

JUDGE E. P. OLIPHANT

Having procured the passage of an act authorizing each county in Idaho to provide a library for district court chambers, it seemed well to collect pictures of all district judges to be grouped in a frame in the judges' chambers with brief biographical notes of each.

The first judge who held court within the present limits of Idaho was Ethelbert Patterson Oliphant, who, before the creation of Idaho Territory, as Judge of the First Judicial District of the Territory of Washington (which then included Idaho), held a term at Florence, in Idaho County and another at Pierce, in Shoshone County, in 1862. He registered at Lewis House in Lewiston with attorneys Garfiede, Hays and others as he came and left. The hotel register now belongs to the Carnegie Library at Lewiston,

The next court held in Idaho was held at Lewiston in January, 1864, by Samuel C. Parks, who had been appointed on March 10, 1864, as Judge of the Supreme Court of Idaho Territory.

Apparently the only case that went to the Supreme Court of Washington Territory from the present limits of Idaho, before Idaho Territory was created, was Newberg and Abrams against J. D. Farmer (First Washington Territory, 188.) involving \$35, going from Idaho County and being decided at Olympia at the December term, 1862, affirming the court below.

It seemed impossible to get trace of a picture, biography, or of any relative of Judge Oliphant though a very thorough inquiry among pioneers, historical societies, historians or early judiciary records.

Hon. Edward Baumeister, of Asotin, remembered that when a boy he saw a bullet just miss the judge's very ample chest extension in a street of Walla Walla. Mr. George H. Himes, of the Oregon Historical Society, had some biographical data, including a statement of friendship between Judge Oliphant and Thadeus Stevens and that Judge Oliphant had delivered a notable address on Stevens in Washington, D. C., at an Army and Navy meeting.

Finally a young woman named Oliphant, at Pullman, Washington, whom I chanced to meet, gave me an item of information, which led by a very circuitous route to M. E. Oliphant, a lawyer, 286 Ninth Street, Milwaukee, Wisconsin. He is a son of Judge Oliphant and in a very generous spirit furnished pictures, a biography and extracts from the journal kept by his father. The son accounts

for the brevity of information about the trip into Shoshone and Idaho Counties in 1862 by the statement that the trip was not recorded in the journal but was in letters to his wife, which, with other supposedly unnecessary files, had been destroyed.

Florence, in Idaho County was in 1863 one of the likely points for Idaho's Capital and the great placer mining activities at Pierce and Florence were in 1862 the leading attraction within the then wide limits of Washington Territory. Jonas W. Brown, beloved pioneer only recently deceased, wrote the minutes of the court mission at Florence in a perfect record hand. The volume is in Grangeville, the present county seat. Mr. Brown was elected Chief Clerk of the Council of the Washington Territorial Legislature on December 13, 1862. During that session there were many acts passed for the mining sections. Mr. Brown was interested in such items as would advance Lewiston's chances of becoming the seat of government of the proposed new Territory. These included the granting of authority to build a trail from Lewiston to the Boise mines (January 12), constructing a wagon road along the north side of the Snake River and establishing ferries by John M. Sillcot, Andrew Crowley and Samuel D. Smith (January 13), incorporating the City of Lewiston (January 15), incorporating the Lewiston and Clearwater Boom Company (January 22).

Gilmore Hays was a lawyer and acted as deputy clerk of the court in Shoshone County but the minutes of the 1862 session are not in the clerk's office at Wallace, the present county seat of Shoshone County. They may be among a large mass of official documents which are still in the old court house at Pierce, not having been sent north in 1887 when the county seat was moved to new and better mines. It is likely that the difficulty of transportation at that time caused the documents to be left behind.

One Oliphant was a colonial lawyer in South Carolina, a Middle Templar of the Bar of England, and another wrote an important opinion in public service law in *Gibson vs. Silva*, Supreme Court of Ceylon, 1848, (Rama Nathan, 105).

This brief biography of Judge E. P. Oliphant and extracts from his journal throw much light on the times and influences operating in the Pacific Northwest during the American Civil War.

The following brief autobiographical sketch is cherished by the Judge's family. It was printed in *The Republican Standard*, of Uniontown, Pa., on May 22, 1882. Two years later the Judge suddenly died as recorded in the concluding "Note."

JAMES E. BABB

Biography

By authority of the family record, Ethelbert Patterson Oliphant was born at Fairfield furnace, Fayette county, Pennsylvania, October 4th, 1803, being the youngest son of John and Sarah Oliphant of time honored memory. About the year 1808, the family moved from Fairfield furnace to "Liberty Hall" farm, about one mile from the former place, and near Fairchance furnace.

The educational training of the writer was under the then organized system of country school houses and teachers such as they often could "catch." The first remembered was at home ("Liberty Hall") in a room fitted up for the purpose.

As years increased, he was sent a few miles from home viz: Woodbridgetown and Grassy Run, afterwards to places nearer the paternal mansion, viz: Tent meeting house, Millers' alias Concord, and Amity school houses. The teachers in my earliest years were Thomas Porter, father of A. G. Porter, present governor of Indiana, Alexander Clear, ——Loughberry, Francis Fraser, ——Rowland, and Joseph Herron. The best were the first, second, third and last named.

A collegiate course was pursued at Jefferson College, Canonsburg, Washington county, Pennsylvania, of which I became an Alumnus in the year 1825. Presidents of the institution during the period, Rev. William McMillan, D. D., and Rev. Matthew Brown, D. D. In November, 1825, commenced the study of law at Uniontown, Fayette county, Penna., with Hon. Nathaniel Ewing as my preceptor, and was admitted to the bar, at that place, March term of court 1828, examiners John M. Austin, Esq., and John Dawson, Esq., of Fayette and Thomas McGiffin, of Washington county, Pa. With these gentlemen I had for years a pleasant and ever harmonious, social and bar intercourse until death closed their well known and useful careers.

In 1829 was appointed prosecuting attorney for Fayette county, under the administration of Governor Wolf, and held that office until elected to the legislature as a representative for Fayette county at the October election of 1830. My successor to the office of prosecuting attorney was Joshua B. Howell, Esq.,

In December 1831, went west, encountered the freeze and flood of that year. Leaving the steamer Magnolia at Bellepry, Ohio, opposite Blennerhasset's Island, traveled by land in a sled to Chillicothe, Ohio, from Chillicothe to Cincinnati in a partially open wagon, and thence to Lawrenceburg Indiana, where lived my first

school teacher and other friends and relatives, and where I took quarters for two months. In the spring of 1832, after the opening of navigation, went to Illinois, and aided in taking the steamer *Talisman*, Capt. Pollock, up the Sangamon river, the first and last craft of its kind that ever made a similar voyage. The party consisted of Capt. A. Bogue, —— Bailey —— Sertees, F. H. Oliphant and the writer. Messrs. Bogue and Baily accompanied the expedition to the destination of the steamer, five miles northwest of Springfield, Ill., at the primitive saw mill of Capt. Bogue.

Shortly after arriving at Springfield it was my province to visit Salem, Ill., to attend to getting up from there a portion of the cargo, which the Captain of the steamer in a pet would and did leave there.

Salem was a small newly commenced village, having a few houses of the log cabin architecture, and a frame grocery. A large crowd of male settlers were gathered there at the time for fun and frolic, and among them was the tall form of Abraham Lincoln, of subsequent historic fame. Although but a little advanced (if any) beyond his majority, he seemed to be the central figure of the crowd, and the superior in all the numerous athletic sports inaugurated on that occasion.

Soon after my location at Springfield, Ill., in the spring of 1832, the Black Hawk War had its origin, and the writer became a member of a company raised at that place, and served therein until mustered out of service by General Whitesides at Ottawa, Ill.

At Rock Island the Illinois Volunteers were mustered into the service of the United States by General Atkinson, U. S. A. At Dixon's Ford, a volunteer battalion under command of Maj. Stillman was permitted to make a reconnaissance "on their own hook" and about thirty miles from the Ford had a skirmish with the Indians, resulting in a disastrous defeat, Capt. Perry and several of his men being killed and shockingly mutilated. The troops under Whitesides made an early start for the battle ground, and arrived the same evening. The next day they buried the dead, and returned to Dixon's Ford, late the same night. From thence after reconnoitering a larger and entirely uninhabited portion of Western Illinois arrived at Ottaway where the few settlers in that region had erected a fort for such protection as it could afford; an entire settlement in that region having been broken up and several of the inhabitants massacred.

The event of mustering the army out of service under this state of affairs, and with the defeat of Stillman fresh in mind, created

great commotion; the gallant Maj. Henry being particularly outspoken and denunciatory of his superior officers.

By order of the Governor, or his assent to accept of volunteers for a period of twenty days, a small regiment was the result, and of which the writer had the honor of being appointed Adjutant by Col. Fry.

Another call for troops by Gov. Reynolds was responded to by three full regiments.

Maj. Henry, a native of Fayette county, Pa., and a relation of a family by the name of Downey, well known to the writer in his boyhood and youth was elected General by what would now be called acclamation. He was a kind friend, and a more brave and honorable man I never knew.

At the time of the Black Hawk war and previous thereto, he was High Sheriff of Sangamon county, Ill., and at an election held during his absence he was re-elected in a Democratic county (although himself an ardent Whig) over his Democratic competitor who was in every respect a worthy man, by over 1,200 majority. He was unmarried and died not many years after the events above narrated.

At the close of the twenty days service, in company with others of my fellow townsmen and mess-mates, I returned to Springfield, Ill. Others, among them Capt. Abraham Lincoln, re-volunteered, and remained in the service until the end of the war.

In the fall succeeding the above narrated events, owing to a severe illness, after a partial convalescence, acting upon the solicitation of relatives and the advice of my physician, Springfield was left with some regrets, and my native land reached (with some risk) in February following, there to inhale the pure breezes from "Laurel Hill," "Pine Knob," "White Rocks" and "Delaney's Cave."

In the following winter, 1833, the writer was appointed clerk in the office of the Secretary of State, at Harrisburg, where he remained, excepting three months service in the Land Department, until 1836.

In 1834 became a member of the Presbyterian church, at Harrisburg—Rev. William W. De Witt, pastor, a worthy man, christian gentleman and an excellent and popular preacher. In all solemnity I regard this the most important event, and fraught with highest interests of a very checkered life.

In 1836 returned to Uniontown, Fayette county, Pa., and resumed the practice of my profession; subsequently becoming a partner in the practice of law with Joshua B. Howell, Esq., under

the well known firm name of Howell & Oliphant, and which continued harmoniously for a period of eleven years.

May 13th, 1840, was married at Hartford, Connecticut, by Rev. Burgess to Miss Elizabeth C. Howe, a native of Massachusetts, but then residing in Hartford.

The children of this marriage have been four sons and three daughters, of whom one daughter and two sons now survive.

In April, 1852, acting on favorable inducements, I located at Beaver, Beaver county, Pa., but returned to Uniontown in October, 1853, leaving behind my two youngest daughters beneath the green sod of the grave. After my return to Uniontown continued the practice of my profession until appointed by President Lincoln, a Justice of the Supreme Court of Washington Territory in July, 1861. After serving four years in the official position named, and with some success, as evidenced by a reappointment, the same was resigned in January, 1866, and a clerkship accepted in the General Land Office of the Interior Department, Washington, D. C.

Politically, after being eligible to vote in October, 1824, (and first done at the house of David Miller, Georges township, Fayette county, Pa.) the writer acted with the Democratic party until 1840. Since the last named date he has acted with, and shared in the successes and defeats, prosperous and adverse fortunes of the Whig and Republican parties.

For nomination of candidates for President and Vice-President of the United States, at the Chicago Convention in 1860, there is a pleasure in recording that the one who pens these lines was the original Lincoln man in Fayette county, Pa., for the nomination for the Presidency.

The votes given for the Presidency have been for Jackson, Van Buren, Harrison, Clay, Taylor, Scott, Fremont, Lincoln, Grant, Hayes and Garfield.

As worthy of mention, though noted out of the order of events, the writer was present at the reception of Gen. La Fayette, at Uniontown, and was assigned by Dr. Hugh Campbell, one of the marshalls, to a share in the matters pertaining to the procession from Brownsville to Uniontown, and witnessed the meeting between La Fayette and Gallatin at the foot of the hill west of the alms house.

NOTE—The subject of the above sketch on Tuesday evening, May 8th, 1884, left his house at Washington, D. C., for prayer meeting, being at the time in unusually good spirits, and seemingly usual health. On the way to church, becoming ill, he took a street car in order if possible to reach his home. Being unable to leave the car

at his usual stopping place, he was carried on, and assisted to a drug store some squares away, but the nearest in reach. There in the hands of strange, but exceeding kind gentlemen, one of whom was a physician, the silver cord was loosened, the golden bowl broken, and at peace with God and his fellow man, the flame of his life flickered and went out, and the spirit of one who was always gentle and considerate passed over the river of death, to enter the great eternity.

The immediate cause of his death was pronounced heart disease, and he passed away with scarce a struggle, conscious almost to the very last, and fully realizing his condition. On the Saturday following his death, his remains were taken to the Assembly's Presbyterian Church (for which he started the evening he was cut down) and after an impressive service by the pastor, Rev. Dr. Little, the body was committed to its last resting place in Glenwood Cemetery.

Extracts from a Journal of Judge Oliphant

On April 15, 1861, he was commissioned, by President Lincoln, an Associate Justice of the Supreme Court of Washington Territory, and on July 15, of that year, he left his home, in Uniontown, Fayette County Pennsylvania, en route that jurisdiction. Stopping in Pittsburg, Pa., he visited Camp Williams and was entertained by the officers, and some of the men, of the "Fayette Guard," Captain J. B. Gardner. In that command he had a nephew, John Oliphant Stewart. Continuing on to Harrisburg, Pa., he visited old friends, many of whom he had not seen since his legislature days, twenty years previous.

The next stop was in Washington, D. C., where he called upon the President, in the White House, to report himself on the way to Washington Territory. On taking leave of the President, the latter extended his most cordial wishes for the prosperity, health and safety of the Judge. Then after stopping in Philadelphia, to transact some necessary business, he found that he had not time to reach New York to sail, as anticipated, on the 22nd of July. This delayed him until the next sailing date, August 1st., and while in New York he received the intelligence of the battle of Bull Run. Of this he wrote as follows:

"What sadness this event has cast upon my feelings and spirits! What a deeper sadness and gloom upon the citizens of New York! Many a stalwart form, that had but recently gone from their midst, had fallen, wounded or dead, amid the strife of a battle. Many women were bereft of husbands, children of fathers, mothers of

sons, sisters of brothers, and thousands of linked ties of friendship broken forever. All this is the damning work of traitors to the government under which they have hitherto thrived and prospered. 'Verily they must get their reward.' "

His delayed sailing gave him opportunity to visit kinfolk of his wife, in New Haven, Conn., at the time of a Yale College commencement, where he heard the annual address, and had the pleasure of lunching at the College Hall with many distinguished men, alumni of Yale and other institutions of learning, he being an alumnus of "Old Jefferson" (now Washington and Jefferson) College, which he terms "the pioneer institution of learning, religion and civilization west of the Allegheny Mountains." In this connection he wrote: "Her sons are scattered all over the world, as statesmen, jurists and heralds of the cross of Jesus." One of them, Rev. Mr. Evans, he found at Olympia, pastor of the Presbyterian church in that place; another, Butler Anderson, Esq., a member of the bar at the same place, and still another, the Rev. Mr. Sloan, of Steilacoom, but who was at Olympia when Judge Oliphant first arrived.

The voyage, from New York to Aspinwall, was begun Thursday August 1, 1861, on the steamer *North Star*. On board he made the acquaintance of Mr. Cushman, of Olympia, recently appointed Receiver of Public Monies. Mr. Cushman had been living in Washington Territory for eleven years previous and is mentioned as having been a most agreeable gentleman from whom much satisfactory information as to the country and its people was obtained.

The arrival at Aspinwall, was about 9 p. m. Friday, August 9. Nothing good is noted of that place, where only about one hour was spent the next morning, while waiting for the train on "that wonderful work of railroad success accomplished by the mind, muscle and money of man." It is to be wondered how the Judge might have viewed the since completed Panama Canal!

The trip of forty seven miles, across the Isthmus of Panama, was made in four hours, and there was immediate transfer, in a small steamboat, to the "magnificent steamer, *Golden Age*, Captain Watkins, then anchored in the bay three or four miles from the town." Mr. Cushman and Senator Nesmith are mentioned as being fellow passengers and the beauty of Panama Bay is extolled.

Sailing about noon of the day, the vessel passed the U. S. S. *Lancaster*, flagship of Commodore Montgomery. The band of the warship played "The Star Spangled Banner" and was cheered by all on board the *Golden Age*. A similar ceremonial occurred later, when passing the U. S. S. *Saranac*.

It is stated that: "No hotel in the Atlantic cities can exceed, the profusion and variety of table fare on the *Golden Age*. If ice were only furnished by the ship, he would be a monster of discontent who would dare complain." However ice could be had, and was had, at twenty-five cents a pound and proved very refreshing and indispensable to the inner man, even though it was an expensive luxury.

San Francisco was passed in a fog, and intelligence had from a sailing vessel that the steamer was eleven miles on its way to Oregon. It then went about and landing at destination was had in the forenoon of Saturday, August 24, 1861. A journey of twenty-three days from New York, and considered a good accomplishment in those days.

Especial mention is made of a breakfast at the American House, San Francisco, the menu being fish, venison, elkmeat, beefsteak, broiled ham, buckwheat cakes and coffee.

He left San Francisco, on Tuesday of the next week, aboard the steamer *Cortez*, for Portland, Oregon. Owing to a withdrawal of mails from steamers and their transfer to the overland route, there was no boat service, at the time, between San Francisco and Olympia direct. The speed of the *Cortez* was about seven miles an hour, and the weather was quite cool, especially at night. The passengers numbered about fifty and included Victor Smith, Esq., who had been appointed Collector of the Port, at Port Townsend.

Enroute, the *Cortez*, passed the *Nevada* for San Francisco, she being on a course some miles to the west of the former steamer. In the afternoon of August 29, the *Cortez* passed Tillamook Head and later entered the Columbia River, making a landing at Astoria on the Oregon side, and which was then "a village containing from twenty to twenty-five small, neat dwelling houses, one of them being two stories high. All frame, weatherboarded and painted white, except one, it being red."

The *Cortez* entered the Willamette River in the night of August 30th, and at 4 o'clock the next morning reached Portland, which place, at that time, had a population of approximately 3,000. At 6:30 o'clock, of the same morning the journey was continued, "on the one horse steamer *Cowlitz*," retracing part of the previous voyage on the Willamette and Columbia Rivers, this being necessary, because of the *Cortez* being of too much draft to venture a landing at Monticello. The *Cowlitz* was a "stern-wheeler having one boiler, one stack, an eating cabin large enough to seat eight persons, and down stream the boat had a speed of possibly twelve miles an hour."

A stop was made at St. Helens, Oregon, then a town of "a dozen tenements and having a handsome church edifice (Methodist) a post-office and a settlement west thereof." Arriving at Monticello, a small place, dinner was had, and further travel was by land, first in a vehicle that "was a thing on wheels called a stage" drawn by six mules, then on horseback for fifteen miles and again by stage, over numerous hills and through fir forests, the roads being rough for part of the way.

The arrival, at Olympia, was at 7 o'clock p. m., September 1, and on the next day began the regular term of the United States Court for the Second District of the Territory. A term of the Court of the Third District having recently terminated, Judge Oliphant decided to remain for a time at Olympia and learn what he could of the manner of transacting business and of the mode of practice there. The predecessor of Judge Oliphant, in the Third District, was the Hon. E. C. Fitzhugh, and the newly appointed Chief Justice Hewitt presided in the Second District.

Ex-Chief Justice McFadden was very desirous of holding the term of court in the Second District, and claimed that there was an understanding between himself and the incoming Chief Justice to that effect. Judge Hewitt admitted that there had been some conversation or intimation relative to a gratification of Judge McFadden's wishes, but that there was no promise nor contract on his part to that end. Judge McFadden rather intimated that he was Chief Justice of the Territory for four years from the 8th day of June, 1858, but that he had no thought or disposition to hold over, though claiming right to do so. To end controversy on the subject, Judge McFadden proposed to submit the question, as to who should preside, to the members of the bar. This was not agreed to on the part of Judge Hewitt, the latter stating that he had no control of the members of the bar and that they might meet, if they saw proper. They did meet, and were nearly unanimous in favor of Judge Hewitt holding court. Judge McFadden yielded with great courtesy and took his seat among "the priests in the temple of jurisprudence." Court was then convened, a grand jury empannelled and "an excellent charge delivered by Judge Hewitt.

"The lawyers did not seem very much disposed to rush business. Apparently not much was done, although a number of cases were disposed of 'on the docket,' which none but the initiated knew anything about."

The second day of the second week of court, Justice Hewitt was indisposed, and pressed Judge Oliphant to serve for him. The

substitute states, that he occupied the bench for three days, "with what ability and acceptance, it does not become him to speak." It is stated that the position was new and trying, but that he gave "the profession and outsiders a fair chance to presume, however violent the presumption, that the Court knew something."

On Tuesday, September 17, 1861, Judge Oliphant left Olympia, on the steamer *Eliza Anderson*, for Port Townsend, where he arrived early the next morning. Port Townsend is described as being "a most unprepossessing place, although its location on the bay, and the view therefrom it truly beautiful." It was a small place, "the eye taking in the whole of it, under the hill, at a glance." Here he found a number of "very clever people," and mention is made of B. Dennison, Esq., and ——— Pettigrove, the latter having his residence out of town. "The town is admittedly a hard case of a place, and if the mind were freely spoken, very few would say that their attachments to Port Townsend were of the strongest and indissoluble kind. Was it strange in me that ecstasy would not break forth upon my entrance and sojourn there."

Later he arranged to room and board at the home of Judge Albert Briggs more than two miles from the town, and in this home he was "most pleasantly situated and kindly treated."

From October 8, 1861, to April 21, 1862, the writer has no data of Judge Oliphant's experiences in Washington Territory. It appears that they were related in letters to his wife, but these letters were destroyed long ago. His intermittently kept journal records a trip from Vancouver to Walla Walla, the latter place being then in the First Judicial District to which he was appointed by the Territorial Legislature. On this trip he was a passenger on the steamer *Julia*, and mentions meeting Mr. R. R. Thompson of the Oregon Transportation Company. Mr. Thompson was originally from Lancaster County, Pennsylvania, but before going to the Pacific Coast, he resided at Cadiz, Ohio.

The Judge was much impressed with the scenery along the Columbia River and notes a portage of more than two miles from the Cascades to take the steamer *Idaho* for further ascent of the river to The Dalles, from where transportation was by stage for fifteen miles to the river again, this portage being over sand hills and requiring about three hours to make. It terminated at Des Chutes, where the steamer *Tenino* was boarded for Walla Walla. It had been only about three years since steamer transportation between these places had been attempted, and his trip was made in the spring,

after the longest and most severe winter previously known in that region.

Aboard the *Tenino* he occupied a stateroom with Judge Strong and Judge Lander. There were approximately three hundred passengers, seventy head of horses and mules and one hundred and seventy tons of freight, exclusive of the passenger baggage. This was at the time of a gold excitement, and though his voyage terminated at Walla Walla, the steamer continued on up the Columbia to the Snake River and then up the latter river to Lewiston, the head of navigation and the anticipated depot of all the mining region, but it was then only what might be called "a very fine paper city." It is noted that he was at Lewiston, August 17, 1862, but no details are given in his journal of that visit.

At Wallula there was only two dwelling houses, the main one being of "unburnt brick," and from there, it was a case of stage, "in a spring wagon, drawn by six horses," for thirty-two miles to Walla Walla, then (April 26, 1862) a new place having from 150 to 200 dwellings and business houses.

Mention is made of a trip to Fort Colville, also known as Pinckney City, and to Peirce City, as well as to Florence, but the description of this trip was made in letters that suffered the same fate as those above noted.

A note occurs of a trip from Vancouver to Olympia, via Portland, in December of 1863, stops being made at Monticello, Drews and Claquato.

The Judge remained in Olympia from December 22, 1863, to February 12, 1864, then returned to Vancouver, via Portland, from where he went to The Dalles and Walla Walla, remaining at the latter place from November 12, 1864, to February 6, 1865. He then went to Seattle, then to Steilacoom, again to Olympia, which latter place he left, on June 12, 1865, for San Francisco via Vancouver, B. C., on his way back to his Pennsylvania home.

In the journal, brief mention is made of a remarkable hail storm at Walla Walla, May 23, 1862, and of a fire at the same place, May 9, 1864, that consumed the court-house.