

January 1931

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### Recommended Citation

Fred Y. Holland, Early Colorado Courts and Judges, 9 Dicta 22 (1931).

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# EARLY COLORADO COURTS AND JUDGES

*By Fred Y. Holland of the Denver Bar\**

**A** BRIEF biographical sketch of each of the Chief Justices of the Supreme Court of Colorado, which we have been asked to prepare for publication in *Dicta*, would be incomplete if we did not first mention some of the important political events vitally connected with the early history of the judiciary of the Territory and of the State of Colorado, and the founding of the present Supreme Court.

As early as 1855, all the western part of Kansas Territory had been constituted Arapahoe County, and the area which is now the State of Colorado, was embraced within that County. The eastern part of our present-day Colorado, known to the early settlers, was referred to as the Pike's Peak Region. The first recorded attempt to establish a court in the new Pike's Peak Region was by an Act of the Kansas Territorial Legislature, in 1855, which created a Probate Court in Arapahoe County and provided for the appointment of Allen P. Tibbitts, a resident of the capitol at Lawrence, as judge of the Court. There is no evidence that Judge Tibbitts ever assumed the duties of his office, or that the new court ever functioned. Several reasons are offered by the historians in explaining the failure of Judge Tibbitts to assume the judicial duties of his office. One of the most interesting and probably the most reasonable conjecture is; "He was aware of the fact that, with the exception of a few trappers and hunters, there were no white people in the country then, and he did not relish the long overland trip in those days when hostile Indians infested the Region."<sup>1</sup> However, the fact remains that Judge Tibbitts, by virtue of this appointment, was Colorado's first judge.

By 1859, the population of the settlements along Cherry Creek and the Platte river had increased rapidly. The need for a local government had become extremely urgent and accordingly a County election was called and held in March. A full complement of county officers was elected for Arapahoe County, and S. W. Waggoner was chosen Probate judge. Be-

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<sup>1</sup>Bench & Bar of Colorado, by George E. Lewis and D. F. Stackelbeck.

<sup>2</sup>This article gives the background of history prior to the organization of our Courts. Hereafter will appear the biographies of the various early Judges of the Supreme Court of Colorado.

ing a resident of the County, he immediately took the oath and assumed the duties of his office. In the meantime, the Kansas Legislature had divided Arapahoe County into five counties; Montana, Broderick, Fremont, El Paso and Oro. Apparently this fact was unknown to the settlers until after the March election. Inasmuch as a large number of the voters were residents of that part of the Territory which the Kansas Legislature had designated Montana County, the question arose as to the legality of the recent election. Dissatisfied with this uncertain state of affairs and feeling the immediate need for definite and enforceable laws, the citizens of the settlements, in joint meeting, decided that a separate and distinct code of laws to meet the requirements of each camp should be enacted, and provision made for enforcing the laws. As a result, meetings were held in each settlement, and a general plan of action was formulated which resulted in perhaps the most unique of legislative and judicial proceedings in the history of the United States. Each mountain settlement was denominated a "Mining District" and a legislative body was selected, rules of procedure were agreed upon and officers elected. Thereupon, this body proceeded to enact Civil and Criminal Codes, establish a judicial tribunal, and provide for the election of officers. The first Miners' Court thus organized was on June 15, 1859, in the Gregory District, located on North Clear Creek, in Gilpin County. After that date the enactment of Mining District laws and the organization of Miner's Courts spread rapidly throughout the mountain region. As the mining activities spread and new camps opened similar mining districts were organized until there were perhaps a hundred or more of such local governments created by the time the first Colorado Territorial Legislature convened in 1861. From the first, these local laws and their enforcement had proved very successful and effective, and commanded the universal respect of the law-abiding citizens.

The success of the Miners' organizations in the mountain districts caused the settlers in the valleys to organize for their protection, when occasion required, a similar court which they named the "People's Court". The jurisdiction of this court was criminal and it was convened only when an especially serious crime had been committed. It did not possess any

authority based upon any previous enactments or laws. It had no written Code of Procedure, and when it was necessary to form a court, thirteen law-abiding citizens were selected, one of whom acted as judge and the remaining twelve served as a jury. The defendant was given ample time to assemble his witnesses, and was given every opportunity to prepare and present his defense. No appeal was provided or could be had. The sentence of the trial court was final, and was either death, banishment or acquittal, and was carried out immediately or within a few hours after the trial.

Due apparently to the limited jurisdiction of the Miners' Courts and the People's Courts, and in order to meet a situation created by a new class of offenders, known as claim-jumpers, still another judicial tribunal was found necessary and organized to meet the emergency. This tribunal was denominated "Claim Club" and its function was not only to prevent claim jumping but to adjust property rights in the agricultural sections. Its jurisdiction was gradually extended, however, until it was limited only by the litigation brought before it or the apprehension of criminals. After the establishment of the first "claim club" in 1859, others were formed in the various agricultural settlements, and these "clubs" soon became a very highly respected and important part of the legal machinery of the territory.

The first effort to establish a Supreme Court in this new territory was in the fall of 1859. A provisional government, known in history as "Jefferson Territory", was created at an election held on October 24, 1859. A few days prior to this election a constitution had been adopted which provided for a full complement of officers, including a Chief Justice and two Associate Justices. A. J. Allison was elected Chief Justice and J. N. Odell and E. Fitzgerald were elected Associate Justices. The first Act passed by the Legislature of Jefferson Territory was, "An Act to adopt and establish a Criminal Code." The second Act was, "An Act to adopt and establish a Civil Code". The subject of Courts and court procedure received the very careful consideration of the members. (It might be interesting here to state that the present oath taken and subscribed to by attorneys upon admission to the bar is an almost exact reproduction of the oath promulgated by that

legislative assembly, and that a comparison shows that many of our present statutes were copied word for word from the laws enacted by the Jefferson Territorial Legislature. Digressing further, only four copies of these laws are known to exist, one at the Historical Society of Colorado, one in the Denver Public Library, one at the Kansas State Library and one at Harvard University.) At this session of the Jefferson Territorial Legislature which lasted less than two months its members enacted over forty laws of a general nature many of which directly affected the administration of justice. It established a judicial system composed of a Supreme, District, County and Justice Courts, and fixed the terms of the courts.

A multiplicity of courts had now been established, i. e., Courts created by Kansas Territory, Miners' Courts, People's Courts, Claim Clubs courts, and the numerous courts created by Jefferson Territorial Legislature. This multiplicity of laws resulted in an extraordinary situation. Litigants were at a loss to know which one or more of the courts properly had jurisdiction, and therefore Plaintiff would usually simplify his action as far as possible by commencing it in whichever court was friendliest to him.

Repeated efforts had been made to secure recognition by Congress of a new State or Territorial Government. Thereafter, in February, 1861, Congress passed an Act which created the Territory of Colorado, with boundaries corresponding to those of our state today. This action by the National Congress had the effect of terminating all courts theretofore created, but not before all proceedings growing out of former court actions, where both parties had appeared or were served with notice, had been validated. Also, these "local laws" were also confirmed by the first Colorado Territorial Legislature, and were recognized by Congressional enactments when not in conflict with existing statutes.