In Memoriam

RICHARD ASBURY JONES

(October 22, 1821 • August 19, 1888)

Chief Justice
Washington Territory

Seattle Bar Association
Seattle, Washington Territory
August 20, 1888

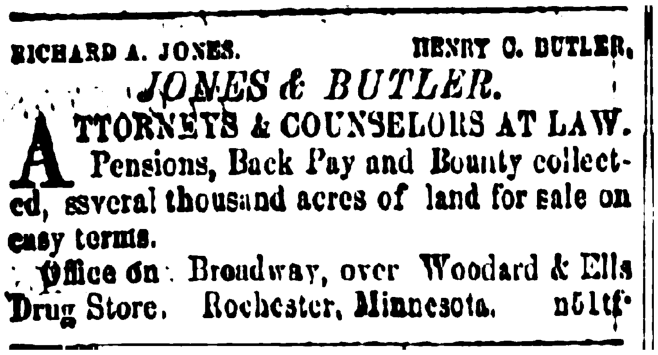
Olmsted County Bar Association
Rochester, Minnesota
August 21, 1888

Table of Contents

1. Practicing Law in Rochester

Richard Asbury Jones began practicing law in Rochester, Olmsted County, Minnesota in 1864 at the age of 33. He already had a wealth of experience: in 1853 he moved to California where he practiced law and probably prospected; he moved to Chatfield in 1859 and practiced for a while with his younger brother, John R. Jones; later settling in Rochester.

By 1865 he was a member of Jones & Butler and like most lawyers at this time sought to represent veterans in claims against the federal government. Selling land was a side-line business. The firm's business card was published in *The Rochester Republican* in 1865:[1]


RICHARD A. JONES. HENRY C. BUTLER.

JONES & BUTLER.

ATTORNEYS & COUNSELORS AT LAW.

Pensions, Back Pay and Bounty collected, several thousand acres of land for sale on easy terms.

Office on Broadway, over Woodard & Ells Drug Store, Rochester, Minnesota. n51tf

2. The 1866 Election for Congress.

He quickly took a prominent and influential role in the Democratic Party in Southern Minnesota. In 1866 he plunged into a campaign against William Windom, the incumbent congressman in the First Congressional District. It was not close:

William Windom (R).....14,828
Richard R. Jones (D).....8,231
Write-in.....20 [2]

By 1870 the partnership with was still intact, leaving him time to run again for office.

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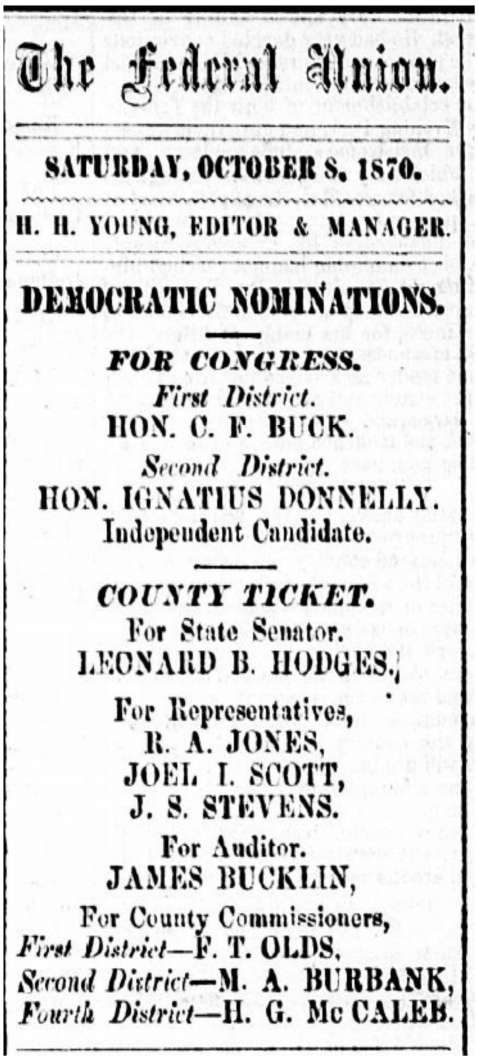
[1] *Rochester Republican*, September 28, 1865, at 1
[2] Bruce M. White, et al, *Minnesota Votes* 68 (Minn. Hist. Soc. Press., 1977).

3. The 1870 Election for the State House

In 1870 he decided to take another run for office. He became the Democratic Party's nominee to represent District 12 in the Minnesota House of Representatives. He delivered numerous speeches in the district.[3]



The Federal Union.

SATURDAY, OCTOBER 8, 1870.

H. H. YOUNG, EDITOR & MANAGER.

DEMOCRATIC NOMINATIONS.

FOR CONGRESS.

First District.
HON. C. F. BUCK.

Second District.
HON. IGNATIUS DONNELLY.
Independent Candidate.

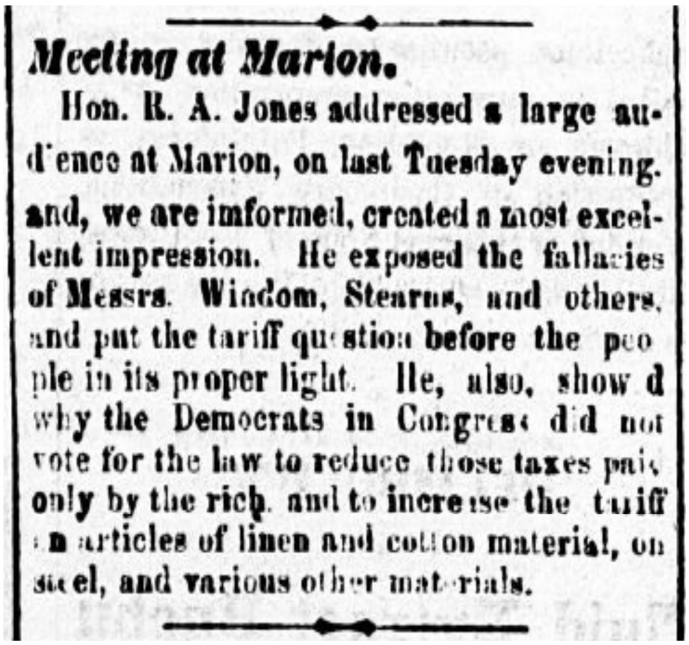
COUNTY TICKET.

For State Senator.
LEONARD B. HODGES.

For Representatives,
R. A. JONES,
JOEL I. SCOTT,
J. S. STEVENS.

For Auditor.
JAMES BUCKLIN,

For County Commissioners,
First District—F. T. OLDS,
Second District—M. A. BURBANK,
Fourth District—H. G. Mc CALEB.



Meeting at Marion.

Hon. R. A. Jones addressed a large audience at Marion, on last Tuesday evening, and, we are informed, created a most excellent impression. He exposed the fallacies of Messrs. Windom, Stearns, and others, and put the tariff question before the people in its proper light. He, also, showed why the Democrats in Congress did not vote for the law to reduce those taxes paid only by the rich, and to increase the tariff on articles of linen and cotton material, on steel, and various other materials.

In the election on November 1870, he was elected, coming in first in a "top 3" election: [4]

[3] Left: *The Federal Union* (Rochester), October 8, 1870, at 1.
Right: *The Federal Union* (Rochester), October 29, 1870, at 4.

[4] *Rochester Post,* November 19, 1870, at 2. District 12 was allotted one senator and 3 representatives by Statute, c. 3, Title 1, §2, at 71 (1866) ("The Twelfth district shall be composed of the county of Olmsted, and shall be entitled to elect one senator and three representatives.").

Philip N. Grant (R).....1,502
Richard A. Jones (D).....1,772 *
Thomas W. Phelps (R).....1,609 *
Joel L. Scott (D).....1,475
William Somerville (R).....1,641 *
J. S. Stevens (D).....1,477

Jones displayed his mettle in the 13th Legislature which met in 1871. That session's most notable achievement was the enactment of the first Granger Law—also known as "Jones Railroad Bill" —which classified freight and set maximum freight charges.[5] Rasmus S. Saby writes in "Railroad Legislation in Minnesota, 1849 to 1875":

> The real Granger law of this session was passed shortly before adjournment—the so-called Jones Railroad Bill. This was an act to regulate the carrying of freight and passengers on all railroads in Minnesota, and it passed both Houses by a large majority. In the Senate only four voted against it.[6]

The "Jones Bill" was declared unconstitutional by the Olmsted County District Court but sustained by the Minnesota Supreme Court. *Blake et al. v. Winona and St. Peter Railroad Company*, 19 Minn. 418 (1872). *State v. Winona and St. Peter Railroad Company*, 19 Minn. 434 (1872) raised the

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Some researchers may be confused into thinking that there were three separate elections in the Twelfth by the odd way the "official" results were reported in this issue of the *Rochester Post*.
* = elected
The *Rochester Post* performed a post mortem on the Republican Party's performance, singling out Jones's election:

> Dick Jones' election was due, in addition to the causes we have stated, to the fact that he is in point of intellectual fitness for the office, superior to any other candidate on either ticket. Four years ago he was driven out of the Republican party for daring to disbelieve in the political infallibility of Windom. We thought then that the party hadn't such an overplus of brains that it could afford to squander them, and we have been still more of that opinion, since this campaign has demonstrated that we threw away enough of that necessary article to set up the Democratic party in business.

Rochester Post, November 12, 1870, at 2.

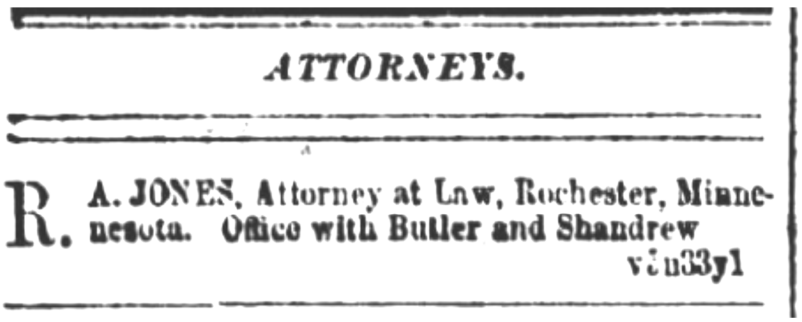
[5] 1871 Laws, c. 24 at 61-66 (effective May 1, 1871).

[6] Rasmus S. Saby, "Railroad Legislation in Minnesota, 1849 to 1875," 15 *Collections of the Minnesota Historical Society* 106 (1912) (citations omitted)

same issue. This case and others from Midwestern Supreme Courts became known collectively as "The Granger Cases" when they were appealed to the United States Supreme Court, which affirmed their constitutionality in *Munn v. Illinois*, 94 U. S. 113 (1877) and companion appeals including *Winona and St. Peter Railroad Company v. Blake*, 94 U. S. 180 (1877.[7]

4. 1871 Election to the State House

The following year he was on his own, subletting from Henry G. Butler, his former partner: [8]



ATTORNEYS.

R. A. JONES, Attorney at Law, Rochester, Minnesota. Office with Butler and Shandrew
v2n33y1

He did not seek re-election; however, when he was away from Rochester, presumably on business, he was nominated by the "Democracy," as it called itself, and the People's Party.[9] His protests were overridden by party regulars, and he eventually acquiesced. From The *Federal Union*: [10]

Mr. Jones' Declination.

> The following notice, addressed to us having been submitted to the Chairman of the Democratic County, Committee, has been accepted a declination and the committee will fill the portion on the ticket at the earliest practicable day. We

[7] The Granger Cases are the subject of an enormous literature. There is no better place to start than Charles Fairman, *Reconstruction and Reunion, 1864-1888* (Part Two) 290-371 (1987) (Volume 7 of the Oliver Wendell Holmes Devise, History of the Supreme Court of the United States). Fairman discusses the Minnesota rate law on pages 332-333.

[8] *Federal Union*, September 16, 1871, at 1.

[9] The nomination of Jones by the Democrats is reported in *The Federal Union*, September 30, 1871, at 3. The People's Party (calling itself the Democratic-People's Party) endorsed the entire slate of the Democrats. *Rochester Post*, September 30, 1871, at 3.

[10] *The Federal Union*, September 30, 1870, at 1

regret that Mr. Jones has seen fit to pursue the course he has taken, for his own sake. He has received frequent favors at the hands of the Democracy, and did good service in the legislature last winter in carrying forward the measures of our party. That he made one or two slight mistakes is admitted, but they were not of a character to do serious mischief, nor to cause even a suspicion that they were prompted by other than worthy motives. He is certainly a powerful man in carrying forward whatever he advocates, and is capable of doing a great deal of good. The suspicion, that his declination is attributable to unworthy motives, we cannot but regard as unjust. It is a result of his disposition and he was just as likely to accept the position and rush vigorously and eagerly into the canvass as to act as he has.

ROCHESTER, Sept. 29th, 1871.

Editor Federal Union:

On arriving home last night I learned for the first time that I had received the nomination of two Conventions for member of the Legislature.

Grateful as I am for the honor conferred, and the endorsement of a re-nomination, I must respectfully decline to be a candidate.

I respectfully request you to make this public through your paper because I do not learn that any County Committee has been appointed to whom I can officially address it, Respectfully,

RICHARD A JONES.

The story played out on the pages of the Democratic leaning *Federal Union*:

CORRESPONDENCE

Rochester, Sept., 30th, 1871.

Hon. R. A. Jones: —

Dear Sir.—We observe by the papers that you have declined being a candidate for the Legislature. The important services rendered by you last winter, to the people seems to require that you should waive your pecuniary interests and individual wishes and consent to again serve the people the coming winter in order that the work inaugurated last winter

may be completed. We, therefore, respectfully request that you re-consider your refusal to be a candidate and allow your name to be used in the coming election.

[Signed by F. T. Olds, O. W. Anderson,
L. W. Bucklin, L. L. Eaton, John Chute,
A. Nelson, and forty-five others]

_____

F. T. Olds, O. W. Anderson, L. W. Bucklin, L. L. Eaton, John Chute and others:

Gentlemen: — Yours of Sept. 30th is received. I profess to be a Democrat and as such most heartily endorse the State platform of that party, consequently it was with more than ordinary regret that I declined the nomination for the legislature and for reasons purely personal to myself have desired, and still would prefer, to be left out of the list of candidates for office for all time to come.

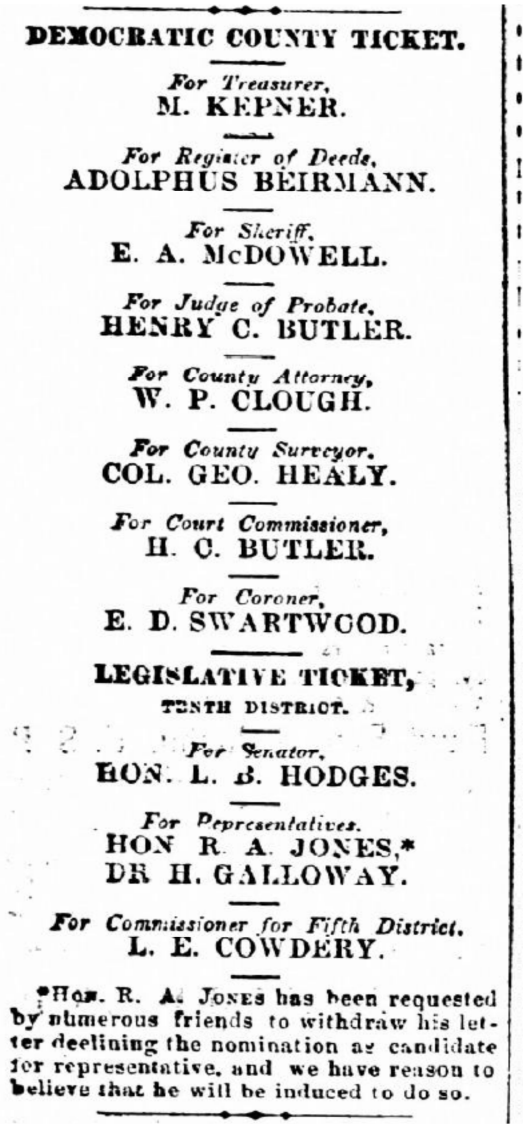
Your flattering preference, as expressed in your communication, following so closely the nomination of the democracy, and also of the peoples' convention, and the personal appeals made to me by very many friends, irrespective of party, representing that the interests of the people require that I should again consent to serve them in the Legislature, seems to indicate a demand for the sacrifice of my personal wishes in this respect and renders it difficult for me to decline.

If, therefore, the people of this district should ratify your preference by electing me to the Legislature this fall, I can only say that I shall, to the utmost of my ability, strive to ensure their interests, is perfecting and carrying forward the reforms so favorably inaugurated last winter. Respectfully, R. A. Jones.[11]

He was listed on the Democratic ticket as was Henry G. Butler, now a candidate for probate judge. He had a strenuous speaking schedule that was listed in *The Federal Union*, the only Democratic-leaning paper in the county.

[11] *The Federal Union* (Rochester), October 14, 1871, at 1.

The Federal Union
October 14, 1871, at 2.



DEMOCRATIC COUNTY TICKET.

For Treasurer,
M. KEPNER.

For Register of Deeds,
ADOLPHUS BEIRMANN.

For Sheriff,
E. A. McDOWELL.

For Judge of Probate,
HENRY C. BUTLER.

For County Attorney,
W. P. CLOUGH.

For County Surveyor,
COL. GEO. HEALY.

For Court Commissioner,
H. C. BUTLER.

For Coroner,
E. D. SWARTWOOD.

LEGISLATIVE TICKET,
TENTH DISTRICT.

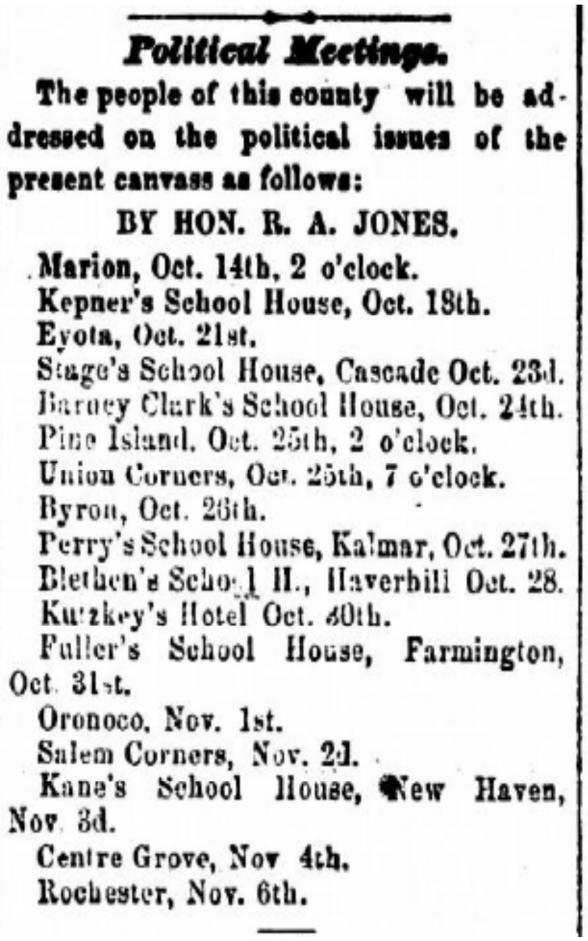
For Senator,
HON. L. B. HODGES.

For Representatives.
HON R. A. JONES,*
DR H. GALLOWAY.

For Commissioner for Fifth District.
L. E. COWDERY.

*Hon. R. A. Jones has been requested by numerous friends to withdraw his letter declining the nomination as candidate for representative, and we have reason to believe that he will be induced to do so.

The Federal Union
October 14, 1871, at 1.



Political Meetings.

The people of this county will be addressed on the political issues of the present canvass as follows:

BY HON. R. A. JONES.

Marion, Oct. 14th, 2 o'clock.
Kepner's School House, Oct. 18th.
Eyota, Oct. 21st.
Stage's School House, Cascade Oct. 23d.
Barney Clark's School House, Oct. 24th.
Pine Island, Oct. 25th, 2 o'clock.
Union Corners, Oct. 25th, 7 o'clock.
Byron, Oct. 26th.
Perry's School House, Kalmar, Oct. 27th.
Blethen's School H., Haverhill Oct. 28.
Kurzkey's Hotel Oct. 30th.
Fuller's School House, Farmington, Oct. 31st.
Oronoco, Nov. 1st.
Salem Corners, Nov. 2d.
Kane's School House, New Haven, Nov. 3d.
Centre Grove, Nov 4th.
Rochester, Nov. 6th.

He was re-elected in a "top 2" election on November 7, 1871:

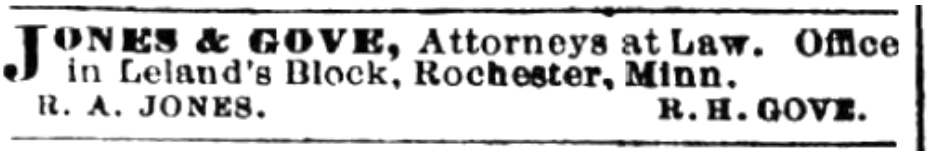
George Holmes (R).....972
T. B. Lindsay (R).....1,027
Richard A. Jones (D).....993
H. Galloway (D).....978 [12]

He did not seek re-election and resumed practicing law.

[12] *Rochester Post*, November 18, 1871, at 2; *The Federal Union*, November 18, 1871, at 3.

5. 1875 Election for Attorney General

By 1875 he had formed another firm, Jones & Gove. [13]


JONES & GOVE, Attorneys at Law. Office in Leland's Block, Rochester, Minn.
R. A. JONES. R. H. GOVE.

That year he was endorsed by the Democratic-Liberal Party, as it now called itself, for attorney general. In its account of the state Democratic–Liberal convention in St. Paul on July 7, 1875, the *Anti-Monopolist* weekly newspaper, published and edited by Ignatius Donnelly, gave one paragraph to the selection of a candidate for attorney general:

> ATTORNEY GENERAL.
>
> For this office were presented the names of W. W. McNair of Hennepin and R. A. Jones of Olmsted. Mr. McNair's name being positively withdrawn, Mr. Jones was made the unanimous nominee.[14]

It was a tough contest because his Republican opponent was incumbent George P. Wilson.[15] They debated on the same stage where Jones used his wit and sarcasm to considerable laughter.[16] In the next election Wilson would defeat John R. Jones, Richard's younger brother.[17]

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[13] *Rochester Post*, October 30, 1875, at 1.

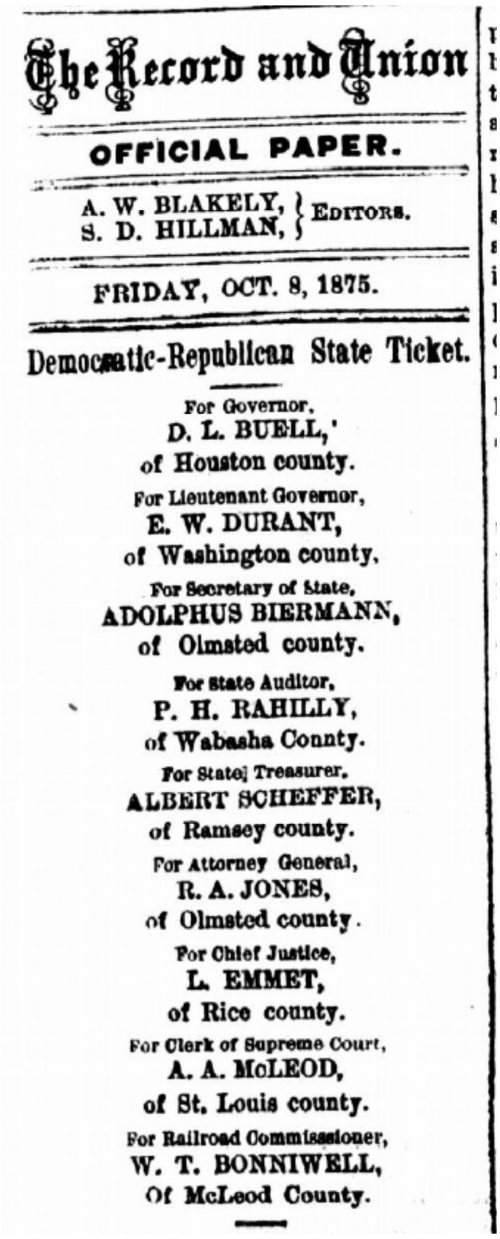
[14] *Anti-Monopolist,* July 12, 1875, at 9.

[15] George Potter Wilson (1840-1920) began practicing law in Winona in 1862; he served three terms as attorney general, 1874-1879; and in 1887 moved to Minneapolis where he continued to practice. He is the author of "Reminiscences of the Early Bench and Bar of Minnesota" (MLHP, 2015) (delivered first 1908).

[16] For a speech by Jones in a debate with Wilson in St. Paul, see Appendix, at 45-48.

[17] For a biographical sketch see "John R, Jones (1828-1900)" (MLHP, 2021). See also, "Results of Elections of Attorneys General, 1857-2014" (MLHP, 2013-2016).

The Record and Union
Rochester, Olmsted County



The Record and Union

OFFICIAL PAPER.

A. W. BLAKELY, S. D. HILLMAN, } EDITORS.

FRIDAY, OCT. 9, 1875.

Democratic-Republican State Ticket.

For Governor,
D. L. BUELL,
of Houston county.

For Lieutenant Governor,
E. W. DURANT,
of Washington county.

For Secretary of State,
ADOLPHUS BIERMANN,
of Olmsted county.

For State Auditor,
P. H. RAHILLY,
of Wabasha County.

For State Treasurer,
ALBERT SCHEFFER,
of Ramsey county.

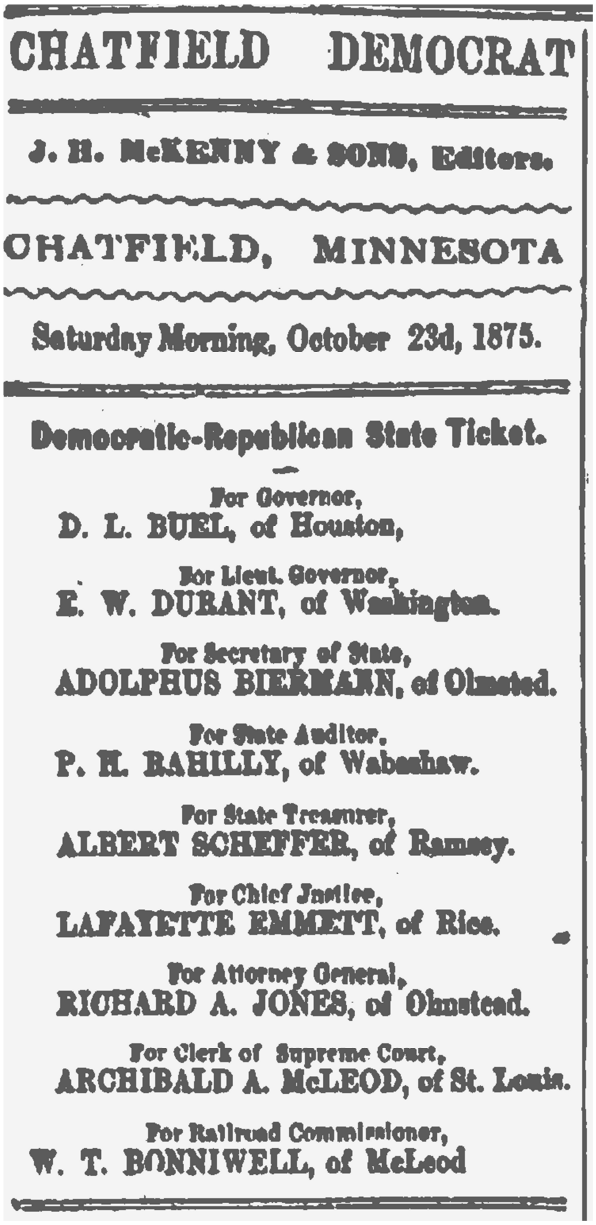
For Attorney General,
R. A. JONES,
of Olmsted county.

For Chief Justice,
L. EMMET,
of Rice county.

For Clerk of Supreme Court,
A. A. McLEOD,
of St. Louis county.

For Railroad Commissioner,
W. T. BONNIWELL,
Of McLeod County.

Chatfield Democrat
Chatfield, Fillmore County



CHATFIELD DEMOCRAT

J. H. McKENNY & SONS, Editors.

CHATFIELD, MINNESOTA

Saturday Morning, October 23d, 1875.

Democratic-Republican State Ticket.

For Governor,
D. L. BUEL, of Houston,

For Lieut. Governor,
E. W. DURANT, of Washington.

For Secretary of State,
ADOLPHUS BIERMANN, of Olmsted.

For State Auditor,
P. H. RAHILLY, of Wabashaw.

For State Treasurer,
ALBERT SCHEFFER, of Ramsey.

For Chief Justice,
LAFAYETTE EMMETT, of Rice.

For Attorney General,
RICHARD A. JONES, of Olmstead.

For Clerk of Supreme Court,
ARCHIBALD A. McLEOD, of St. Louis.

For Railroad Commissioner,
W. T. BONNIWELL, of McLeod

In the election on November 5, 1875, he received only 42 % of the vote.

George P. Wilson (inc. & Republican).....45,091
Richard A. Jones (Democrat).....34,683
C. M. McCarthy (Reform and Anti-Monopolist).....2,749 [18]

[18] Journal of the House of Rep., January 6, 1876, at 17. For an analysis of the contest for Chief Justice of the Minnesota Supreme Court in this election, see Douglas A. Hedin, "Lafayette

6. 1878 Election to the State House

In 1878 he was still a member of Jones & Gove.[19] That fall he reluctantly accepted the Democratic nomination for his old seat in the state House of Representatives (again he was nominated when he was absent from home). He announced his candidacy in an open letter to the public, published in the *Rochester Post* on October 11, only 24 days before the election: [20]

A CARD FROM HON. R. A. JONES.

To the Voters of the Tenth Legislative District.

FELLOW CITIZENS: Some weeks ago I was nominated by the democratic convention for member of the next Legislature. At the time I was away from home and was not consulted with reference to it. Since that time, and until the meeting of the greenback convention, I have used all my powers of persuasion to induce my personal friends in the two parties to sink personal animosities and selfishness and unite on a ticket which should not include my name. I succeeded in getting the consent of my democratic friends, but some half dozen leading members of the greenback party (including the editors of the Record and Union, and one or two of the candidates on the announcement county ticket,) have determined to gratify a personal spite rather than achieve success for the principles they profess to advocate.

Emmett v. James Gilfillan: The Contest for the Election of Chief Justice of the Minnesota Supreme Court, 1875" (MLHP, 2021).

[19] The firm's business card appeared in the *Rochester Post*, October 25, 1878, at 1. Frank B. Kellogg had his office with Jones & Gove. Id.

[20] *Rochester Post*, October 11, 1878, at 2. In a separate column on the same page, the editors of the *Post* chide Jones:

> We publish in another column the announcement by Hon. R. A Jones of his candidacy for Representative. On looking over his reasons for running and claims for an election, we fail to find the statement of any political principles, but, if we understand his card aright, he is running because some of the lesser lights in his crowd are anxious to beat him; he is running through mulishness. Some men run as republicans, some as democrats, some as hard money men, some as greenbackers, some as nationals: but our friend Dick seems to be running on the Jones ticket.

My personal desire has been to keep out of politics and not be a candidate for any office. This desire I had determined to carry out at all hazards, and had notified the chairman of the democratic committee to withdraw my name before the greenback convention met. The half dozen malcontents I have alluded to, however, chose to make a personal war of this campaign and especially as to myself.

It is proper for me to say that Hon. James Button, who was nominated by the greenback convention, was not in any way, so far as I know or believe, a party to this personal move. On the contrary, both Mr. Button and myself have been earnest advocates for a union ticket.

The challenge being thus made by these parties, I cannot without personal dishonor withdraw from the contest. Whatever else is true of me, it is true that I never run away from a personal controversy.

Therefore, I accept the battle thus tendered, or rather forced upon me, and want it distinctly understood that I am a candidate for the Legislature, and desire your votes. I should not allow myself to ask your votes without giving you to understand what you may expect of me if elected. As I have twice been your representative in the Legislature you can judge what I will do by what I did and tried to do before. I shall be governed now by the same motives as then.

Time has proved to you whether what I did in 1871 and 1872 was for your interest or not, and you can say by your votes for or against me now, whether you approve or disapprove my acts. If elected, I shall endeavor to honor myself by honorably doing my duty as your representative and be able to look you all in the face, with an honest conviction that 1 have done my best in your behalf.

I am compelled to publish this in the republican organ, as we have no democratic paper in the district, but in company with Col. James George, I intend to hold some meetings in the district, at which you will have an opportunity to ask such questions touching my purposes and conduct in the future and in the past as you may think fit.

Respectfully, R. A. JONES.

District 10 was allotted one senator and two representatives. [21] In addition to candidates from the two traditional parties, nominees of the Greenback Party, also known as the National Party, joined the fray. The results of the "top 2" election on November 5, 1878, were: [22]

C. E. Stacy (R).....907*
R. Middleton (R).....762
R. A. Jones (D).....1,121*
M. Dosdal (D & National).....819
James Button (National).....659

He did not run for re-election in 1880, but in 1882 he ran again for a seat in the House.

7. 1882 Election for the State House

Due to reapportionment, his old House District had been reconfigured and now fell within the Fourteenth, which had one senator and three representatives.[23]

The *Rochester Post* endorsed the entire Republican ticket, and reminded voters of the history of the opposition party:

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[21] Statute, c. 3, Title 1, §2 (10), at 63 (1878) ("The tenth district shall be composed of the towns of New Haven, Oronoco, Kalmer, Cascade, Salem, Farmington, Haverhill and the town and city of Rochester in the county of Olmsted, and shall be entitled to elect one senator and two representatives.").

[22] *Rochester Post*, November 15, 1878, at 2..

* = elected.

[23] The Fourteenth House District was subdivided into three districts:

> 14. The fourteenth district shall be cmposed of the county of Olmsted, and shall be entitled to elect one (1) senator and three (3) represenatives. Representative districts divided as follows:
>
> The towns of New Haven, Oronoco, Farmington, Haverhill, Cacade, Kolmer, Byron village, Salem township, and Rock Dell township shall be entitled to elect one (1) representative,
>
> The first second, and third wards of the city of Rochester, towns of Rochester and Marion shall be entitled to elect one (1) representative.
>
> The towns of Viola, Quincy, Eyota, Dover, Elmira, Orion, Pleasant Grove, High Forest, Eyota village and High Forest village shall be entitled to elect one (1) representative.

Statute, c. 3, §2 (14), at 6 (1881 Supplement).

> Let every voter who believes that our government will be better administered by the republican party than by the party which once sought its destruction, go to the polls next Tuesday and work and vote for the republican candidates. [24]

The Union and Record, the only Democratic newspaper in the district, gave Jones a hearty endorsement:

> R. A. JONES,
>
> The democratic candidate in this district is so well known that we need hardly mention his name. Twelve years ago he introduced and secured the passage of a law regulating railroads. It was drawn up by him and run the gauntlet of the courts and was sustained by the Supreme Court of the United States and of this state. He stands pledged today as he did then, to secure the making of laws to prevent discrimination by railroads. He is a natural opponent of monopolies, whether by railroads or rings of any kind. The voters can also rely on Mr. Jones to vote against Windom, the boss of all the rings in the state. His opponent is an ardent supporter of Mr. Windom. Let every man who is opposed to Mr. Windom vote for Mr. Jones and the democratic ticket.[25]

Excepting the re-election of Probate Judge Henry C. Butler, the Republican Party swept Olmsted County on November 7, 1882, electing all three representatives:

> M. J. Daniels (R).....646
> R. A. Jones (D).....476
>
> J. Fraham (R).....623
> James Barnett (D).....398
>
> R. D. Dyer (R).....650
> Wm. Porter (D).....477 [26]

[24] *Rochester Post*, November 3, 1882, at 2.
[25] *The Union and Record*, November 3, 1882, at 2.
[26] *Rochester Post*, November 17, 1882, at 2; *The Record and Union*, November 17, 1882, at 2.

For personal reasons, long forgotten, he and three of his children moved to Portland Oregon, in 1886.

9. Appointment as Chief Justice, 1887

In March 1887, he was appointed chief justice of Washington Territory by President Grover Cleveland. He earned this appointment because of a rousing speech seconding the nomination of Cleveland at the Democratic convention in Chicago in July 1884. *The Record and Union* reprinted a story from the *Chicago Inter Ocean* about "Our Dick": [27]

> The Hon. Richard A. Jones, of Minnesota, seconded the nomination of Cleveland in an eloquent speech. He is a large man in a black alpaca coat, with a clerical look and a florid completion. He is smooth shaven, with black hair in short curls. He has a powerful and penetrating voice. His nose is of the Roman pattern; prominent chin, high, intellectual forehead.

The court session at which Jones took the oath of office and now former Chief Justice Greene gave a farewell address is posted in the Appendix.

10. The Death of the Chief Justice, 1888

Chief Justice Jones died on August 19, 1888, at age 66. To the public it was unexpected, to many barristers it was not. In his most famous decision, *Bloomer v. Todd*, released five days before his death, the Chief Justice began the conclusion, "Continuous illness since the argument of this case prevents me from going more at large into the subject than I have already done."[28] The *Post-Intelligencer* published his obituary.

SEATTLE POST-INTELLIGNCER

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JUDGE R. A. JONES DEAD.

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[27] *The Record and Union*, July 18, 1884, at 23.
[28] *Bloomer v. Todd*, 3 Wash. Terr. 599 (August 14, 1888). Appendix, at 66.

A Sudden Summons Early This Morning.

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The Chief Justice Passes Away, Surrounded by His Family, Whom He Bids Farewell

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Richard Ashbury Jones, chief justice of the district court of the United States for Washington Territory, died at his residence, corner Fifth and Union street, in this city, at 2:30 this morning. His death was sudden and unexpected.

Several days ago Judge Jones went to the farm of Mr. Geo. Shannon, near Olympia, for a few days rest, returned home at 9:30 last night, in some pain, and immediately retired. He had been indisposed for several weeks, and when he returned his family felt no alarm. Toward midnight he became worse and a messenger was dispatched for Dr. Smith, his physician during his recent trouble. Dr. Smith happened to be attending another case.

Owing to the wretched telephone service, which last night was almost criminally bad, no other physician could be brought to the sufferer's bedside until he was past all human help.

Dr. Smart arrived about fifteen minutes before Judge Jones died and Dr. Weed came a few minutes later. The immediate cause of death was œdema or dropsy of the lungs, which embarrassed respiration. But kidney trouble had reduced the patient’s strength; hence death may be attributed to a complication of disease. He died in great pain, but was conscious to the last. He knew that his end upon earth had come and bade farewell to his sorrowing family and to the physicians present.

News of the death reached the POST-INTELLIGENCER office by telephone at 3:20 morning. A reporter hastened in a carriage to the residence and obtained the above meager particulars.

Judge Jones was born in Indiana October 22, 1830. He went to California during the gold excitement in 1850. Subsequently he removed to Minnesota, where he engaged in the practice of law and attained a high place in the bar of that state. He removed to Portland, Oregon, in 1886, and in April, 1887, was appointed to the chief justiceship of this territory. His last official act was his decision in the woman's suffrage law last Tuesday. He leaves two sons, M. K. and R. S. Jones, the latter a resident of Rochester, Minnesota, and two daughters, Miss Isabel C. and Edith Jones. Judge Jones was a widower.

He was an 82d degree Mason, and formerly occupied the office of Deputy Grand Master of the Grand Lodge of Minnesota. . . . .

Judge Jones was a man of noble character, a lawyer of splendid attainments and a just Judge. He had been a resident of Washington territory but a short time; yet long enough to gain the confidence, respect and admiration of this common-wealth. His death is a great loss to the community.[29]

The *Post-Intelligencer* did not publish an edition on Monday, August 20. The next day it printed almost a full page of tributes by lawyers and judges to the late Chief Justice, a biographical sketch and bar memorials. In reading these tributes it is important to recall that members of the Washington Territorial Supreme Court also served on the trial bench, as did Supreme Court Justices who served in Minnesota Territory. The most famous ruling by Chief Justice Jones was *Bloomer v. Todd*, 3 Wash. Terr. 599 (1888), issued a week before his death.[30]

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[29] *Seattle Post-Intelligencer*, August 19, 1888, at 1 (Burial arrangements omitted).
[30] It is posted in the Appendix, at 57-66.

SEATTLE POST-INTELLIGNCER

August 21, 1888.....Page 3

A GREAT LOSS.

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Death of Chief Justice Jones.

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Further Details of the Sad Affair.

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The Remains Sent to Minnesota For Burial.

———

A Short Sketch of His Life —
Action Taken by the Bar Association—
Estimate of Judge Jones' Character
by Members of the Bar.

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The meagre particulars in the first edition of Sunday's Post-Intelligencer of the death of Chief Justice Richard Asbury Jones and the fuller details contained in a second edition had without a doubt fully as saddening an effect wherever the news penetrated in this territory as intelligence of the death of Garfield had upon the nation. Judge Jones' noble qualities of heart and mind, his kindly genial manner and his intense humanity, endured him to all with whom he came in contact. His towering physical form was typical of his big heart and broad mind. He was looked up to by all as a chief among men and all recognize the fact that his death is a loss well nigh irreparable to the judiciary and the commonwealth at large.

But very few of Judge Jones's friends had an intimation that his recent indisposition was at all serious. He was naturally of such

full habit, that disease did not quickly show by outward signs. Those who had practically noticed him for the past two weeks, however, remember a particular wan expression, particularly of the eyes, while his countenance bore nearly its normal ruddy hue. His step lost its usual firmness and buoyancy and he was easily exhausted. After attending the session of the supreme court at Olympia last week he went to the ranch of Mr. George D. Shannon, near the city. There he seemed to recuperate somewhat. He was in quite good spirits and evidently enjoyed the quiet and rest. Friday night, however, he had a serious sinking spell and his friends were greatly alarmed. The Chief Justice certainly had a premonition that his end was near and he was determined to get home at once. The next day he left for Seattle. Such was his remarkable fortitude that the friends who accompanied him were deluded with the belief that he was feeling much stronger and better. Judge Jones was devoted to his children and had carefully kept from them all knowledge of his real condition. When he arrived home Saturday night he sought to prevent any alarm and the family retired without an intimation of their father's real condition. When, about midnight, his condition became so much worse a messenger was dispatched for Dr. Smith. He was attending another case and could not be found. Time incalculably was lost through an inability to secure telephone connection. The boy in the central office was fast asleep and not until 15 minutes before Judge Jones breathed his last did Dr. Smart arrive. Dr. Weed came a few minutes later. Judge Jones was then past all human aid. He died in great agony, but was conscious to the last and bade his friends farewell. Ædima or dropsy of the lungs, which embarrassed respiration, complicated with kidney trouble was the cause of death.

The children residing here, M. Keith and Misses Isabel and Edith Jones, were almost prostrated with the shock. In accordance

with their request no visitors, excepting two or three devoted lady friends, were received at the family residence. Chief Justice Jones had expressed the wish that his remains, when he should die, should be laid by the side of his wife at his old home, Rochester, Minn. The body was accordingly embalmed Sunday, preparatory to the long journey.

ACTION BY THE BAR.

Appropriate Resolutions and Measures Adopted.

Suitable measures of respect and mourning were promptly adopted. Flags were put at half mast on the city and county buildings, as well as in many places throughout the city. The portico of the court house was festooned with black and white crape. The chambers of the chief justice and the court room were draped profusely with broad strips of black and white cashmere and the dead judge's large rocking chair was covered with a large piece of black crape.

In this somber court room the Seattle Bar Association met at 10 a. m. yesterday. It was probably the largest meeting of the association ever held. Every member who was not out of the city was present. Ex-Chief Justice Jacobs called the meeting to order with a muffled gavel, and opened the exercise with a brief and heartfelt eulogy.

A BRIEF EULOGY.

He said: "It is not necessary to enter into an explanation of the object of this meeting. We all know that our beloved chief justice is dead and that we have lost in him a grand character and an able judge. In my long experience it has never been my

fortune to meet a *nisi prius* judge who possessed in such a full measure all of the great qualities necessary for that office. He was fearless, independent, clear-minded and just. He allowed no prejudices to sway him and he was considerate of the rights and feelings of everyone. He was a true man and an able and impartial judge. This may not be the occasion to pass an extensive eulogy on his character. It may be more appropriate to do so when his successor shall be appointed and installed in office."

PALL-BEARERS APPOINTED.

Attorney General Metcalfe moved the appointment of a committee of three to select ten pall-bearers to accompany the remains to Tacoma. Attorney General Metcalfe, Ex-Chief Justice Roger Greene and J. J. McGilvia were appointed, and they selected the following pall-bearers: [list omitted] . . .

William R. Andrews, Thomas Burke and E. P. Ferry were appointed a committee on resolutions. They reported the following which were adopted:

THE RESOLUTIONS.

The members of the Seattle bar have heard with feelings of the deepest sorrow of the sudden and unexpected death of Hon. Richard Asbury Jones, chief justice of the supreme court of the territory.

The late chief justice has been a resident of the territory less than two years, and yet, during that short period, he had established for himself the reputation of a profound, honest and fearless judge, and an upright and public spirited citizen.

It has rarely happened that in so short a time a public official has so endured himself to all classes of people, as was the case with Judge Jones.

On the bench, and in his intercourse with the members of the bar, his kindly, generous nature, his genial and pleasant manner, won the love and esteem of all. None that have practiced before him can ever forget his patience, uniform courtesy and considerate kindness, especially to the younger members of the bar; his unswerving sense of right, his love of justice, and his sterling integrity.

With him right and justice were above all things, and he was never known to sacrifice them to the mere technical forms of the law. He was a man of noble qualities of head and heart and the man was not lost in the lawyer or the judge.

His all too short career upon the bench in this territory served to illustrate the nobler judicial virtues which in a larger field would have given him a national reputation. And now, as a slight tribute to his memory, the bar desire to place upon the records of the court an expression of their high regard of his great worth as a man and citizen; as a lawyer well versed in the law; and as a judge who brought to the discharge of his official duties learning, industry, patience, ability and a love of justice. Therefore,

Resolved, —First —That in the death of the late chief justice the people of Washington Territory and especially those of the Third Judicial District have lost a judge whose broad and comprehensive knowledge of the law, whose love of justice, fearless independence, splendid executive abilities, spotless integrity and unerring sense of right have shed a lustre over the administration of judicial affairs in this territory.

Second —That in our common sorrow we do not forget the deeper suffering and despair resting over the household that death has so unexpectedly entered, and that we respectively tender to the bereaved ones our most sincere sympathy.

Third —That in further token of our sorrow the Seattle bar, as a body, accompany the remains of our chief justice as far as Tacoma toward their last resting place.

Fourth—That the chairman of this meeting is hereby requested to send an engrossed copy of these resolutions to the family of the deceased.

W. R. Andrews
Thomas Burke
E. P. Ferry
Committee

A LONG, SAD JOURNEY.

The Bereaved Children En Route East With the Remains.

The funeral services at the house at 2:45 yesterday afternoon were of the simplest character, and more extensive services will be held at Rochester, Minn., before interment. The remains were enclosed in a beautiful airtight casket. [Details of funeral services omitted] A silver plate on the casket bore the inscription:

RICHARD A. JONES.
October 22, 1821.
At Rest.
August 19, 1888.

MORE ABOUT HIS LIFE.

A Career That Adds Lustre to His Memory.

Richard Asbury Jones was born in Indiana, October 22, 1821, and although he removed from his native state when quite a young man, he always maintained with pride his claim to be classed as a "Hoosier." He obtained his education under difficulties, and early showed the possession of talents of an exceptional nature. He went to California during the gold excitement of 1860. There he met and married Isabel McClellan, who had gone to California on account of her health. Subsequently he removed to Rochester, Minnesota, where he attained a high place in the bar of the state. He was particularly successful as a criminal lawyer and had he located in Minneapolis or some other large city, he would doubtless, by reason of his unusual talents, have become the most prominent attorney in the state.

He became attached to the beautiful little city of Rochester, however, and would not leave it. He was a candidate for Congress several times in a hopelessly Republican district, and by his popularity, generally reduced the usual Republican majority. He was in the state legislature several times, and many good laws now on the state statute books of the state were his productions. One of the most notable in that railroad ridden country, was a law fixing the maximum and minimum freight rates to be charged by railroad corporations. This law was tested in the United States Supreme Court and it stood the test. Although before his appointment he always enjoyed a large practice, he never accumulated much wealth and died in moderate circumstances. He was too benevolent and generous in nature to make money. No one in distress ever called him in

vain. His long residence in Minnesota and his extensive practice, made him known in every quarter of the state. A life long friend said yesterday, "I don't believe there were a hundred people in Minnesota, who did not know him at least by sight. He could not step off the train at any little station in Minnesota, without some one giving him a warm hand grasp and greeting, "Hello Dick" or "How are you Jones or Mr. Jones," according to the familiarity of the acquaintanceship. Thirteen years ago his beloved wife died and he never married again. He was devoted to his family and simple in his tastes.

HIS LIFE HERE.

He removed to Portland Oregon, in 1886, and in March, 1887, was appointed by President Cleveland chief justice of Washington Territory. Shortly after he removed to Seattle and has ever since resided here. He was held in the highest esteem as a judge and a man of by everyone who knew him and attracted to him many warm friends.

NOTABLE OFFICIAL ACTS.

The most important official act of Chief Justice Jones, perhaps, was the writing of the decision of the supreme court rendered last week, declaring the woman suffrage law unconstitutional. This will for all time be one of the most noted decisions in Washington Territory reports.[31]

He decided the riparian rights cases of Squire versus Kenyon and Kenyon versus Squire, a decision that will always have material effect upon very important interests on Puget Sound. Judge Jones held that the person who buys a lot on the water front, according to the recorded plat, is bound by that plat in

[31] *Bloomer v. Todd*, 3 Wash. Terr. 599 (1888), is posted in the Appendix, at 57-66.

case it shows in front of his lots, and they are really below high water mark. Judge Allyn has taken directly opposite ground on this question.

The Miller murder decision, with which everyone is familiar, is also one of Judge Jones's most important acts. Miller was found guilty of murder. The supreme court granted a new trial and declared if on the future trial no stronger evidence is produced the defendant would be entitled to acquittal. On the new trial Chief Justice Jones followed this expression of the supreme court and acquitted Miller.

Another notable official act of Judge Jones was his opinion in the case of William M. White vs. The Territory, in which he lays down very clearly the law of self-defense and the right of those in possession of property to defend their possession against violence, whether the possession be legal or not.

Judge Jones was an indefatigable and systematic worker. He was a thirty-second degree Mason, and formally occupied the office of deputy grand master of the grand lodge of Minnesota. His last official act was the signing of an order in a suit pending. This was sent to Mr. C. H. Hanford of this city, under date of last Wednesday, with the following note:

George Shannon's Ranch,
Aug. 15, 1888.

Bro. Hanford: I enclose your complaint affidavit to the clerk and send herewith the order to show cause, returnable Friday morning of next week. This is in order to give you full time for your Medical Lake trip and to get back. I can hear the matter and go to Oysterville Saturday or Sunday.

Very truly, R. A. Jones.

BELOVED BY THE BAR.

Estimates on Judge Jones's Character From Lawyers.

Chief Justice Jones enjoyed the confidence, respect and esteem of the entire bar in a remarkable degree. Many prominent attorneys are out of the city, and it was impossible to see several others yesterday, but the following expressions, it is safe to say, would only be duplicated if every member of the bar in the city were interviewed.

Prosecuting Attorney Ronald —I think that for a new *nisi prius* judge, he was fitted by nature and ability far beyond any man I know of. For grasp of intellect and profound and logical reasoning, he had not an equal on this coast. He knew no man. The poor got the same kind of justice as the rich. Strict, absolute justice was what he tried to administer in every case.

Judge Arthur—Judge Jones seemed to have been designed by nature to wear the ermine. He possessed in quite an exceptional degree all the great qualities which go to make up the successful trial judge. He was quick minded, clear-headed, had a strong grasp of the facts brought out, and always knew what principle to apply to those facts. He was splendidly versed in the fundamentals of the law. He was withal a born moderator of the proceedings before him, and guided them easily to the proper goal. He was the soul of gentlemanly urbanity. The members of the bar were all personally fond of him. He always addressed them as "brothers," and they regarded him as a father. Had Judge Jones remained in his native state of Indiana he would have attained a national reputation. Being a Democrat in Minnesota his extraordinary qualities were not rewarded politically. In Indiana he would have been sent to the United

States Senate and would have made his mark even in that great body. He made friends readily and held them with hooks of steel.

Gov. E. P. Ferry—He was an honest upright, fearless and conscientious man. As a judge he was above the average.

Judge Hoyt—My personal knowledge of Chief Justice Jones was somewhat limited. Judging from the sentiments of those having opportunity to know him, he was universally respected as a judge. As a man I knew him more intimately and held him in the highest esteem as a citizen and father.

Judge Thomas Burke—He was endowed with fine executive ability. His long experience at the bar gave him an acute knowledge of human nature, which served him to excellent purpose on the bench. He was a broad-minded man, talented and indulgent toward the short comings of man, yet both as a man and a judge, firm in his purpose.

C. H. Hanford.—I had a very high opinion of Judge Jones as a man and a judge. He was a man of noble character, broad and liberal minded in every way. A man who had traveled extensively and had acquired a great knowledge of the world and human nature by experience. He seemed to be able at all times to treat all with whom he came in contact in the way they deserved. He was generous and just. He was a thoroughly well-informed lawyer, very clear and penetrating in his conception of cases. He never erred by misconception. I regard his decisions for the most part as being sound, and on the whole, I have met but very few men whom I considered as well qualified as he was to fill the position of judge.

C. F. Munday—As a man, lawyer and judge, no abler man ever occupied an official position. His loss at the present time is a public calamity.

W. R. Andrews— In the first place I look upon the late chief justice as a man whose knowledge of the law was both broad and profound, and that while he appeared upon the bench to know but little of technical practices, yet his action in this regard was governed more by a desire to do justice than to sacrifice the spirit of the law to the letter. His great purpose seemed to be to do justice. His uniformly kind treatment of members of the bar compelled them to look up to him as children learning wisdom from their father. His splendid executive abilities enabled him to do more for this district than can scarcely be hoped for in any successor that may be appointed. His loss to this district and the territory at large is to be deeply deplored.

C. K. Jenners—I have always considered Judge Jones as one of the ablest judges I ever practiced before, and especially remarkable for his ability to dispatch large amounts of business and to do so in a generally correct and legal manner. He cleared the docket here in three terms were hundreds of cases had been dragging for years.

S. H. Piles—I can only say as every lawyer thinks, that Judge Jones was the best jurist we ever had in the territory, that his death is a calamity to the people at large. He was a man of great force of character, an honest man and an upright jurist. He was a man with whom no one could come into contact without learning to love and respect him.

Harold Preston—Judge Jones was a man whose equal as a new *nisi prius* judge, I never expect to meet. He was very able and a most accurate and painstaking trier of fact. As a man he drew to himself the friendship and personal esteem of every attorney who practiced before him. He was uniformly just and unfailingly courteous. His loss will be daily felt by the attorneys of the territory generally and of King county in particular.

W. W. Newlin—We have not only lost a chief justice and a judge eminent as a lawyer and jurist and one whose reputation is absolutely spotless as to honesty, but every man, woman and child who has known him has lost in him a friend. It will be hard to replace so able a man having such a simple, honest, lovable traits.

Attorney General Metcalfe—Chief Justice Jones was one of the best equipped man that I ever knew. As a man he had superior knowledge of men in their ways as the world goes. His knowledge of his countrymen, their ambitions, ideas and idiosyncrasies were extensive. His memory was very retentive and the dominating elements of a great progressive stream of life in our country fixed themselves upon his mind and always came from him in ordinary conversation in a philosophic way that impressed his companions. He was one of the most charming and agreeable man that I ever knew, and his gift of adaptability to the company he was in won him a host of friends. As a jurist he was acknowledged by all our brethren of the bar to be eminently fitted for his position, which in the developing progress of the Northwest requires not only a thorough knowledge of the law but an accurate drift of human affairs. No man in his family circle was ever more beloved and his attachment and solicitous care for his children was one of the jewels of his character. The community has lost an esteemed citizen; the bar and bench a chosen advisor and friend, and the territory one of its ablest men.

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The following expression of Judge Allyn appeared in last evening's Tacoma *News*: "The sudden announcement of his death struck me like a blow—it was so unexpected. I had parted with him but a few days ago under an arrangement of exchanging terms for next week to relieve him somewhat in his

work. He was a very attractive man, big in every way; in mind, heart and body; a kindly man of lovable disposition. He had so firmly impressed his character on the bar and people of the community that his place cannot [be] readily filled. He was at his post on Monday and Tuesday preceding his death, ready as always to do his duty. His last official act was in writing the suffrage decision, which clearly shows the strength and breadth of his mind and his splendid ability as a jurist. I had to some extent relieved him of pressing work of late and was wishing to do more, but he always insisted on doing his full share as long as he could, and to this praise-worthy ambition must unfortunately be ascribed to some extent, his sudden calling off, for, although forbidden work by his medical advisors, as I know he would often work when he should not. I believe his loss is felt as a personal one by the bar. I certainly know it is by us, his associates on the bench. As I before remarked, his death is an actual loss to the community, but of all it is an irreparable—and overwhelming—one to his loving and devoted family. In his home life the judge's beautiful character was exemplified. A man of splendid brain and large body, when sympathy was called for his heart was shown to be as tender as a woman's. So with his superior ability as a lawyer and judge of brilliant talents, his tender love and care for his family and his amiable quality showed him to be a man of rare character, and made all made us all admire, respect and love him."[32]

Editorial

> By the death of Chief Justice Jones the territory suffers a serious loss. Judge Jones was a man of fine talents, profound legal requirement of untiring industry and of spotless character. As a judge and as a man he was universally respected.[33]

[32] *The Seattle Post-Intelligencer*, August 21, 1888, at 3.
[33] Id. at 2.

9. Memorial Services in Rochester, August 24-31, 1888.

The embalmed body of the Chief Justice was transported by rail to Rochester, where he was buried next to his late wife. The weekly *Rochester Post* reported his death, lengthy funeral services and resolutions of the Bar Association.

The Rochester Post

August 24, 1888 Page 2

RICHARD ASBURY JONES

Died at Seattle, W. T., August 19th, 1888

Our community was shocked on Sunday evening, by the intelligence of the death of Hon. Richard A. Jones, at his home, Seattle, Washington Territory, that morning.

Justice Jones had been in poor health for several weeks. His duties as Chief Justice of the Supreme Court of the territory have been very arduous. In a letter written by him, to Mr. Sam Whitten, soon after his cessation of work, we find a statement of the prodigious amount of work done by him within the past eighteen months.

He had tried over eleven hundred cases, some of them taking more than a week each, one more than two weeks and many of them one, two, of and three days each, and others, of course, much shorter so that he had received as many as four verdicts in one day, several times three and very often two, and had tried from four to ten a day without a jury and until that time had had in the whole period only six and a half days without court, besides Sundays and had averaged over twelve hours every day, Sundays and all, of hard work.

As a result of this excessive labor, he was, in the latter part of July, compelled to absent himself from court and has since

then been confined to the house, but it was thought that the indisposition would be only temporary and that after a few weeks rest, he would be able to resume his duties. The seriousness of his condition was not realized by any of his friends here till the news was received of his death. No definite information has yet been received as to the immediate cause of death, but a dispatch from Seattle to the Minneapolis Tribune says: "His death was sudden and wholly unexpected, and the end came before the physician could be summoned to his bedside. He had been indisposed for some time with kidney troubles, but his condition was not such as to alarm himself or family or physician. The immediate cause of his death was dropsy of the lungs.

The remains will be brought to this city by a special car, arriving here probably to-night. They will be accompanied by his son, M. Keith Jones, his daughters, Misses Elizabeth and Edith Jones, and a deputation from the bar of Washington Territory.

The body will lie in state in the City Hall, on Sunday, from 9.45 a. m. to 1:30 p. m. under a guard of honor of Knights Templar. The City Hall will be open to the public. The casket will not be opened at the church.

The funeral will be under the direction of the Free Masons of this city. The services will be held at the Methodist church at half past two o'clock Sunday afternoon. Rev. W. C. Rice is to officiate.

Special trains will come from Chatfield, Plainview, Kasson and probably Winona, and will return in the evening.

Richard Asbury Jones was born near Lafayette, Indiana, October 22d, 1831. His parents were Rev. Stephen and Isabella Jones. The family moved to Wisconsin in 1838, locating near the present site of Evansville. Rev. Stephen Jones afterwards settled

at Chatfield in this state, where he died several years ago, was a Methodist minister, well known and held in the highest esteem all through this region.

Justice Jones was educated at Milton Academy, in Wisconsin, and read law in the office of David E. Wood, at Fond du Lac. In 1853 he went to California by the overland wagon route, and practiced law at Santa Clara and San Francisco. While in California he was married to Miss Sarah J. McClelland, of Lewiston, Pennsylvania, who died in this city in 1879. He came to Chatfield in 1859 and practiced his profession there till 1864, when he removed to this city, practicing law in partnership with Hon. Henry C. Butler, in the firm of Jones & Butler, and afterwards with R. H. Gove, Esq., in the firm of Jones & Gove. In the spring of 1880 he removed to Portland, Oregon, and was practicing law there when appointed Chief Justice of Washington territory, which position he was filling at the time of his death.

He leaves surviving him two sons, R. Saxe Jones of this city, and M. Keith Jones of Seattle, and two daughters. Misses Elizabeth and Edith Jones, of Seattle. His brother, Col. John R. Jones, is a very well known resident of Chatfield.

During his more than twenty years residence in Rochester he was prominent in all public affairs. As a lawyer he stood in the front rank; as a politician he was one of the best known and most influential in the state; as a free mason he attained the position of Deputy Grand Master and was always high in the councils of the order. As a friend and neighbor he was loved and liked by all with whom be came in contact. During the war and the period immediately following, he was a leader in the republican party, but held no office. When President Johnson disagreed with the republican party Justice Jones took the president's side of the controversy and in the fall of 1866 he accepted the independent and democratic nomination for congress against William Windom, made a strong canvass and

displayed a hopeless minority and his defeat followed as a matter of course. From that time his political affiliations were with the democratic party, but he was by nature an independent and was never a strong partizan, though as born leader among men, prominent in the party.

He served three terms in the Minnesota House of Representatives, in the sessions of 1870, 1871, and 1878 and was defeated as a candidate for the same office in 1882. He was as a representative, popular and influential to an unusual degree, taking a leading position as a debator and a legislator.

He obtained prominence in the Democratic National Convention of 1884, by a strong speech seconding the nomination of Cleveland for president.

In January 1887 he was appointed by President Cleveland Chief Justice of the Supreme Court of Dakota (sic). Though without former judicial experience, he entered upon his new duties with all the mental and professional equipment requisite for their successful administration, and in the short period of his service had attained a high reputation for ability and thorough administrative capacity. He made a most excellent record as a judge.

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Our friend was in every respect a large man physically, mentally and socially and above all else large souled. He was a lawyer almost unequalled in the variety of his acquirements and the readiness of his resources. His reading was extensive and his information general. He was a powerful and convincing speaker before either a jury or an audience. And most of all he was cordial and sympathetic and generous in his relations with his fellow men, drawing others to him with a rare attraction and enjoying an extent and intimacy of acquaintance and friendship with different kinds and conditions of men, that but few are capable of. It is his greatest merit that those who knew him best

liked him most. Deep indeed is the sorrow with which intelligence of his death will be received by all of the very many whose lives have been made the happier by knowing him.

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A meeting of the Rochester Bar was held at the office of W. Logan Brackenridge, Esq. on Tuesday evening. Judge C. M. Start presided and Thomas Spillane, Esq., was secretary. Hon. Henry C. Butler presented a series of very well written resolutions in reference to the death of Hon. Richard A. Jones.

Brief remarks were made by Messrs Walter L. Brackenridge, R. H. Gove, H. A. Eckholdt, J. A. Leonard. H. M. Avery, W. Logan Brackenridge Thomas Spillane, H. C. Butler, and Hon. C. M. Start, after which the resolutions were unanimously adopted. We expect to publish them next week.

A committee consisting of H. Butler, Walter L. Brackenridge and R. H. Gove was appointed to present the resolutions at the next session of the District Court. [34]

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[34] On August 24, 1888, *The Record and Union* published his obituary and a more detailed account of this "informal meeting:":

> An informal meeting of the members of the bar of Olmsted county was held in the office of W. Logan Brackenridge, last Tuesday evening, to take action in the matter of the decease of the Hon. R. A Jones, late Chief Justice of the Supreme Court of Washington territory.
>
> The Hon. Chas. M. Start was elected chairman, and Thomas Spillane, secretary. The chairman called on the Hon. H. C. Butler to state the object of the meeting.
>
> Judge Butler said that the meeting had been called to take some action regarding the death of Chief Justice Jones that as he had been a law partner of Mr. Jones for many years, he had taken the liberty to draft a set of resolutions which if the members present were willing, he would read.
>
> On motion he was requested to read the resolutions, which were unanimously adopted, and a copy ordered to be presented to the family, and also a copy with the proceedings of the meeting ordered to be presented to the court and filed and spread upon the records the resolutions will be read at the funeral.
>
> The choir called on the members present for remarks.
>
> Hon. W. L. Brackenridge said that the resolutions were appropriate and that he heartily approved them. He esteemed the deceased as a very dear friend, and

A special meeting of the Common Council was held on Monday night. There was a full council present.

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that his sudden demise was a very great shock to him. In his death we are reminded of the uncertainty of life at any age.

Hon. R. H. Gove said that the subject was a very painful one to him, the deceased being a very dear friend of his, and that he knew that everything in the resolutions was true.

Mr. Eckboldt said that though his associations with the deceased were not as many as some of the members present yet they had been associations of pleasure and profit, and that the deceased graced the bench and bar with his talents. He felt sad with the rest of the bar and community at his sudden death.

Hon. J. A. Leonard also fully concurred with the resolutions, and said that nothing could be said favorable but that in which all could agree.

H. W. Avery, W. Logan Brackenridge and Thomas Spillane also made appropriate remarks, eulogizing the deceased and concurring with the resolutions.

Hon. H. C. Butler said that he never knew anyone who had such an intuitive faculty of grasping the force and effect of a principle as the deceased.

Hon. Charles M. Start said that while he could not hope to add anything to the resolutions, there were one or two characteristics of the deceased which he wished to mention, and which the deceased possessed in a marked degree. One of these was his generosity that he was always willing to lend a helping hand to the young lawyer and to all who approached him. Though many lawyers used the profession as a stepping stone to wealth and hold wealth as above proficiency in the legal attainments necessary to the practitioner, the deceased was not one of them all could profit by his life_and example. Another characteristic was his loyalty, devotedness to his friends they always found him loyal and true. One more characteristic which was full of profit to all lawyers, was the invariable courtesy of the deceased to brother attorneys and to the court. Neither to the court nor to his brother attorneys did he ever give an unkind word. In closing .Judge Start said his death came as a sudden and severe shook. With such a brilliant future before him, death cut him off in the midst of his labors. He was a brilliant lawyer, a great Judge and a generous man. His death will come home to lawyers in this state as a personal loss, more than would the death of any other lawyer in the state. . . .

On motion the meeting adjourned.

Record and Union, August 24, 1888, at 2.

COUNCIL CHAMBER,

City of Rochester, Minn., Aug. 20, 1888.

With deep regret we learn of the death of our former townsman and beloved citizen, Chief Justice Richard A Jones, lately of Washington Territory.

Be it resolved, That this Council participate in, and all city officers take part in the funeral services as a body. Be it further

Resolved, That the flags on all City Buildings and Liberty Pole be displayed at half mast on the day of the arrival of the remains, and day of funeral, and we request all business houses to close their places of business on the day of the funeral.

———————

The complete funeral services on August 26 were reported in the *Post* in its next issue. An edited account follows:

Rochester Post

August 31, 1888 Page 2

THE LAST RITES.

———————

Burial of Hon. Richard A. Jones.

The remains of Justice Richard A. Jones arrived here on Friday night of last week. They were accompanied by Mr. Kieth Jones, the Misses Jones, and Messrs F. Monday and E. M. Carr, of Seattle, as a deputation from the bar of Washington Territory.

. . .

The funeral took place on Sunday [August 26]. It was under Masonic auspices and attracted to the city a large number of Free Masons from other places. Delegations came by special trains from Winona, St. Charles, Dover, Eyota, Plainview, Elgin, Viola, Chatfield, High Forest, Grand Meadow, Spring Valley, Zumbrota, Pine Island, Oronoco, Douglas, Byron, Kasson, Dodge

Center, Austin, Owatonna and Waseca. More than four hundred came in by train, and doubtless the great majority of them were personal friends of him whom they came to bury. A number of others than Masons also came, among whom we noticed Hon. William Mitchell, of Winona, and Hon. M. H. Dunnell, of Owatonna. Among the numerous relatives and immediate friends were Col. John R. Jones, brother, and Mrs. Forress, sister of the deceased, both of Chatfield.

. . . .

[Descriptions of processions of Masons and Knights Templar and Sermon of Rev. W. C. Rice omitted]

After the sermon, Hon. Henry C. Butler, on behalf of the Bar, made the follow address:

"The place which our brother occupied in the profession, which he filled conspicuously and honorably while he lived among us, his reputation and standing in that profession throughout the entire state of Minnesota, and his subsequent successful career on the bench as Chief Justice of the Supreme Court of Washington Territory have suggested to his brethren of the bar of Olmsted county the propriety of presenting to his friends here assembled a brief testimonial of the regard in which he was held by them, and a few comments upon his life and character by one of the number who for more than a quarter of a century sustained intimate professional, social, friendly and Masonic relations to him friendly and Masonic relations to him."

The bar of Olmsted county adopted the following on the 21st of August, 1888:

The bar of Olmsted county learn with sincere regret of the death of Hon. Richard A. Jones, late Chief Justice of the Supreme Court of Washington Territory.

More than twenty years he was a member of this bar and engaged actively and prominently in the practice of his profession as a lawyer.

In common with the bar of the state of Minnesota, to whom he was generally known, we heartily make our testimonial of the regard in which he was universally held as a lawyer, a statesman, a citizen and a man.

To the court he was loyal, truthful and obedient. He made no attempt to thwart its upright judgment by artifice or deceit or to lower its moral influence by disrespect of its authority.

To his brethren of the bar he was kind, generous and courteous, always encouraging merit, scorning all attempts to substitute falsehood for truth or to use any of the arts of cunning practitioners.

To his clients he was a faithful counselor. Their interests were sacred in his keeping. Whether resulting in profit or loss to himself, he gave to them the benefit of talents surpassed by none and equaled by few. His intuitive perception and mental grasp of legal principles, his power to bring out facts from witnesses and to present them to courts and jurors and to analyze fundamental principles was marvelous. He was quick in decision and prompt in action, generous and modest in victory and calm and hopeful in defeat. He owned and did not borrow his legal acquirements.

He knew the law from principles rather than from precedent or authority.

To the community his influence and example was salutary. His profession was not degraded by encouragement to frivolous or demoralizing litigation.

To him the law was not merely a medium for fortune or reputation, but a great moral and social factor, educating man in his duties to man. Developing the good and restraining the bad in humanity and enforcing right conduct in government, in society, in business and in homes.

To the state he gave the service of a vigorous Intellect, of rare powers of oratory, of pleasing address, of social attractions and sound judgment, conduct in government, in society, in business and in homes.

As a citizen he was public spirited, active in all public enterprises and judicious in carrying them into effect.

He was large hearted and benevolent to a fault, adhering to his friends in all stations, conditions and vicissitudes of time and fortune, known by every one he met and held in pleasant remembrance by all who had known him.

He died in the enjoyment or high judicial honors and fame, the realization of the hopes and ambition or a true lawyer, with no cloud to sadden the evening of a brilliant life.

We tender our sympathies to his family and friends and join them in memories of a mutual loss and a mutual esteem.

Resolution of Fraternal Lodge of K of H.

With profound sorrow and regret did Fraternal Lodge No. 825, Knights of Honor, receive the announcement of the death of our esteemed Bro. R. A. Jones, and desiring to give expression to the feeling of his fellow members at the loss sustained, it is

Resolved, That in the death of Bro. R. A. Jones, the Knights of Honor has lost a faithful, popular and devoted member.

Resolved, That to his memory be dedicated a page in the records of the Lodge and a copy of these resolutions be furnished the family of our deceased friend and brother.

A. T. Stebbins.)
S. C. Furlow.) Com.
F. H. Allen.)

Obituary from the *Chatfield Democrat* :

Hon. Richard A. Jones, chief justice of the U. S. court of Washington territory, died at: 3 o'clock Sunday morning at his home in. Seattle. His death was sudden and wholly unexpected, and the end came before the physician could be summoned to his bed side. He had been indisposed for some time with kidney troubles but his condition was not such as to alarm himself or family or physician.

The immediate cause of his death was dropsy of the lungs. The body has been embalmed and taken to Rochester for burial, Mr. Jones was born in Indiana Oct. 22, 1831, and consequently- was nearly 58 years old at the time of his death.

He was educated at Milton, Wis., college and studied law with D. A. Wood of Fon du Lac. He was in California from 1858 to 1859, returning to Chatfield in the latter year. He removed to Rochester in 1864, and for twenty-four years was one of the most prominent members of bar in Southern Minnesota. He was appointed chief justice of Washington in April of 1887, by President Cleveland, and since that time has won the respect, confidence and admiration of the commonwealth.

"He was a man of magnificent physique, standing about six feet, four inches tall, and weighing over 250 pounds, and had a very fine face" says a biographer in the Pioneer Press. "His hair was jet black, very curly, and his countenance, which he kept smoothly shaven was indicative of the man's character—open, generous and good natured.

'He had a deservedly high 'reputation as an advocate, and his voice and figure, when once heard and seen, were never to be forgotten. A staunch Democrat of the old school, he worked hard for the interests of the party, and was on the ticket for state office several times. He was a member of the legislature frequently during the last quarter of a century, and was always a prominent figure on the floor. He was a jovial, big-hearted,

generous man,-and possessed the friendship of the leaders of both political parties, as well as of hosts of others. Scrupulous about his debts, he was never known to fail to meet his obligations. Being a philanthropist in his quiet way, he never accumulated wealth though lived well. As one of his old friends said of him, quoting the immortal bard: 'A fellow of infinite jest, and most excellent fancy.'"

His father was the late Rev. Stephen Jones, an old resident of this place, well known to nearly all our readers. His brother, Col. J. R. Jones, and-sister, Mrs. Samuel Forress, still reside here. He leaves five, children, three sons and two daughters, one of the former being, superintendent of a railroad in Washington territory, another lives in Kansas and the other in Rochester.[35]

APPENDIX

[35] *Chatfield Democrat*, August 31, 1888, at 2,

A. Jones on the Stump.

What sort of public speaker was Richard A. Jones? The following is a speech he gave in St. Paul while running for attorney general in 1875. The *Chatfield Democrat* reprinted an account of his speech first reported in the *Pioneer Press*.[36] Although the War had been over for ten years, its shadow hovers over this campaign.

SPEECH OF HON. R. A. JONES.

> The candidates for Attorney General, Messrs. R. A. JONES, and Geo. P. WILSON, held a speaking meeting in St. Paul, not long since. Mr. Wilson made the first speech, and the following is synopsis of Mr. Jones' reply from the *Pioneer-Press*:
>
> "Mr. Jones apologized for his want of preparation, and also for having taken a cold in traveling to St. Paul in a freight car in order to meet Mr. Wilson. He would not allude to Mr. Wilson's arraignment of the democratic party in the past, and he thought if his friend had gone back to Massachusetts he would have found that the democratic party had burnt witches up there two or three hundred years ago. (Laughter.)
>
> He said that the democratic party had taken the name of republican because it was entitled to it, and because they wanted to rescue the republican party from the hands of the dishonest and unscrupulous men into whose hands it has fallen. He spoke of the "democratic rebellion," and the "democratic debt," he said that any one who was ignorant enough to believe in such stuff might vote for his friend Wilson—he did not want their votes—he could be elected without them (Laughter.)
>
> Then he came down to present issues. We were a reasonably prosperous people, he admitted—thanks to God, rather than to the republican party. No political party can govern such matters as the weather and the crops. He claimed that the democratic party was now taking a dead reckoning to see where the country stood. He spoke of the men who had got into the treasury—up to the elbow, up to the shoulder, and all over.

[36] *Chatfield Democrat*, October 9, 1875, at 1.

Alluding to the rascality of the republican state officials in Minnesota, he said that his friend George (meaning Mr. Wilson) as attorney general had spent $5,000 simply to pay witnesses for testifying against one of these republican officers. Let's see, he said, witnesses get about one dollar, and six cents mileage, so there must have been 4,000 men at least who knew something about this rascality. (Laughter) And yet Mr. Wilson says not one dollar has been misappropriated.

Mr. Jones then spoke about Bill King, Windom, McIlrath and Other men who bad become enormously rich on small salaries—where did they get their money. He next dwelt on the salary grab, and said that republican congressmen claimed that they could not live in Washington on their salaries.

How then did Windom and others get so rich? He was down in Washington himself, and he boarded at the same hotel with Senator Ramsey and Gen. Averill, and he had a better room than either of them, and it had cost him only three dollars per day. Even if they had their families with them, they could easily live on their salaries.

Honest Abe Lincoln, during the time when wheat was $2 a bushel, managed to get along on $25,000 a year, while now Gen. Grant required $50,000 salary, and $50,000 more for extras.

Mr. Jones then defended the democratic party from the charge of extravagance in 1859, saying that the expenses included the expenses of two constitutional conventions in Minnesota, and the ordinary requirements of transferring the government from that of a territory to that of a state. He then said the expenses of the state government in 1863 were only $128,000, while in 1875 the expenses of the state were $710,000.—(Applause.) He said in 1863 Gov. Ramsey, ran the governor's office for $2,800, while Gov. Davis spent over$9,000.

He next put his friend, Geo. Wilson, on the stand. In 1860 the expenses of Attorney General Cole were, including his salary, $1,175, and in 1863, $1,300 while in 1875 Wilson required $9,830! (Laughter.) But George ain't to blame for that! The republican party has been in power for fifteen years, and George is employed to try the rascals for stealing.

Now take the adjutant general's office. In 1860 the expenses were $715 in 1863, in war times, it was $2,300, in 1875, it was $2,000 And every dollar honestly expended In 1860 the printing bills were $19,000, in 1863, $14,000 while in 1875, they were $87,867, and every dollar honestly expended

He said the Pioneer-Press had accused him of having been-a republican.—He had been and was proud of it. He voted for Abe Lincoln and he wished to God he could vote for an honest republican to-day. He believed him to be as able and pure a man as ever trod upon the American continent—he was the American Moses, and he honored him now.

An eloquent tribute was next paid to the past history of the democratic party. He said that the expenses of Buchanan's administration was $89,000,000 a year, while that of the Republican party was over $300,000,000 he went on to deduct the expenses incident to the war, and still he said the amount is $145,000,000.

What becomes of the money—what do they do with it Some was required to send soldiers down to Louisiana, or to Louisiana and to Mississippi, to settle a row raised by a few drunken n---rs, but what was done with the rest.

And every dollar honestly expended

Shall we look to the republican party to purify itself. They say they are reforming themselves, and we trusted them, but have they done so? They have not. They talk of the negro and of the bloody shirt rebellion whenever we have an election, and thus manage to keep in power. He referred to swindlers in the Indian ring, and in the Secger-Munch matters, and then called on somebody to point out a single one of the republican office-holders who had stolen thousands of dollars before our very eyes who was in jail. It would be good for sore eyes to see such a sight. There was no such instance on record. Poor men had been arrested for stealing government timber to keep their families from freezing, but not one rascally officer was ever punished—and every dollar honestly expended!

He took up the record of the republican party, and showed that its platform meant anything or nothing. Windom, Strait and all the rest of them voted for protective tariffs, while they were elected on revenue planks.

He closed with an eloquent tribute to the democratic party, which was now engaged in an attempt to bring the government back to its purer and better days. He said all over this broad land crime stalked unpunished—murder, robbery, rape and other crimes prevailed, and filled columns of our daily papers. A similar state of affairs existed before the French revolution of 1789: though we had no king or queen who pretended to rule by divine rights we had the republican party which claimed to rule by prescriptive right. If this state of things continues, if public property continues to be taken for private gain, the result will be the same in the United States as it was in France. Blood will be shed to redeem the country if it cannot be done with votes.

Mr. Jones did not require his whole time and closed when his hour was up. He said that if they elected the Republican ticket they would vote in favor of continuing this thieving and plundering which had prevailed in the republican party. If you are tired of this state of affairs, you must vote for the democratic-republican ticket." (Applause.)

———————

B. Jones Sworn as Chief Justice and Justice Greene Gives Farwell address.

The oath that Richard Jones took to become Chief Justice was a remnant of the War. Although the War had been over for 22 years, the oath still required a presidential appointee to affirm that he had not supported the Confederacy.

Chief Justice Greene's farewell speech may be compared to Judge Wescott Wilkin's retirement address to the Ramsey County Bar on January 3, 1891. [37] Judge Greene spent an inordinate amount of his address parsing the meanings of "consistency," a virtue to which he aspired. Judge Wilkin, on the other hand, discussed at length the habits of a conscientious trial judge. Each judge in his own way saluted the local bar—a strong bar makes a strong bench.

[37] "Judge Wescott Wilkin's Retirement Banquet" (MLHP, 2021).

SEATTLE DAILY POST-INTELLIGENCER

March 13, 1887.....Page 7

EXIT JUDGE GREENE – ENTER JUDGE JONES.

———————

Impressive and Interesting Exercises Over the Laying Down of the Reins of Office of Chief Justice Greene and the Taking of Them Up by Chief Justice Jones.

———————

It having been announced through the columns of the Post lntelligencer that at 11 o'clock Saturday morning [March 12] the newly-appointed Chief Justice would take the oath of office, a large concourse of ladies and gentlemen assembled to witness the ceremonies attending the exit of Judge Greene and entry of Judge Jones. Every seat in the court house was filled, the Bar particularly being well represented.

Court convened at 11 o'clock, Judge Greene on the bench.

Eben Smith, President of the Seattle Bar Association, rose and said: "May it please the Court, I have the distinguished honor to present to this Court the commission, under the great seal of the United States of America, appointing Hon. Richard A. Jones, of Oregon, Chief Justice of the Supreme Court of Washington Territory."

Mr. Smith then presented Judge Jones' commission to Judge Greene, together with a copy of the official oath. Judge Greene directed the clerk to place the form of verification on the copy, and the taking it in hand rose and said, "If the appointee is in court, let him come forward." Judge Jones, who had been sitting among the Bar, rose and came to the front of Judge Greene's desk. Mr. Smith said: "May it please your Honor, I take very great pleasure in introducing to this Court Hon. Richard A. Jones, of Oregon."

Judge Greene then, in a solemn and impressive manner, administered the following:

OATH OF OFFICE

To Judge Jones, who, at its conclusion, answered in a firm and decided tone, "I do."

United States of America,)
Territory of Washington.) ss.
County of King.)

I, Richard A. Jones, having been duly appointed and commissioned as Chief Justice of the Supreme Court of the Territory of Washington, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel or encouragement to persons encaged in armed hostility thereto; that I have neither sought or accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power or constitution within the United States, hostile or inimical thereto. And I do further swear that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of Chief Justice of the Supreme Court of Washington Territory, in which I am about to enter. So help me God.

Judge Jones then took his seat and said: "Gentlemen of the bar, be seated." He then read a short address from manuscript, at the conclusion of which he said: "Mr. Clerk you will make an entry of these proceedings in a form which I will furnish you." Then turning to the Bar, he said: "Gentlemen, I am informed that you have a matter which you wish to present to the Court as a Bar."

Mr. Smith then arose and said: "May it please this Honorable Court, representing the Bar of the Third Judicial District of Washington Territory, and the King County Bar especially, I perform by permission of your Honor, the most pleasurable duty of my experience as a member of the Territorial Bar I have the honor to present the following:

REOLUTIONS,

Unanimously adopted at a meeting of the Bar of this District on the 11th day of March, 1887, which read as follows:

"Roger S. Greene has filled the positions of Justice and Chief Justice of the Supreme Court of Washington territory for the past seventeen years, and is now about to retire from the bench, therefore

Resolved, that we, the members of the Bar of the Third Judicial District of Washington Territory, do cordially unite in testifying our high appreciation to the eminent Christian virtues, unflagging industry, uniform patience, profound and varied learning, sincere anxiety to do justice and absolute independence which have distinguished this upright magistrate through his judicial career as well as our grateful recollections of the kindly courtesies which he has constantly exhibited and our sincere wish for his continued health, happiness and prosperity, and

Resolved, that the President of the Bar Association of King County be requested to present these resolutions to the Court and ask that they be entered in the records, and that a copy thereof be engrossed and presented to the retiring Chief Justice

"I have prepared the accompanying order."

Judge Jones – "The order will be entered."

Mr. Smith, then turning to Judge Greene, said "I take very great pleasure in presenting to you an engrossed copy of these resolutions," and handed him the resolutions.

Judge Greene, visibly affected, said:

"If your Honor please, this strikes me as a very extraordinary proceeding. I am not aware of having done anything to deserve such treatment. These resolutions which have just been

presented to your Honor, by whomever indeed, I would commend to our learned Prosecuting Attorney as a somewhat unprecedented but very paralyzing form of indictment. They make me feel very much just now like a judicial corpse, for whoever heard of a living person being so arraigned before in any court. I hardly understand why I should be subjected to such accusations, my accusers have not seen fit to bring forward any specific charges and so I am in doubt as to what will be the proper course for me to pursue. I hope that I may be permitted to say in regard to what has been said that I am a poor man, having just lost my situation and as I am not a member of the Bar myself I should have the constitutional right to counsel to advise me as to how I should plead to the indictment which has just been read. But on looking around among the members of the Bar, and from internal evidence in the articles themselves, I find that they seem to be all united in a conspiracy against me, and I am at a loss to know what I should do in the situation in which I find myself. I hardly know what is expected of me, what can be done, whether I should have to strike or should demur. While in my mind these solutions have assumed an aspect quasi-criminal, yet they manifestly have been intended as a civil proceeding, and I am in doubt as to whether I should deny each and every allegation, and put my accusers to the proof or plead in confession and avoidance, or interpose a disclaimer or call for a bill of particulars. My present disposition, however, is to enter a plea of *nolo contendere*, if the court will kindly give me leave to do to do so, first insisting, however, on constitutional right to confront my accusers. With the permission of the court, therefore, I will now

Address myself directly to the Bar.

By Leave of the Court, Gentlemen of the Bar—Your spontaneous token of kindness and regard is very grateful to me. All commendation that is best flows from the greater to the less, and upon the greater, whatever return is at attempted, comes in higher measure that superiority in felicity to which the most discriminating and full of philosophic of men. Himself an

advocate, drew attention when he said, "It is more blessed to give than to receive." The Bar is greater and wiser than the bench, and in everything that can equip or adorn a Judge the Bar excels. Out of the 61,000,000 of our countrymen, I doubt if there could be picked a man to preside in the courts of this district, so capable and accomplished that he would not find himself exceeded in some and most of his excellences by the Seattle Bar. With a Bar as numerous as yours, a like superiority over the best possible bench would probably obtain anywhere. For the vocation of the law demands of those who are to be its really successful votaries, a courage and prowess, intellectual and moral, that is not characteristic of mediocrity.

The true lawyer will not quail before any intellectual difficulty nor be turned about by any tornado of public opinion nor yield to the seductions of mammon. Legitimate and ordinary practice of the law does not offer a man a fair prospect of a competence without strenuous and long-sustained self-denying labor of the most exhausting kind, but if a man has the capacity and will to wrestle with and overcome intellectual and moral opposition, the law opens as a special inviting field of influence for him. Hence it is that those who gravitate to your profession and are retained in it are in comparatively large proportion men of unusually bright and independent minds. But here in the Bar of this Territory, and particularly in the young Bar of Seattle – for though there are men of years in it the Bar is young – to have, I take it, drawn hither from every latitude and longitude of our country, by a principle of natural selection, men fitted and called to shape and solidify the pliant institutions of this rising commonwealth, man as able and bold, as hard-working and stout hearted, as the honorable and true, as ever sought to do the lawyer's part in pioneering the future of a community destined to be great.

The seventeen years of my official work now closing have been eventful ones. They fill a long chapter in my life and a very considerable paragraph in the Territorial history. While they were passing, many very notable changes have happened in this Territory. Population is multiplied tenfold; wealth and facilities for intercourse more than twenty fold. Centers of business have shifted and become, many of them, permanently

fixed. Particular sections and communities have developed traits which will never cease to be distinctive. I have seen hamlets spring and grow to towns, and towns to cities. I have witnessed the original introduction of railroads through our forests and our prairies and up into our mountains, and of waterworks and gas and electricity into our cities and larger towns. I have welcomed the local and full enfranchisement of woman and the enlistment of her sweet and wholesome influence, her quick wit and moral stability, into all lines of political service and with signal affect and benefit and into the jury service of our Courts.

Owing to the variety of our growth and the plastic condition of society and business, it is been my responsibility to pass upon a great number of novel and perplexing questions, that could not arise in an older or different conditioned population. In dealing with these questions, and all questions, I have had constantly the advantage of the advice and instruction – both while in Olympia and while here – of the leading bar of the Territory, and if I have in any degree fulfilled what the public has a right to expect from a reasonably competent judicial officer, it has been very largely due to the industry, research and good sense of the legal gentlemen to whom suitors have been discreet enough to confide their causes. Indeed, after my experience, I do not see how it were possible under our civilization and with the amount of business now cast upon Judges in a busy community, for any man to fulfill at all acceptably to the public the duty of Judge in one of the higher courts, without such light and assistance as the bar is calculated to and so admirably does afford.

My great endeavor, as judge, has been to be consistent. For consistency is good. I love it in others; I have aspired and do aspire to it myself. Conscience of consistency is a jewel. It is also an exceedingly firm and enduring foundation. But a distinction must be made between consistency as an ornament and that which underlies and sustains. The former is a surface affair; the latter is vital. I would not underrate the former. It is beyond expression admirable. I very much desire it; but it is of a secondary moment. By the side of the other, it is little worth; exclusive of the other, it is nothing. To compare them is to

compare beauty and love. One is to be desired as one likes to be good-looking; the other as one must love to be true. That consistency which I have most admired and longed after is singleness of heart to do the right as God gives to see it. If, in that autumn day when every hidden thing shall come abroad and the secrets of all bearers be made manifest, and there shall be given to every man according to his work, my Maker and Redeemer shall take up the successive situations of my life since I accepted the offer of His love, and shall show just what each was, – that such was my being, my composition, my experience and my surroundings – such the occasion, the persons present, the subject in hand, – that such was then my stock of information and my command of any faculties – such and such my emotions and such my temptations – and shall demonstrate, that so situated and conditioned and constituted as I was and supposing I were indeed animated with a constant honest purpose to do right, by conduct could not have been otherwise than it was, then will be displayed for me, if for me it is to be displayed, the consistency I have craved. Such consistency, I believe, may be had for the asking. It is a gift of God to everyone for use with Thanksgiving in this age. But a perfect superficial consistency in this world is impossible. It will not be found on me; it is vain to expect it on any. It remains for by and by.

I retire from public life without regret. Office has long been a burden to me. I have often wished to resign, and twice quite seriously contemplated such step; but the advice of friends and considerations supposed at the time to me properly controlling, hindered, and so I have watched and with amusement the adage taking effect: "Few demand none resign." Loss of office I count gain. I was a Judge but am about to be**,** if found equal to it, the advisor and instructor of judges, a responsibility fully as high as my ambitions of mine for this world.

To my predecessors in office, who opened the way for me, and into whose labors I entered, and those to those who have served with me, the clerks, marshals and sheriffs and their deputies, and the jurors, bailiffs and criers of the courts, and to the public press whose columns have always been open to me and which has, I think, never blamed me where it understood

me, and to the public whose generous though quiet approval and support I have felt always around and underneath me, and especially in times of need, I owe and give most hearty acknowledgment and thanks. But my closest official contact and intimacy, except with my God, it has been ever with the Bar. You, gentlemen of the Bar of Seattle, and your brethren in this Territory, should be credited with many elements of first importance in all that I have judicially accomplished. This is your just due. I shall never cease to think and speak with gratitude of what you have been to me as a judge. Accept my thanks, they are deeper and fuller than man can put in words.

For my successor, I do not need to ask at your hands what he will surely have, the same kind and liberal treatment that you have so freely accorded me. It is not my happiness to have more than a very limited acquaintance with him, but he comes among us well spoken of, both as a lawyer and as a man, and we well hope he may prove to be such that, his name grows familiar, your recent Judge, if remembered at all, shall come to be spoken of as that man who was Judge next before Chief Justice Jones. I shall gladly join with you in all legitimate endeavor to make the increasing cares and responsibility of his office light to him, and to render his career in the best sense and large it largest measure useful and renowned."

Judge Jones then said, "The clerk will enter the resolutions presented by the Bar."

Governor Ferry then rose and said, "May it please the court, Judge Greene called our attention to the fact that he is not a member of the Bar of Washington Territory, and that this deplorable state of things may no longer continue. I move that the Honorable Roger S. Greene be admitted as an attorney and counselor at law of this court, and present to the court the license granted him by the Supreme Court of the state of New York."

Judge Jones then said, "Judge Greene, you will step forward to the Clerk's desk and take the proper oath."

Judge Greene did so and Judge Jones said: "As far as I am informed there is no further business to come before the court at this session and so, Mr. Clerk, you may enter an order

adjourning this court until the 11th day of April, 1887, at the hour of 10 o'clock in the forenoon."

Court then adjourned.

C. *Bloomer v. Todd*,

NEVADA M. BLOOMER

v.

JOHN TODD, J. E. GANDY, and H. A. CLARKE

Washington Supreme Court
3 Wash. Terr. 599 (August 14, 1888)

The act of the legislative assembly, approved January 18, 1888 (Sess. Laws 1887-1888, p. 93), purporting to confer the right of suffrage upon women, is void as in conflict with the organic act of the territory, providing that every white male inhabitant above the age of twenty-one years, resident in the territory, shall be a voter at the first election, but the qualification of voters at subsequent elections shall be prescribed by the legislative assembly of the territory, provided that the right of suffrage shall be exercised only by citizens of the United States above the age of twenty-one years, or by those above that age who have declared on oath their intention to become such; the word "citizen," as used in the act, to be construed and read only as male citizen, etc.

Error to the District Court holding terms at Spokane Falls, Fourth District.

Nevada H. Bloomer, the plaintiff below, sued the defendants John Todd, J. E. Gandy, and H. A. Clarke, judges of election, and conducting the regular municipal election in one of the wards of the city of Spokane Falls, in April, 1888, for fraudulently, maliciously, and without sufficient cause, and with intent to injure her, refusing to receive her ballot, which she tendered to said judges, containing the names of the persons for whom she intended to vote for the office of mayor and for other offices to be filled at said election. The plaintiff alleged that at the time of the election she was a female citizen of the United States over twenty-one years of age, and had been for more than one year prior to said term a resident, a citizen, and a qualified elector of the territory, and had for more than one month immediately prior to said election resided in said city, and for more than five days in the ward in which she offered to vote, as required by law, to-entitle her to vote. The plaintiff prayed judgment for damages in the sum of $5,000. The defendants interposed a demurrer, alleging insufficiency of facts in the complaint to-constitute a cause of action. Demurrer sustained to the complaint, and plaintiff failing to amend, judgment for costs was rendered in favor of defendants, from which plaintiff' appealed.

Mr. William M. Murray, for the Plaintiff in Error.

Mr. A. S. Austin, as amicus curiae, filed a brief, and argued for the Plaintiff in Error.

Mr. George Turner, Mr. George M. Forster, and Mr. J. M. Kinnaird, for the Defendants in Error.

J. O. Haines, as amicus curiae, for Defendants in Error.

Mr. Chief Justice Jones delivered the opinion of the court.

The appellant commenced this action in the District Court for Spokane county, upon the following complaint:

"The above-named plaintiff complains of the above-named defendants, and alleges that the city of Spokane Falls is a municipal corporation, existing as such city under and by virtue of the laws of Washington Territory, and was existing as such city under and by virtue of such laws at the times hereinafter mentioned. That, by an act of the legislative assembly of Washington Territory, approved November 28, 1885, the said city of Spokane is divided into four wards, and all that portion lying west of Howard street and south of Riverside avenue constitutes and is within the fourth ward of said city. That, under and pursuant to an act of the legislative assembly of Washington Territory, 'An act to amend an act to incorporate the city of Spokane Falls,' approved November 28, 1883, an election was duly held in said city of Spokane Falls, and in each ward thereof, including the said fourth ward thereof, on the first Tuesday, to wit: on the 3d day of April, 1888, for the election, by the qualified voters of said city, of a mayor and other administrative officers, and for the election in each ward respectively, and in said fourth ward, of members of the city council. That the plaintiff is, and at all times herein stated, and on said 3d day of April, 1888, was, a female citizen of the United States, and was on said date more than twenty-one years of age. That she was then, and for more than one year prior thereto had been, a resident, and a citizen, and a qualified elector of the Territory of Washington, and had then, and for more than one month immediately preceding said election, resided within said city of Spokane Falls, and for more than five days prior to said election within the fourth ward of said; city, and was, on said 3d day of April, 1888, a qualified elector in said fourth ward of said city. That the defendants John Todd, J. E. Gandy, and H. A. Clarke were duly constituted and appointed judges of election for said election in and for said fourth ward of said city, and that the said defendants accepted such appointment, and on said 3d day of April, 1888, duly qualified as such judges and entered upon the duty of holding and conducting said election in and for said fourth ward of said city, and did hold and conduct the same. That the plaintiff, on said 3d day of April, 1888, and between the hours of nine o'clock in the forenoon and six o'clock in the afternoon, presented herself at the place appointed for holding said election in said ward and for receiving votes therefor, and where the said defendants as judges of said election were holding and conducting said election, and tendered to said defendants as such judges of election a white paper four inches in width and twelve inches in length, containing the names of the persons for whom she intended and desired to vote at said election for the office of

mayor of said city and for other administrative officers thereof and for the office of councilman from said fourth ward, and insisted and demanded of the said defendants as such judges of election that they receive the same as a ballot at said election; but the said defendants, disregarding their duties in the premises, did fraudulently, and maliciously, and without any sufficient cause, and with the intent to injure plaintiff, refuse to receive said ballot then and there tendered to them by the plaintiff, and refused to permit the plaintiff to vote at said election, by which refusal, made fraudulently, and maliciously, and without any sufficient cause, and with intent to injure the plaintiff as aforesaid, the plaintiff was deprived of the right to vote in said ward at said election, to her great ignominy and disgrace, and to her damage in the sum of five thousand dollars. Wherefore, the plaintiff demands judgment against the defendants for the sum of five thousand dollars and for her costs of suit."

To which complaint the appellees demurred, as follows:

"The said defendants demur to the complaint filed in this action, and for cause of demurrer allege that the complaint does not state facts sufficient to constitute a cause of action."

The District Court sustained this demurrer, and judgment was entered thereon, from which judgment this appeal is taken.

In this court the facts are admitted to be as follows: The plaintiff is a woman, and, unless disqualified by reason of her sex, is a qualified elector of the fourth ward of Spokane Falls, and was such on the 3d day of April last. The defendants were the duly appointed and acting judges of election, at an election regularly held on the 3d day of April, 1888, in said city, and .fourth ward thereof, for the election of a mayor and other executive officers of said city of Spokane Falls, and for members of the city council of said city, including a member of the council from said fourth ward, on which day an election was held in said city and ward. On said day, and while defendants were acting as such judges of election in said ward, and within the hours prescribed by law for voting therein, the plaintiff presented herself at the place where said election was being held and conducted in said ward by the defendants, and tendered them a printed ballot, in the form prescribed by statute, containing the names of the persons for whom she desired to vote, which the defendants refused to receive, and refused to permit her to vote at such election. This action is brought to recover damages from the defendants for thus wrongfully depriving her of the privilege of voting. The defendants demur, upon the ground that the complaint does not state facts sufficient to constitute a cause of action.

The only point raised by the defendants in the court below was as to the validity of the act of the legislative assembly, approved January 18, 1888, conferring the privilege of suffrage upon women; and it is assumed that no other question will be raised in this court. The correctness of the decision of the District Court on the act of the legislature in question is the only point here to be considered. That act (chap. 51, Laws 1888) reads as follows:

"That all citizens of the United States, male and female, above the age of twenty-one years, and all American half-breeds, male and female, over that age, who have adopted the habits of the whites, and all other inhabitants, male and female, of this territory, above that age, who have declared on oath their intentions to become citizens of the United States at least six months previous to the day of election, and shall have taken an oath to support the constitution and government of the United States at least six months previous to-the day of election, and who shall have resided six months in the territory, sixty days in the county, and thirty days in the precinct next preceding the day of election, and none other, shall be entitled to vote at any election in this territory; and provided, that no officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote at any election in this territory, by reason of being on service therein, unless said territory is, and has been for a period of six months, his permanent domicile; provided, he was a citizen of this territory at the time of his enlistment; and provided further, that nothing in this act shall be so construed as to make it lawful for women to serve as jurors."

In the construction of statutes certain rules have obtained, well considered in many cases in different courts and in textbooks, so that a court cannot be misled if these rules are followed. Human language being incapable of always accurately expressing the intention of the legislature, recourse is had to the customs and institutions existing at the time of the enactment of a law in order that the actual intention of the legislature may be ascertained. This is not simply interpretation. Interpretation differs from construction in this: that it is used for the purpose of ascertaining the true sense of any form of words; while construction involves the drawing of conclusions regarding subjects that are not always included in the direct expression. In all constitutional governments the powers of government are divided or allotted to different officers or departments, and each of these has by constitutional limitation certain powers, generally independent of each other, and usually involving the duty of interpretation, and often of construction, upon each of the several departments or officers who have the administration of the government in charge. Constitutions have not as a rule, provided for a tribunal whose specific duty is that of solving difficult questions which may arise under it prior to the necessary solution resulting from litigation. Frequently, but not always, constitutions provide for the taking the advice of the judiciary by the legislature prior to the enactment of a law; but in this territory no such duty is devolved upon the courts, and the construction or interpretation of statutes is an after-duty devolving upon them. The executive department of this territorial government is charged with this duty often in the interpretation as well as the construction of the powers devolving upon the executive by virtue of the organic act, as well as by the acts of the legislature. But, as a rule, the construction and interpretation of the laws arise after enactment. To illustrate further, the administration of public justice, in this territory, is conferred upon the courts, and the courts perform that duty by first ascertaining the facts in any case, and giving effect to their conclusions of fact by applying the laws to the facts ascertained. In doing so, a construction or interpretation of law is necessary. The right and power of courts to do this is so universal that their conduct in that regard is unquestioned. In performing this duty, a court has the aid of a

long line of decisions of other courts which have existed before it; and their interpretation and construction of similar statutes and constitutions — many of those courts having superior authority, and the decisions of other courts not having such superior authority, but of similar jurisdiction, their decisions being in the same line and on similar questions of construction and interpretation — have the force of argument and are of persuasive power. Other courts, of the same jurisdiction, resort to them for aid in the interpretation of laws of similar character. Where inferior courts construe laws or constitutions, their decisions may be reversed by the court of last resort, as, in this territory, a decision of this court may be reversed by the Supreme Court of the United States, and its decision become authoritative. In the state courts a' long line of decisions upon the same subject-matter continues to be followed, even though the general sense thus given to the words are not satisfactory to the courts of a later date. The doctrine of stare decisis is applicable in its full force within the territorial jurisdiction of the courts making such decisions, and this rule is usually followed because it is deemed better to follow that which is already established rather than reopen a question and thereby disturb rights once adjusted. The construction of statutes and constitutions should be uniform and unvarying. They should not be made to mean today one thing, and another thing to-morrow or at any subsequent time. If the interpretation or construction put upon it by the court is unsatisfactory, it is, in this country, in the power of the people to obviate the difficulty by a new constitution, or an amendment thereto, or by changing a statute. It is for this purpose that constitutions are made; that there may be stability in the government which thus furnishes the fundamental law; that varying moods of public opinion, clamors of the populace, or even public sentiment, shall not affect the fundamental law of the land, and thus leave us without any stable and unchanging guide — when the public passions or resentment of the populace might carry the state out upon a sea of revolution, with only passion for a guide. An excited public opinion is quite as likely, indeed history shows more likely, to be in the line of oppression than that of liberty and law; and constitutions, should they change with equal facility, would become alike oppressive and unendurable. It is the duty, of a court, in construing a statute, to give effect to the intent of the legislature, even though in doing so a seeming violence is done to some of the words employed. The intent is the law, no matter what form of words is used in expressing that intent. Primarily, this intent is to be found in the words of the law itself, and the presumption attaches that the language used will furnish conclusive expression of that intent; but examination by the courts often demonstrates the fact that men use words in such manner as would establish a rule directly contrary, or widely at variance, with the intent of the lawmaking power. While the legislature should be considered to mean what they have said, and leave no room for construction, yet, growing out of the subject-matter and facts existing at the time when the law is made, such intention is not always found in the mere words used. In all cases the entire enactment upon the same subject, or upon others of similar character, should be examined together in order to .ascertain the intent of the law-making power. Our ancestors brought with them to the American colonies the common law of England, and that law should be kept in mind in considering the enactments of legislatures or construing clauses in a constitution, as throwing light upon and furnishing great assistance in ascertaining the intent of the makers of the law. The ordinary use of words at the time when used, and the meaning adopted at that time, is usually the best guide

for .ascertaining legislative intent, as it is always the intent of any written instrument or law at the time it was made that is to govern in enforcing it. It is therefore well to inquire, in all cases, as to the meaning of words, and the force to be given them at the time when they were used, either in written contracts, constitutions, or legislative enactments. And while, as a general thing, it will be taken for granted that when words are used in one place in some legislative enactment, or in a contract, they will have a like meaning in every other place in the same instrument, yet this is not always true. Story, in his work on the constitution (vol. 1, sec. 454), lays down a rule, as follows: "It does not follow, either logically or grammatically, that because a word is found in one connection in the constitution, with a definite sense, therefore the same sense is to be adopted in every other connection in which it occurs. This would be to suppose that the framers weighed only the force of single words, as philologists or critics, and not whole clauses and objects, as statesmen and practical reasoners; and yet nothing has been more common than to subject the constitution to this *narrow and mischievous criticism. Men of ingenious and subtle minds, who seek for symmetry and harmony in language, having found in the constitution a word used in some sense which falls in with their favorite theory of interpreting it, have made that the standard by which to measure its use in every other part of the instrument. They have thus stretched it, as it were, on the bed of Procrustes, lopping "oft this meaning when it seemed too large for their purpose, and extending it when it seemed too short. They have thus distorted it to the most unnatural shapes, and crippled, where they sought only to adjust its proportions according to their own opinions.'' Another rule that obtains in all the courts is, that when a general power is conferred, or a duty enjoined, every particular power necessary for the exercise of the one or performance of the other is also conferred, and the particular parts must be made to harmonize with the entire purpose. This is, however, modified by another ruler that, when the means for the exercise of a granted power are given, no other or different means can be implied because more effectual or convenient.

A further source of light in the construction of a statute or a constitution, aside from the mere examination of words, and that which is implied, is found in the subject-matter of which the statute or constitution treats, and the object to be accomplished, the evil to be remedied, or the right to be granted, in order that, by grasping the motive in the same light in which the law-maker saw it, we may the more readily or thoroughly apprehend his meaning and the thought he would convey to others, than we would otherwise be able to do if we simply knew and understood what the words implied in endeavoring to convey to us that meaning. The context often controls the meaning of a word, or phrase, either by extending or limiting its signification. A conspicuous example is given in the authority last cited. In our form of government the national legislature is governed by a constitution granting to it certain powers, which are called "enumerated powers," and are, in fact, enumerated in the constitution itself; and any power not specified in the constitution specifically, or by necessary implication, does not exist at all. The congress can claim no powers which are not thus granted. This applies not only to the constitution as originally made, but as it now exists, with the amend-ments. (Gibbons v. Ogden, 9 Wheat. 187; U. S. v. Cruikshank, 92 U. S. 542.) The state, on the contrary, by its constitution, takes away or limits legislative power, instead of giving

it, as is done by the federal constitution; and, except as limited by the constitution of the state, or of the United States, the state legislature may enact any law they deem for the welfare of the people under their jurisdiction. The organic act of the territory, in this respect, furnishes a constitutional limitation beyond which the legislature of the territory cannot rightfully proceed. Congress created territorial governments, and furnished the rule of conduct by which the government is to exist, and provided the limitations to each branch thereof. Legislation, of course, must not be in conflict with the laws of congress, under and by which it is organized and the power to legislate is granted, and the rules enacted by congress limit the power of the legislature to make laws.

Recurring, now, to the claim here made involving the act of 1888, already cited, we are to inquire what was the intent of congress in the use of the word "citizen" as found in the organic act. (Rev. Stats., sec. 5506; 10 Stats, at Large, 174, sec. 5.) Section 5 reads as follows: "That every white male inhabitant, above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within said territory; but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the legislative assembly; provided, that the right of suffrage and of holding office shall be exercised only by citizens of the United States, above the age of twenty-one years; and those above that age, who have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States and the provisions of this act; and provided further, that no officer, soldier, seaman, mariner, or other person in the army or navy of the United States, shall be allowed to vote in said territory, by reason of being on service therein, unless said territory is, and has been for the period of six months, his permanent domicile; provided further, that no person belonging to the army or navy of the United States shall ever be elected to or hold any civil office or appointment in said territory. " The privilege of voting is not a natural right, but a privilege conferred by law. (Cooley's Const. Lim. 752.) It may be limited or enlarged by the legislature within its own constitutional limitation of power. Section 5, above quoted, provided, first, that at the first election held in this territory, every "white male inhabitant, above the age of twenty-one years, who shall have been a resident of the territory at the time of the passage of this act, and shall possess the qualifications hereinafter stated, shall be entitled to vote and hold any office within the territory," and it is manifest that but for this act of congress the right to vote at such election would not have existed at all. It is, therefore, a privilege conferred upon the class named by that act. It is to be noted, also, that it is conferred expressly upon "every white male inhabitant above the age of twenty-one years." Had it been the pleasure of congress, the act might have limited it simply to male inhabitants, or have extended it to persons under twenty-one years of age, and not have limited it to males. The same section provides, further, that the qualification of voters and of office-holders at all subsequent elections shall he such as shall be prescribed by the legislative assembly; "provided, that the right of suffrage and of holding office shall be exercised only by citizens of the United States, above the age of twenty-one years, and by those above that age who shall have declared on oath their intention to become such, and shall have taken an oath to support the constitution of the United States and the

provisions of this act." These latter provisions in the act of congress might have been omitted entirely and the privilege of voting remained vested in the "white male inhabitant," without reference to citizenship or other qualification whatever, the words "white male inhabitants" being words of limitation as well as words granting the privilege of suffrage and of holding office. The word "citizen," also contained in the proviso, is also to be construed as a limitation upon the legislative power, and was quite evidently intended to establish a different rule from the words first quoted. The word "citizen" at that time included, as now, all native-born inhabitants of the United States, without regard to sex, and if it had been intended by congress to use the word "citizen," in the broad sense claimed for it, then there would have been no occasion for specifying, as congress did, in the first phrase, "white male inhabitant," if, in the use of the word "citizen" in its place in the proviso it was intended to include females as well as males; the change from "white male inhabitant" to the word "citizen" quite evidently being used for the purpose of excluding aliens, and not for the purpose of enlarging the grant, and there understood with reference to suffrage as applying to male "citizens" alone. The power granted by congress in this section not being intended by the latter phrase to extend the first grant made to the "white male inhabitants," but to limit it to a smaller class of people in this territory; and yet the same fact that the word "citizen "at that time applied to all native-born persons, the same as it now does, was then well understood in a general sense, but was equally well understood as applicable only to male citizens of over twenty-one years of age when used as relating to the granting of the privilege of the elective franchise. That this is true, an examination of the enabling act itself will furnish a criterion upon which judgment may rest. The same proviso which relates to the elective franchise also relates to persons who are entitled to hold office in the territory. The same act provides that every territory shall have the right to send one delegate to congress, and the only limitation is that he shall be a citizen. It will not probably be contended by any person but that the delegate was intended to be and, indeed, must be a man, and an elector within the territory; and it certainly was not within the intent of congress that a woman should go to the house of representatives as a delegate. The thought was not in the mind of anybody. The act also provides for the election of justices of the peace and other judicial officers. But will it be claimed that it was within the contemplation of congress at the time of the passage of this act that these might be filled by women? That at that time it was within the intent of congress that under that act women might be elected to hold those offices? It might have been better, and perhaps would now be a step in advance, if such had been the case; but was that the legislative intent at that time?

If we turn to the constitution of the United States we find that the whole structure of the instrument is based upon the idea present in the minds of the makers of it that the officers provided for therein shall be males. In the first place, and as of minor importance, the form of every word in the constitution relating to the holding of office under that constitution is masculine. It provides that the senate shall be composed of two senators from each state. No person shall be a senator who shall not have reached the age of thirty years. The vice president shall be the president of the senate. No person shall be eligible to the office of president except a native-born citizen, who shall hold his office during the term of four years, and shall be elected as therein provided.

The judicial power shall be vested in one supreme court, the judges whereof shall hold their offices during good behavior. In numerous other instances it is conclusively apparent that at the time of the framing of that instrument the idea of a woman holding office under that constitution was as foreign to the mind as that a woman might be president under that constitution; else the sole limitation would not have been that the president should be a native-born citizen of the United States. If the word "citizen," as there used, had been supposed to include females, it will not now be questioned but that there would have been an express negation in that regard. Such has been the uniform practical construction ever since its adoption, and for more than thirty years our organic act has likewise been construed to mean "male citizen," when the privilege of voting has been under consideration, and even now it is not disputed but that was the sense in which congress then used the word.

This practical construction is not to be ignored or evaded. As we have before said, the construction of an act of the legislature should be uniform and unvarying in order to protect the liberties of the people, and this is not unfrequently carried out by the consideration of the words used as of the time when they were used, and the practical contemporaneous construction at and succeeding the times when used, forming a part of the act to the same extent as if contained within its specific words. No other rule can be safely followed. Words have different significations at different times and in changed circumstances, but in a fundamental law they must always be of the same meaning in the same connection, and it rests with the supreme power to establish a new rule. The same rule is applicable to other words, and their significance cannot be gainsaid or changed because the opinions of men change with their desires. Ever since the colonial law provided that a person accused of a crime should be tried by a jury of "twelve honest men," the word "jury," standing alone, has meant the same thing. That there have been here and there exceptions, help to establish the rule, and there can be no doubt in the mind that the word "jury," as found in the national constitution and our own laws, has and can have but the one meaning until competent authority shall in express terms make a different meaning possible. We are cited, as opposed to the views here expressed, to the case of Murphy v. Ramsey, 114 U. S. 14, 5 Sup. Ct. Rep. 747. There were five cases of similar character carried from the Supreme Court of Utah to the Supreme Court of the United States and embraced in the opinion here referred to. The facts in these cases are carefully set out by Mr. Justice Matthews, and the contention grew out of the act of congress known as the "Edmunds Act," whereby a board of commissioners was appointed for the territory of Utah, growing out of the condition of affairs there relating to the subject of polygamy in that territory. This board had extended that act so as to interfere with and control the action of registration officers and affect the qualification of voters in that territory. While it is true that it appears in that case that under the law of Utah women possessed the privilege of voting, yet that question was not argued before the Supreme Court, and was not in any manner passed upon by that court. Mr. Justice Matthews, who delivered the opinion of the court, is careful to say that on the examination of the ninth section of the act of March 22, 1882, providing for the appointment and prescribing the duties and powers of that board, it shows that they have no functions whatever to perform in respect to the qualification of voters, much less to prescribe any qualification of voters as a condition of registration. It

is true that the court in that case consider the questions involved without reference to the question of the right of females to vote under the laws of Utah, and place it upon the ground that the board were powerless in that regard, and therefore we consider that decision as without force in this regard. And it appears therefrom conclusively that the Supreme Court, by that decision, furnished no ground whatever for the contention here made that the laws of Utah authorizing woman suffrage have received the sanction of that court. The case of Minor v. Happersett, 21 Wall. 162, is also cited for the purpose of showing that the provisions of the fourteenth amendment to the constitution of the United States, wherein it is said that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside, are by the words used in affirmance of the construction contended for by appellant. The decision proceeds upon an exactly opposite theory, and denies the doctrine contended for, and therefore it does not follow that the use of the word "citizen" in the enabling act conveys the idea or carries with it the proposition that the legislature has the right to confer the privilege of suffrage upon female citizens; nor can it be true, unless it be further contended that at the time of the passage of the organic act of the territory the word "citizen" necessarily implied a female as well as a male citizen, when used as empowering the legislature to grant the privilege of voting to all citizens. While there is no contention that the word "citizen," before and since the adoption of the fourteenth amendment, included women, yet the authority referred to expressly declares that the right of suffrage was not one of the privileges or immunities of citizenship guaranteed by that amendment. (See also, Van Valkenburg v. Brown, 43 Cal. 43.)

Continuous illness since the argument of this case prevents me from going more at large into the subject than I have already done; but, in view of the considerations herein urged, we are to declare what was the intent of congress by the organic act of the territory in the respect referred to, and to give force to that intent. In construing agreements merely between parties, and even more especially when giving a construction to a statute, the thing which we are to arrive at with as much certainty as we are able is the thought which it was intended to express, and the intent of the power prescribing the rule; and we are to enforce this intent as it existed at the time it was made. In 1852, when this act was passed, the word "citizen" was used as a qualification for voting and holding office, and, in our judgment, the word then meant and still signifies male citizenship, and must be so construed. That the rule contended for might be better, we are not called upon to determine. The congress can confer the desired power upon our legislature, and we cherish the hope that in the near future our own citizens will have an opportunity to determine this question for themselves in the formation of a constitution for the state of Washington.

The judgment of the court below should be affirmed.

Langford, J., and Allyn, J., concurred. ■

Related Article

"John R. Jones (1828-1900)" (MLHP, 2021).

Credits & Acknowledgments

The photograph on the first page is from the archives of the History Center of Olmsted County in Rochester. I am indebted to Archivist Krista Lewis for her assistance in securing it.

I also thank Elaine Settergren of the Minnesota Legislative Reference Library for sharing her thoughts on the election in House District 12 in 1870.

Posted MLHP: September 30, 2021.