



GUAJALOTES, ZOPILOTES, Y PAISANOS

Newsletter of the Hillsboro Historical Society

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Editor: Harley Shaw

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MINUTES

HILLSBORO HISTORICAL SOCIETY ANNUAL MEETING FEBRUARY 8, 2011

The meeting was brought to order at 6:30 PM by President Harley Shaw. We had five guests attending: Bert Walters, Dierdre Schebeck, Jim Laupan, Barbara Reid, and Ray Reid. These were introduced and welcomed. Board members present were Harley Shaw, Larry Cospers, Stretch Luna, Matti Nunn, Patti Nunn, and Paul Torres. Patty Woodruff attended as the bookkeeper and assistant to Stretch.

Larry moved that the minutes of the November meeting be accepted as posted in the newsletter. Paul seconded. Unanimous vote.

Patty and Stretch presented the annual financial status report and proposed hard copy to post for the community. Larry moved the report be accepted. Paul seconded. A more detailed breakdown of income and expenses will be prepared for the board.. In the discussion Patty noted that 62 tickets have now been sold for the ironwood sculpture drawing .

Old Business

Harley noted that the Community Center had been scheduled again for the Labor Day weekend in 2011, on the assumption that Hillsboro Historical Society will again host the Heritage Music Festival. This has been a major fundraiser for operating costs for the society. Ike Wilton and Mark Bennett will be approached regarding organizing the music festival. Patty Woodruff will help organize the silent auction.

Harley noted that our offer to buy one or two of the lots associated with the courthouse property were rejected. Paul Torres suggested that the project seems to have reached a dead end and that we might better place our efforts in other projects. Restoring the fire truck and working out some kind of cooperation with the Black Range Museum were both mentioned as possibilities.

Harley offered to draft a letter to individuals who have donated to the courthouse project, offering them a range of options that will include return of their money or allowing us to redirect its use to other projects. This letter will be presented to the board before it goes out.

Harley announced that the Arcadia Press photo history manuscript had been submitted, and thanked Patti, Matti, and Craig for all the effort putting this together. The book is now in the editing phase at the publishers and should be out sometime in 2011.

Harley noted that a group including Paul Torres, Gary Gritzbaugh, Jan Haley, Harley Shaw, and Patty Woodruff had traveled to the Mimbres Valley and picked up the antique John Plemmons piano. It is now stored at Matti's. We have been in touch with piano historian Cy Schuster who periodically passes through Hillsboro and has agreed to inspect the piano on one of his trips.

We then moved on to election of board members. Board positions occupied by Sonja, Harley, and Paul expired with this meeting. Sonja and Harley have expressed a desire to keep serving; Paul has decided to resign. Paul had contacted Jim Laupan to see if he would run as a replacement, and Jim agreed. Larry nominated Sonja, Harley, and Jim from the floor. No other nominations were forthcoming, and these three people were elected by acclamation after a motion and second by Larry and Paul. These are three year terms which expire in February 2014.

New Business

With board members in place, Harley nominated Larry as president for the coming year. Matti nominated Harley as secretary, and she agreed to take over the treasurer's job. Stretch was nominated as vice president. These officers were elected by acclamation.

A discussion regarding the need for a planning session that would redirect the efforts of the organization, with the courthouse purchase being put on the back burner for the present, at least. Effort to refurbish the fire truck and a cooperative effort with the Black Range Museum were mentioned as possibilities. Barbara Reid asked the board if the organization might be able to expand its area of interest to Kingston and Larry said that this would certainly be included in future planning.

Paul moved to adjourn. Harley seconded. We adjourned about 7:45 PM.

THE EDITOR'S REPORT: NEWS AND COMMENTS

As you can see in the minutes, this issue of the newsletter heralds some changes in Hillsboro Historical Society. Larry Cosper is our new president, having ascended from vice-president. Stretch Luna has moved to vice-president and Matti Nunn to treasurer. I have officially assumed the duties of recording secretary—something I was pretty much already doing. I'll continue editing the newsletter as part of the secretary's job.

We acquired a new board member—Jim Laupan. Jim has been associated with the Black Range Museum for the last year or two and brings a tremendous amount of interest in and knowledge of about local history to the board. Paul Torres, one of our original board members, has decided to give more time to riding his horses. My guess is that we'll still be calling on Paul for his knowledge of the history of Happy Flats, early ranching, and, especially, the development of roadways and highways in Sierra County. Between Paul Torres and Lonnie Rubio, the entire history of Highway 152—culvert by culvert—still resides in local memory. We need to get it all on paper. With luck, Paul won't be called upon to supervise loading another very heavy old piano, as he did so willingly with the Plemmons piano.

Our minutes also reflect the decision of the board to put the courthouse project on the back burner. Owning, stabilizing, and interpreting that site remains a worthy goal, but we've made little progress and see more discrete and potentially more doable projects. Continued focus on the courthouse is keeping us away from these smaller projects. A letter will be going out within the next week to those who donated funds for the courthouse purchase asking for their guidance in disposition of those funds.

Our biggest "finished" project is the Arcadia Publishing Images of America series book entitled *Around Hillsboro*. It is now in the editing process at the publishers and should be in print by the end of 2011. If you haven't seen these books, Sherry Fletcher and Cindy Carpenter just had theirs on Truth or Consequences (AKA Hot Springs) published. Patti Nunn, Matti Nunn, and Craig Springer labored long and hard to meet publisher deadlines, while I wrung my hands in the background. Although the cover author will be Hillsboro Historical Society, these are the folks who found and scanned the photos and also wrote the captions. A by product is a wonderful blog assembled by Craig at <http://hillsborohistory.blogspot.com/>. Look it up.

Finally, in this issue we have another article from a member of the legal profession. Mark Thompson has pulled together a history of Judge Frank Parker, who began his career in our area and later became the first Justice of the New Mexico Supreme Court. This is two months in a row that lawyers who are Hillsboro descendants have demonstrated their interest in our history, along with the obvious fact that lawyers do not always write in unintelligible legalese.

LOCAL HISTORY

JUDGE FRANK WILSON PARKER: FRONTIER LAWYER, POLITICAL WARRIOR.

by Mark Thompson

Mark Thompson, a former member of the New Mexico Bar, lives in Centennial Colorado. He is the great grandson of Nicholas Galle and the grandson of Mark B. Thompson.

In May of 1885, thirty-six residents of the Hillsboro area in Sierra County petitioned the territorial

governor and the adjutant general seeking the creation of a volunteer militia to fight an insurgency in their backyard, the threat of the Apaches led by Geronimo. The petition resulted in the establishment of Company G captained by one of the petitioners, Nicholas Galles.ⁱ Among the petitioners receiving a noncommissioned officer position was a twenty-four year old lawyer from Michigan, F. W. Parker.ⁱⁱ Company G saw limited service, September 30 through October 7, 1885,ⁱⁱⁱ and, unlike politicians who regularly touted their experience as "Indian fighter," Parker apparently downplayed the importance of the campaign. Frank Wilson Parker, however, went on to make his mark in New Mexico legal history, proving to be a courageous participant in the political wars.

F. W. Parker was born October 16, 1860, on a farm in Sturgis Township, St. Joseph County, Michigan, located near Kalamazoo, Michigan and also bordering the State of Indiana on the south. His grandfather, John Parker, and grandmother, Elizabeth (Leiser) Parker, were born in Pennsylvania but had moved to Michigan from New York shortly after the birth in 1829 of Frank's father, James Wilson Parker. Frank's mother was Maria Antoinette Thompson of Sturgis, Michigan who at age 15 was living in the John Parker household, indicating, perhaps, the early death of her parents.^{iv}

The biographical sketches, including remarks printed in the New Mexico Law Reports, indicate that Parker attended school in the town of Sturgis and at age eighteen entered the University of Michigan. One biographical sketch indicates that he took "a limited course in the 'Academic Department'" and another has him graduating from the "Ann Harbor" Law School. Although Parker is not mentioned in a compilation of graduates and ex-students of the U of Michigan Law School serving in the judiciary in the United States,^v the official school website includes Parker in the class of 1880.

The University of Michigan Law School, probably the premier public law school in the United States, was established in 1859, at a time when it was rare for lawyers to have any academic training in the law. In 1878, the only two requirements for admission to the Law Department were proof that the applicant had reached age eighteen and was of good moral character. Graduation with an LL.B. required only completion of the full two year course and passing an "approved" examination, including a dissertation.^{vi} I did not find the exact date for Parker's completion of studies, or for his admission to the Michigan Bar, but in the federal census for July 1880, he is shown with the occupation "lawyer."^{vii}

Possibly at the suggestion of a friend, in October of 1881, Parker moved from Michigan to Socorro, New Mexico. The next month, now 21 years of age, he was admitted to the Bar by the Second District Territorial Judge, Samuel C. Parks. With two years of academic study of the law and a year of practice in Michigan, Parker should have had no trouble gaining admission to the practice of law under the standard prevailing at the time. One fanciful biographical sketch says he was examined by a committee of the bar, but even if Judge Parks had some help in the process, Parker only needed to convince the judge that he knew enough law to be granted his license.^{viii} In 1881, admission by one of the territorial judges was sufficient for all purposes. New Mexico did not limit the power of the individual judge and had no uniform standards for admission until 1909.^{ix}

Shortly after admission to the bar, Parker moved his practice to La Mesilla, and, with an intermediate stop in the mining town of Kingston in 1882, by 1883 he had taken up residence in Hillsboro, where he practiced law for the next fourteen years. In addition to his brief stint in the territorial militia, he participated in Republican Party politics and he served a two year term as Sierra County school superintendent, an elected position.^x By 1897, U.S. Presidents, in the absence of overriding political needs, were willing to appoint "local" lawyers to the territorial bench, and President McKinley picked Parker to succeed Judge Gideon Bantz on the Territorial Supreme Court and as judge for the Third District, with headquarters in Las Cruces.

Territorial judges appointed by the President served as trial judges in their individual districts and as appellate judges sitting as the territorial supreme court. Although they were "federal judges" in that they were appointed by the President and confirmed by the Senate, they did not have lifetime tenure, i.e. they were not "Article Three Judges" under the U.S. Constitution. With a four year appointment prescribed by the act creating the territory, they were characterized as "legislative" judges. Obviously politics played a large part in their appointment and reappointment, and some historians claim that they served at the "will of the President." I have argued elsewhere that the Congress intended that judges have more independence than territorial executive branch officers appointed by the President, and consequently could not be removed on a whim except during the existence of a separate federal law, the so-called "Tenure of Office Act."^{xi}

Even if they had some tenuous hold on their seat, the judges were products of the political system and "political" lawsuits, including criminal prosecutions, were probably more common than we would like to think. To have the confidence of the parties and lawyers and to be considered honest and fair was no small task for a trial judge. Perhaps overlooked, at least by those of us far removed from the fray, was the need for the personal courage required to administer justice under the circumstances. Just two months after assuming the bench on January 10, 1898, Frank Parker would be tested by involvement in what certainly would be considered one of the

most "political" criminal cases in New Mexico history.

In January of 1896, the prominent lawyer and former Speaker of the House of Representatives, Albert J. Fountain, disappeared with his young son somewhere between Lincoln and their home in La Mesilla and were presumed dead. Finally, in a long anticipated move, Sheriff Pat Garrett of Doña Ana County, on April 3, 1898, asked Judge Parker to issue arrest warrants for Oliver Lee, Jim Gililand^{xii} and William McNew. Although the judge granted the application, it would be another thirteen months before he could get the case to trial. I have no intention of "retrying" the murder case, which would be something like "carrying History to Hillsboro,"^{xiii} but it would be interesting to see the case from the viewpoint of a new judge, something we are unfortunately prevented from doing in the absence of a memoir by a long retired judge.

First, there is apocryphal story that every new judge is warned that in a criminal case he should never sustain the prosecution objection to evidence tendered by the defense and, to the extent possible, always sustain the objections of the defense. The reason is simple—the judge does not want to give the defense grounds for overturning a conviction on appeal. Without even knowing Parker's motivation, it is possible to answer the criticism that he acquiesced in all of the "demands" of the defense by just applying the apocryphal rule.

Secondly, the politics of the case was extreme. Even after Parker issued the warrants in April 1898, the political maneuvering continued apace, including the formation of Otero County to deprive Doña Ana County Sheriff Pat Garrett of jurisdiction. After the new county was created effective January 30, 1899, Oliver Lee surrendered in March 1899 to George Curry, a future governor and the newly appointed sheriff for Otero County. Parker was able to set the case for trial in May, after first granting a defense motion for a change of venue from Otero County to Hillsboro in Sierra County.

The fight on several levels, including in the legislature, was between Albert B. Fall of Las Cruces and Thomas B. Catron of Santa Fe, the men who would eventually be selected as the first U.S. Senators for the State of New Mexico. Fall represented Lee and Gililand, Catron was a special prosecutor aiding the district attorney. It seems likely that Judge Parker knew most of what was "at stake" politically, but did he himself orchestrate the result? Fall even accused him in closing arguments of being a part of the conspiracy to convict Oliver Lee, probably pure political theatre rather than a serious claim by the defense. At least the residents of Hillsboro and the spectators at the trial made it clear where they stood—upon the announcement of "not guilty," "[t]he people cheered."^{xiv}

Having been twice reappointed to the territorial bench, Parker in 1909 then presided over what many view as the sequel to the Lee/Gililand trial, the prosecution in Las Cruces of Wayne Brazel for the murder of Pat Garrett. Garrett had been killed in March of 1908 and Brazel had immediately "confessed" with a claim of self-defense to Doña Ana County Sheriff, Felipe Lucero. The case came on for trial on April 19, 1909, and was over with a "not guilty" verdict in one day. No cheering by the spectators this time, but several citizens found it necessary, in a letter to the *Rio Grande Republican*, to defend the result and Judge Parker, perhaps against a charge of local bias favoring the defendant: "The presiding judge of this court, while a resident of New Mexico, is an appointee of the president of the United States, is a federal judge and has held such position for several years."^{xv} Albert B. Fall had again served as defense counsel, with former district attorney Herbert B. Holt taking the defense lead at trial.^{xvi} The later public relations campaign, although including Governor Curry and several prominent citizens, appears to be clearly instigated by Fall.^{xvii}

By defending Judge Parker, Fall may have sought to avoid the issue historians have considered more important, the quality of the prosecution. Unlike in the Lee/Gilliland case, the prosecution this time had no big name lawyers, although Attorney General James Hervey may have suggested that the A.G.'s office handle the case. Instead, the prosecution was conducted by twenty-seven year old Mark B. Thompson, admitted to the bar in January 1906 and appointed district attorney by Governor Hagerman in March of 1907. But to claim youth and inexperience as an excuse for a prosecution conducted, according to some historians, with "appalling indifference and incompetence," would be disingenuous.^{xviii} Governor Curry in his letter to A.B. Fall suggested that the Attorney General had said the evidence did not warrant conviction but that "the district attorney thought it best to let the case go before a jury . . ."^{xix} Not exactly a ringing endorsement, but probably the best the prosecutor was going to get.

The Las Cruces years were good to Judge Parker, including a second marriage, this time to Anna Davis of Iowa in 1904. This union produced one child, Frank W. Jr, born in 1907. In 1910, he was a successful candidate for delegate from Doña Ana County to the Constitutional Convention, joining fellow Judge Clarence J. Roberts of Colfax County as one of the powerhouse lawyers at the convention. Parker, as chairman of the Judiciary Department Committee, is generally credited with achieving the agenda of the conservative, "railroad lawyers" in making sure that the first New Mexico Constitution had an elected judiciary.^{xx} Parker then obtained the Republican nomination for one of the three Supreme Court positions and was elected to the initial court at the

special election in 1911. Following the final act granting statehood, the signature of President Taft in January, 1912, Frank W. Parker began a twenty year career on the New Mexico Supreme Court.

An appellate judge may be one step removed from the political cases, but Justice Parker could not avoid involvement in the fascinating political controversy between a district judge and an Albuquerque newspaper editor. Carl C. Magee as editor of the decidedly Republican *Albuquerque Journal* decided to take on the party establishment and in 1921 lost his control of the *Journal* but was able to continue his attacks as editor of the *New Mexico State Tribune*. Much of his ire was directed at the judiciary, especially Judge David Leahy of Las Vegas,^{xxi} but Judge Leahy saw an opening for revenge when Magee made a comparatively mild criticism of Chief Justice Frank Parker, suggesting that Parker had failed to see anything wrong in the way the clerk of the Supreme Court was handling court money. Judge Leahy charged Magee with criminal libel and of course obtained a guilty verdict from a Las Vegas jury. That was followed by an attempt to disbar Magee's attorney, former Supreme Court Justice Richard Hanna. Both of these cases resulted in Supreme Court action, first, affirming Governor Hinkle's pardon of Magee and, second, resulting in a slap on the wrist for Hanna.^{xxii}

Judge Leahy could not let go and in 1924 he convicted Magee of direct criminal contempt of court, i.e. contempt of Leahy himself. Magee was again pardoned by the governor, but the sheriff refused to release Magee resulting in a *habeas corpus* "original proceeding" in the Supreme Court. Having recused himself from sitting on the first two cases, Parker wrote the opinion in the *habeas corpus* action, holding that the governor's constitutional pardon power extended to those guilty of direct criminal contempt. "Judges are human," wrote Parker, and the governor's pardon is "a reasonable check upon the exercise of a one-man power ... which often must be exercised under the stress and sting of personal insult, sometimes depriving the judge of the ability to act wisely and judicially in such matters."^{xxiii}

In what could be unprecedented, on January 11, 1928, the New Mexico Supreme Court paused to eulogize its still sitting Chief Justice on the thirtieth anniversary of his first appointment. Lawyer and State Senator, Herbert B. Holt, a long time friend, and once a court reporter for Parker, was recognized and no doubt "pleased the court" by his remarks.^{xxiv} Judge Parker had many more years to contribute to New Mexico law and, upon his death, the court devoted even more space in the New Mexico Reports to honor him and his work on the court.^{xxv} Frank W. Parker died in Santa Fe on August 3, 1932, and was buried in the Fairview Cemetery on Cerrillos Road.^{xxvi} The Bureau of Public Health official certificate states that the cause of death was "cirrhosis of liver," but, as if anticipating the "objection of counsel," the physician added a question mark on next line!

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ⁱ Galles, who as a member of the territorial House of Representatives in 1884 had carried the bill in the legislature creating Sierra County, had also served in the 1879 campaign against Apache chief Victorio. See Ralph Emerson Twitchell, **The Leading Facts of New Mexico History** (Santa Fe: Sunstone Press, facsimile ed. 2007), Vol. 2, pp. 438-39, n.359.

ⁱⁱ New Mexico Territorial Archives, microfilm ed., roll 85, frame 324.

ⁱⁱⁱ Nicholas Galles' widow, Harriett, filed for a veteran's/widow's pension which was denied on the grounds that the campaign of 1885 did not last the requisite 30 days to qualify its participants, and dependents, for a pension.

^{iv} John Parker household, 1850 United States Census, St. Joseph County, Michigan, population schedule, Sturgis Township, page 266A, dwelling 172, family 173; National Archives micropublication M432, roll 362. I was unable to find the name of her father, perhaps born in Ohio, and, although I would love to claim a relationship with anyone who could name their daughter "Marie Antoinette," I can prove no such relationship!

^v The compilation was not on the Law School's official website but was found on Wikipedia, which had a biographical sketch of another 1880 graduate, George C. Bingham, who served on the Oregon Circuit Court, 1917-1924.

^{vi} Elizabeth Gaspar Brown, **Legal Education at Michigan, 1859-1959** (Ann Arbor: U. of Michigan, 1959), pp. 716 & 740.

^{vii} William [sic] Parker household, 1880 United States Census, St. Joseph County, Michigan, population schedule, Sturgis Township, enumeration district 202, supervisor's district 1, page 68, dwelling 641, family 163; National Archives micropublication, roll 603.

^{viii} See generally, Anton-Herman Chroust, **The Rise of the Legal Profession in America** (Norman: U. of Okla. Press, 1965), Vol. 2, pp. 105-06.

^{ix} N.M. Laws 1909, ch. 53, §§ 15 & 25. (It should be noted that the New Mexico Supreme Court eventually decided that, under the "separation of powers" doctrine, the Supreme Court alone had the power to determine standards for admission to the Bar.)

^x In 1892, Parker married Lillian Kinney of Minneapolis. It is not clear that she ever moved to Hillsboro and she died in Minneapolis in 1893, apparently very shortly after giving birth to a daughter, Lillian Rosmond. Lillian Rosmond eventually came to live with her father, perhaps after he moved to Las Cruces. See Frank W. Parker household, 1910 United States Census, Doña County, New Mexico, population schedule, Las Cruces, enumeration district 64, supervisor district 18, page A33, dwelling 675, family 675; National Archives micropublication, T624, roll 914.

^{xi} Mark Thompson, *President Benjamin Harrison, Judge A.A. Freeman and the Shalam Colony: A Legal and Political History*, **So. N.M. Hist. Rev.** (Vol. XVI, January 2009), p. 9.

^{xii} Historians and newspapers seem to be about evenly split on how to spell the name. Non-published evidence indicates this is how Jim Gililand himself spelled his surname and W.A. Keleher, who visited Gililand in Hot Springs (Truth or Consequences) shortly before the latter's death, used the single L, double L version and I thought that carried some weight.

^{xiii} I will also admit that after reading several excellent accounts, I have no reason to retry the case. See *e.g.*, William A. Keleher, **The Fabulous Frontier** (Albuquerque: U. of New Mexico Press, rev. ed., 1962), ch. 10; A. M. Gibson, **The Life and Death of Colonel Albert Jennings Fountain** (Norman: U. of Okla. Press, 1965); Gordon R. Owen, **The Two Alberts: Fountain and Fall** (Las Cruces, N.M.: The Yucca Tree Press, 1996).

^{xiv} "They Are Free Men," *The Albuquerque Daily Citizen*, (Tuesday, June 13, 1899), p. 1.

^{xv} "Reply is Made To Joe Stahl," *The Rio Grande Republican*, (Las Cruces, N.M., Friday July 23, 1909), p. 1.

Stahl apparently had criticized the prosecution and trial in an article in *The Houston Chronicle*. (Special thanks to the New Mexico State Historian, Rick Hendricks, Ph.D., for bringing this contemporary account to my attention.)

^{xvi} H.B. Holt had worked for Judge Parker and was a close friend. Holt would later serve as a State Senator from Doña County and was the Republican party candidate for U.S. Senator in 1930. Holt's son, Edwin, a future President of the New Mexico State Bar, would marry the granddaughter of Nicholas Galles.

^{xvii} Fall, who held the territorial judgeship position, 1893-95, signed the first of three letters; the letter from Governor Curry is addressed to Fall; and, Fall is the first signer of the letter from "business men and residents of Southern New Mexico." Note 15, *supra*. The list of signers of the third letter included many of the persons featured in Paxton P. Price, **Pioneers of the Mesilla Valley**, (Las Cruces, N.M.: Yucca Tree Press, 1995). (Although certainly a prominent citizen of Las Cruces at the time, Nicholas Galles did not sign the letter, perhaps because of his relationship with the lawyers and the judge!)

^{xviii} See *e.g.*, Leon C. Metz, **Pat Garrett: The Story of a Western Lawman** (Norman: U. of Okla. Press, 1974), p. 294. Metz has a comprehensive discussion of the "mystery" surrounding the death of Garrett.

^{xix} See Curry letter, note 15 *supra*.

^{xx} Susan A. Roberts, *A Political History of the New Mexico Supreme Court, 1912-1972*, **N.M. Law Rev.** (Special Issue, 1975), p. 6.

^{xxi} See my essay in the January 5, 2009, issue of the New Mexico Bar Bulletin, "reprinted" on the N.M. State Historian website, *Hermanos y conuñados: The Rise and Fall of the Brothers Leahy*.

^{xxii} See Roberts, *supra* note 20 at pp. 31-36 and her excellent article in the New Mexico Historical Review, *The Political Trials of Carl Magee* (1975), for the full flavor of the controversy.

^{xxiii} *Ex parte Magee*, 31 N.M. Reports at 279 & 281 (1925).

^{xxiv} 32 N.M. Reports at pp. i-iv (1928).

^{xxv} 36 N.M. Reports at pp. vii-xv (1932).

^{xxvi} "Justice Parker of New Mexico Supreme Court Dies Aged 71," *The Albuquerque Journal* (Thursday, August 4, 1932), p.1.

Editor Note:

Hillsboro had another, less well known, Judge Parker. James Porter Parker was a the roommate of George Armstrong Custer at West Point. He joined the Confederate Army during the civil war, spending two years in Union prison camps. He later drifted to Kingston and became Sierra County's first assessor. He also served as a local magistrate, thereby earning the title of Judge. He shows up as Judge Parker in several photographs taken around Kingston, thereby creating potential confusion with F. W. Parker.