if they have offended so long against the laws of right and reason that remorse cannot trouble them, they may yet take a lesson from yesterday, and learn that the people will not permit offenders —whether against the individual or the State — to go always "unwhipt of justice"; and that though the public may

be long suffering, yet its patience endureth not forever.¹¹

And under the editorial, Walker wrote another article, explaining:

. . . The men selected by the people for trying Stuart and his associate, were really a committee of Public Safety, and were not chosen simply for the purpose of determining whether the prisoner slung-shot Mr. Janson [*sic*], but whether these men were guilty of capital offences that call for condign punishment. . . .

The great object of the people is to strike terror into evil-doers — to make such an example as shall convince the criminals in this city that we are not to be trifled with. . . .¹²

On Tuesday, he again called for a band of "Regulators":

. . . By artful delays and intentional slowness, some of the actors on Sunday last may have prevented the people from punishing Stuart and his associate. . . . As we said on Saturday last our only security is in organizing a band of "Regulators," — men whose duty it will be to act when the occasion requires, and who will not take twenty-four hours to decide the guilt or innocence of a man who may fall into their hands.¹³

On Tuesday and Wednesday, two more lynching episodes of petty thieves were reported, the victims in both cases saved by the police. On Wednesday, an arsonist tried to set fire to the Wind-mill on Telegraph Hill, and Walker once more

¹¹"Justice not Extinct," *Ibid.*, 2/24/1851, p.2 c.1.

¹²"Did Stuart Slung-shot Mr. Janson?" *Ibid.*

¹³"Feeling Against Criminals," *Ibid.*, 2/25/1851, p.2 c.1.

called for summary punishment, closing his "Audacity of Crime" with this thought: "Let the public wrath be deep, serious and earnest — not light and frivolous; and when a proper occasion arises, let the punishment of the outrage be sharp, severe and immediate."¹⁴

The "proper occasion" had already arisen in Sacramento, and the punishment was sharp, severe and immediate, exactly as demanded by Walker. The spectacle was similar to what passed in San Francisco, but in Sacramento the mob succeeded in hanging the culprit, named Roe, and Walker applauded it on Saturday, March 1st, in "Our Debt to Sacramento":

The events at Sacramento on Tuesday last have had a decided effect in San Francisco, and are destined to exert a wide, and, we have no doubt, a salutary influence throughout the State. . . .

We hope that the terrible spectacle of Roe, dangling at the Horse Market before the eyes of an outraged and justly indignant people, may save us from the necessity of repeating the lesson in San Francisco. . . . The punishment of Roe — felon death as it was — will be but a feather in comparison with the infamy to which California will consign some of her judicial functionaries. As Dante passed by in silence some enemies he met in Hell, the patriotic historian will pass these judges by, and not soil the annals of the country with their names.¹⁵

On Friday, Judge Levi Parsons had instructed the Grand Jury then in attendance at the District Court. He told the jurors that in their investigations they should not indict a person charged with crime, unless the evidence would warrant a petit jury in finding a verdict of guilty. He also advised them "to examine the City Press." Walker reacted instantly, in "The Press a Nuisance," on Saturday, March 4th:

¹⁴"Audacity of Crime," *Ibid.*, 2/27/1851, p.2 c.1.

¹⁵"Our Debt to Sacramento," *Ibid.*, 3/1/1851, p.2 c.1.

The District Judge of San Francisco yesterday gave a charge to the Grand Jury, and among other queer things advised them to examine the City Press. According to the report of the Judge the papers of the town constitute a nuisance . . .

. . . The District Court, "learned in the law," as the constitution liberally provides, has charged the grand jury that a bill should not be found unless they deem the evidence sufficient to make a petit jury convict. Thus the District Court instructs the grand jury to aid the escape of criminals. . . . No wonder that after lying down the law favorably to criminals the District Judge should declare against the press.

The old phrase of "judicial madness" is daily assuming a new and intense meaning in California. Our Courts seem determined on "fooling" the people "to the top of their bent"; and like the Hindoo in the phrenzy of superstition they fling themselves under the wheels of the Juggernaut, Public Opinion, in order that they may be crushed under the sacred car.

They cover crime with the folds of the ermine; they lift their impotent arms to scourge an unfettered press with the rods of justice, as they style it. They drop the tears of a bastard mercy upon the robbers and assassins who threaten our lives and our property; they turn with a scowl of wrath and an arm of vengeance upon the press which dares to complain of the tenderness with which offenders are treated.

. . . If we were the guardian angel of the District Judge, we would whisper in his ear, "Beware"!

How can men be so blind or so weak as some of our Judges appear to be! Do they think the patience of the people eternal because judgment against an unfaithful servant is not executed speedily? Do they

dream that the public will forever remain quiet — that the air will be forever mild, the breezes forever gentle, and that the hurricane will never rise to sweep them from the land and bury them in the deep? Again we say to the Judges, one and all, "Beware"!¹⁶

Thus ended two hectic weeks in the Inner Crescent City and in California. It had all started on February 17 with "on the part of the wife, provided the husband kills the man who violates his bed," but the full consequences were yet to be seen. The events closing with "The Press a Nuisance" had opened new chapters both inside the narcissistic walls and in Ithuriel's paradise.

¹⁶"The Press a Nuisance." *Ibid.*, 3/4/1851, p. 2 c. 4

8. Tucker Behind Bars

At the request of the district attorney, an "Indignation Meeting of the Lawyers" convened at the District Court room in San Francisco on Tuesday evening, March 4, 1851. Sixteen members of the Bar attended. District Attorney George K. Platt opened the session by stating that it had been called for the purpose of taking some action, rebuking the abuse of a portion of the Press of the Judiciary, particularly an attack in one of the morning papers against the District Judge. Several speakers addressed the assembly, in vindication of Judge Parsons' charge to the Grand Jury, and in terms particularly derogatory to "that flagitious journal," the *San Francisco Herald*.

The meeting was quite unanimous; the only difference of opinion being whether they should stress the systematic series of abusive publications in the *Herald* against the judiciary generally, or whether they should specify only the article in that paper of the morning, on the subject of Judge Parsons and his charge to the Grand Jury. After some discussion, the latter position was selected, and the meeting was adjourned until Thursday evening.

Walker responded with an editorial; "The Bench and the Bar," examining the legal bases for his criticism of Judge Parsons' charge to the grand jury while he lampooned the lawyers:

. . . The "flagitious journal" they say must be extinguished. Only think of it: John Keats "snuffed out by an article" will be nothing to the "Herald" snuffed out by the candle-snuffers of the San Francisco Bar.¹

¹"The Bench and the Bar." *San Francisco Herald* 3/6/1851, p.2 c.1.

Naturally, he also jabbed at Judge Parsons:

Judges as well as legislators should know how to accommodate themselves to circumstances. The rigid and inflexible Judge who dwells eternally in the region of the abstract, may be a model in the eye of the dreaming philosopher and crazy poet. But in order to deal with the men of this world — to mete out practical and every day justice — it is necessary to observe and be influenced by passing events. Late occurrences at San Francisco and in other parts of the State, should teach our judges and lawyers that the people will not tamely submit to the attacks of criminals, and that legal technicalities shall not always be interposed for the protection of outrageous offenders against law and justice.²

But Levi Parsons was no rigid and inflexible Judge who dwelled eternally in the region of the abstract, for he knew how to mete out practical and every day justice. Hence, he issued an order summoning Nugent and Walker to appear before him to show cause why they shouldn't be attached for contempt of Court.

John Nugent had been absent for several weeks at San José, and William Walker, being the author of "The Press a Nuisance" and sole acting editor of the paper, had to face alone the citation for contempt served by the sheriff. That very morning, he let go one more animadversion at Judge Parsons, whom the young Whigs of California had recommended to the President for a federal judgeship. Walker commented: "These young Whigs must be very young — suckling babes, 'mewling and puking in their mother's arms' — and very easily satisfied."³

The Contempt Case was taken up on Saturday, March 8. Walker appeared with his counsel, Messrs. Edmund Randolph and Charles T. Botts. He declared that he was the author of

²Ibid.

³"Judge Parsons," Ibid. 3/8/1851, p.2 c.l.

"The Press a Nuisance"; that he believed the facts stated in that article were true; and that the inferences drawn therefrom were correct. He added that he wrote and published the article to promote rather than obstruct public justice; and that he was advised that he had committed no contempt of court.

His counsel argued at length, to no avail. Judge Parsons found Walker guilty of contempt and directed the clerk to enter an order "imposing a fine of \$500 on William Walker, and that he be held in close confinement until the same is paid. Mr. Walker accordingly surrendered himself into the custody of the sheriff, where he now remains."⁴

According to the *Herald*, during the afternoon of Saturday, when the imprisonment of Mr. Walker became generally known, every one in the streets seemed to talk of nothing else, and sentiments of indignation were universally expressed against the course that had been pursued. After dark a placard was posted about town, calling the citizens of San Francisco to assemble on the Plaza at 10 a.m. Sunday morning "to express their opinions in regard to the decision of the Judge of the District Court, relative to the attempt to muzzle the Press and infringe on the rights of the people."⁵

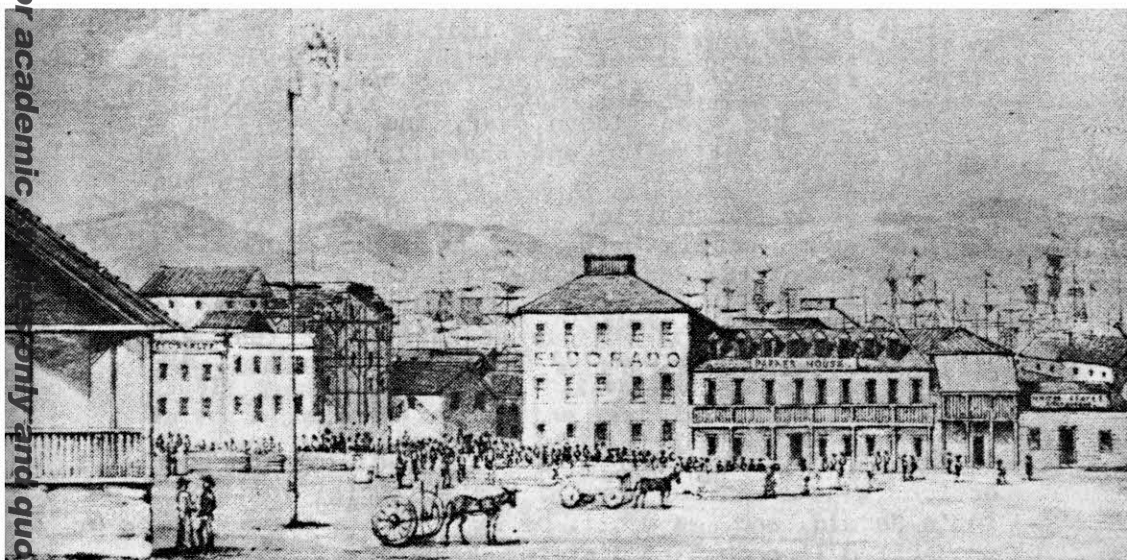
By 10:30 o'clock on Sunday morning, "an immense concourse of citizens were upon the ground." The officers of the meeting took their stand on the portico of the old adobe, and speakers and motions followed. The crowd was aroused to take into consideration the case of Stuart and Windred, when Edmund Randolph was called to the stand. He urged the people to confine themselves to the subject upon which they had assembled. He stated that William Walker would not allow himself to be taken out of the hands of the authorities by violence, and that if so taken, he would feel it his duty to immediately return and surrender himself.

After several more speakers and motions, a number of resolutions were passed condemning Judge Parsons and urging his

⁴"The Contempt Case," *Ibid.* 3/10/1851, p.2 c.2.

⁵"Great Indignation Meeting of the Citizens!" *Ibid.* 3/10/1851, p.2 c.4.

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THE PLAZA
IN 1850

(NAMED PORTSMOUTH SQUARE IN HONOR OF THE VESSEL THAT TOOK POSSESSION OF SAN FRANCISCO IN 1846).

impeachment. Finally, a "committee of the whole" was appointed to wait upon Mr. Walker, and express to him the sympathy of the citizens in his confinement. The crowd, some four thousand strong, "moved down to the front of the District Court, and called for Mr. Walker. In a few moments he appeared in the window of the second story, and was greeted with loud cheers." The *Herald's* chronicle continues:

He addressed the people in a few words, thanking them for that manifestation of their sympathy, but that it was not so much the individual in whom they were interested as the maintenance of a great principle outraged in his person. The Constitution and the laws had been ridden over, and it was time to see that constitution and those laws preserved in all their integrity. He had been sentenced to punishment by the District Judge, in plain violation of his duty and his oath, and he appealed from the decision of the Judge to the decision of the People.

When he had retired, three cheers were called for and given with tremendous emphasis, and then with three groans for Parsons, the meeting quietly dispersed.⁶

That Sunday, confined in a cell adjoining the Sheriff's office, William Walker penned the editorial for next morning's *Herald*, and, as usual, he exposed his secret shadow by projecting it onto "The District Judge":

. . . we would be disposed to pity the weakness of a man whom the gods seem to have delivered over to destruction. We almost melt at the sight of a Judge smitten with blindness by the violence of passion, and were it not for the malignity he manifests and for the incompetency he displays, we would drop a tear over a man who retires from the public stage so overwhelmed with contempt and infamy as Judge

⁶Ibid.

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Parsons must now feel himself to be.⁷

John Nugent returned to San Francisco on Sunday evening, after an absence of several weeks in San Jose. As he again took charge of the *Herald*, his editorials backed Walker all the way, as did the overwhelming majority of the California press. Only the die-hard supporters of Judge Parsons, like the *Courier*, the *Pacific News*, and the *Picayune*, differed — the latter refraining "from any further comment on the subject until the whole matter shall have been collected and published."⁸

On Monday morning, Walker's lawyers interposed a writ of *habeas corpus* at the Superior Court, to secure his liberty. The case dragged on for several days, filled with interminable arguments on legal technicalities, finally leading to a split decision of the Court in Walker's favor. He was released from custody on Saturday, March 15, and immediately published "A Card" thanking his defenders:

During the present week I have been obliged to resort to a legal remedy — the writ of *Habeas corpus* — dear to every American citizen, and made doubly sacred by the struggles and sufferings its defence has entailed on the best and purest men of the race. Taught from my infancy to regard it as the bulwark of freedom, and brought up in a school which treasures with care all the recollections connected with the great writ, it was not until the last few days that I felt the full force and inestimable value of *habeas corpus*.

To one of the counsel who has aided in relieving me from the unjust and tyrannical sentence of Judge Parsons — Mr. Charles T. Botts — I must return my thanks, not only for the zeal he has manifested in my individual cause, but for the lucid and forcible exposition he has given before the Courts . . . For

⁷"The District Judge." *Ibid.* 3/10/1851, p.2 c.1.

⁸"Opinions of the Press." *Ibid.* 3/13/1851, p.2 c.2.

the defence of *habeas corpus*, and of the liberty of the press, Mr. Botts deserves not only my thanks, but the thanks of the whole people of California.

. . .
 To my other counsel in the case, Mr. Randolph, it would be idle ceremony for me to return thanks. Nor can I speak of his efforts in behalf of the liberties of the citizen in such terms as I think they deserve: for the friendship that unites us, and the feelings I have towards him, are of a character to which words furnish no utterance or expression. WM. WALKER.⁹

Before his release, Walker had already addressed a Memorial to the Honorable Assembly of the State of California, at San Jose, praying for an impeachment of Judge Parsons. His document, recounting the facts of the case as he saw them, concluded by saying:

. . . Wherefore your memorialist charges that said Levi Parsons has been guilty of great tyranny and oppression in that he has imprisoned your memorialist without shadow of law or excuse of authority: that through wrath and malice he has sought to corrupt the administration of justice and introduce precedents dangerous to the liberties of this State; that, finally, with falsehood and deceit he has attempted to explain and palliate the enormities he has desired to exercise and practice.

And your memorialist prays that for these offences against the people of California, for tyranny and malice and falsehood, said Levi Parsons may, by your Honorable body, be impeached before the Honorable Senate of California, and be removed from his office of Judge of the Fourth Judicial District of California.¹⁰

⁹A Card, ° *Ibid.* 3/15/1851. p.2 c.2

¹⁰Memorial of William Walker . . . , ° *Ibid.* p.2 c.4.

On March 17, the California Legislature referred Walker's memorial to a Select Committee with powers to send for persons and papers. On March 26, the Committee reported unanimously in favor of the prayer of the memorialist. Upon learning of the decision, Walker, elated, commented in the *Herald*:

. . . The report cuts like a sharp axe into the very root of the offence charged, and the Committee have fully, ably and honestly discharged their duty. They declare that according to all previous precedent, as well as to vindicate the character of our institutions, Judge Parsons should be impeached — that he has committed a crime against the liberties of the people of California, and that he is unworthy any longer to sit in judgment of her citizens.¹¹

But Judge Parsons' friends in the California Legislature had a few tricks up their sleeves. They immediately added two pro-Parsons members to the Committee, one of whom was appointed chairman to conduct the subsequent investigation. Judge Parsons appeared before the expanded Committee on April 1st and during several days produced a number of witnesses and exhibits. Walker was permitted to cross-examine the witnesses as he saw fit. As a result, the Committee issued two reports.

The majority report stated on April 7 that there were not sufficient grounds of impeachment. Its 111 pages contain the testimony of five witnesses and 28 exhibits produced by Judge Parsons, including 14 articles published by Walker in the *Herald* from December 3, 1850 to March 24, 1851. Walker reacted with another article, on April 10, in which he mentioned as examples the "breaches of privilege" when seducing a maid-servant or when shooting a rabbit on the grounds of a member of Parliament, to conclude: "This is what the reasoning of the report leads to -- power to punish, only restricted by the degree of malignity of the small despot on

¹¹"The Impeachment Case," *ibid.* 3/28/1851 p.2 c.1

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the bench, or by the tolerance of an outraged community."¹²

The minority report recommended the impeachment of Judge Parsons. The matter reached the floor of the House of Assembly on April 19, and the motion to postpone it indefinitely was carried by a narrow 15/13 margin. The *Alta* correspondent commented that "the case was not decided upon its merits. The question of whether charges proffered were substantiated was not acted on by the House."¹³

The vote was reconsidered on April 21st. One of the speakers "electrified and astonished the House, as he never before exhibited so much feeling in a debate."¹⁴ William Walker was admitted to the floor of the House of Assembly, and he addressed that body at great length in support of his application. Judge Parsons' argument occupied the whole morning session on April 22nd. On reassembling in the evening, both Walker and Parsons made additional remarks, and finally Mr. Baldwin presented a substitute resolution which was adopted by a 17x12 vote:

Resolved: That the testimony read to the Assembly in the matter of the charges made by William Walker against Hon. Levi Parsons Judge of the Fourth Judicial District, does not sustain the said charges or warrant an impeachment in any respect.¹⁵

Regarding the \$500 fine, judgment by default was made final at the District Court on May 17, against Wm. Walker et al., for \$886 including law costs. On the other hand, Judge Levi Parsons' promising legal career could not possibly survive unscathed his encounter with William Walker's Ithuriel spear. Continuously harassed and chagrined by the *Herald*, he resigned his office on October 2, 1851, and rapidly faded into oblivion.

¹²The Assembly Committee on the Doctrine of Contempt." *Ibid.*, 4/10/1851, p. 1.

¹³San Jose Intelligence." *Alta* 4/22/1851, p. 2 c. 4.

¹⁴*Ibid.* 4/23/1851, p. 2 c. 5; 4/24/1851, p. 2 c. 5.

¹⁵Legislative Proceedings." *San Francisco Herald* 4/24/1851, p. 2 c. 2.