



THE GOOD, THE BAD AND THE UGLY JUSTICE IN EARLY CALAVERAS COUNTY

by, Charity Maness

When California became a newly formed free state in 1850, those elected to represent the people faced many challenges in creating the envisioned utopia; crime and punishment was one such challenge. The discovery of gold caused the fledgling state to begin bursting at the seams with people traveling over land and sea to find their fortunes in gold. Along with those searching for a better life came those who slithered in the shadows of society, those who fed off the innocent; those with criminal intent. Calaveras County was no stranger to the seedier, greedier and needier side of humanity and over time developed a justice system that served all.

The state's first constitution, drafted in September 1849 in Monterey, included Article VI covering the judicial branch, providing for a Supreme Court consisting of a Chief Justice and two associate justices. The Constitution provided that the first three justices would be elected by the state Legislature and subsequent justices would be elected by the voters for six-year terms in contested elections. Though the constitution allowed for such a thing as organized justice, this practice took years to trickle down into the mining camps of Calaveras County.

Vigilante Justice and Bloody Bill Higby

Without a formal Superior Court, nor a district court, mining towns often dealt with miscreants and criminals with their own form of justice; vigilante justice, a justice that was swift and often came at the end of a short rope. In some mining camps when a crime was committed the miners elected a judge and jurors at the time of an arrest to provide a hearing and sentencing. Elections were not based on experience or degrees, often times providing a tainted and prejudiced form of justice.

Some towns prided themselves on their own form of justice, such as Mokelumne Hill, which drafted the first Code of Laws for Miners in Calaveras County in 1851 and soon thereafter formed a company of militia called the "Calaveras Guards" to keep the peace. The *Daily Alta California*, August 3, 1852, reported:

First Calaveras Guards—The Guards held a meeting on the 24th of July for election of officers and the organization of the Company, previous to an application to the government for arms. Arnold C. Lewis was elected Captain; Charles A. Leake,

First Lieutenant; Charles Clarke and Thomas Stephenson, Second Lieutenants. Orderly Sergeant, David Pollock.

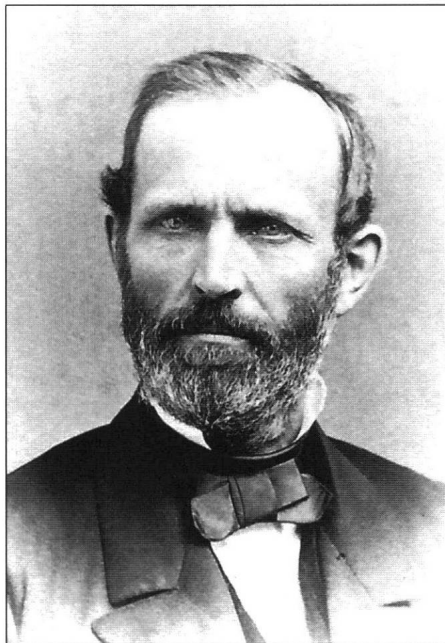
Mokelumne Hill resident William Higby noted the form of justice meted out by the vigilante committees left the justice bar very low for the community at large and planned to make a difference. Higby, a graduate of the University of Vermont, was admitted to the bar in 1847. He practiced law for three years prior to making his trek to California in search of gold. Upon his arrival in the mining town of Mokelumne Hill he found that law enforcement was regarded as unfair, unreliable and oftentimes seeped with corruption.

One example of vigilante justice cited by Higby involved a California statute imposing a death sentence on burglars. On one occasion a burglar was caught in the act one night at 9 p.m., a quick vigilante trial was held, followed by sentencing and execution, the execution taking place at 2:30 a.m., less than six hours after the crime was committed.

In 1853 Higby became District Attorney of Calaveras County in hopes of helping the justice system with a well thought out process and not something to be handled by mobs/vigilante committees. Higby proved to be a strong DA and vigorously prosecuted criminals. However, much to his disappointment, old ways die hard and during his first four years in office, vigilante committees still operated in Calaveras County.

In 1854, the vigilante committee promptly executed a man accused as a horse thief, something Higby was loathe to accept. After the execution he took to the town and publicly lectured the citizens about such a questionable form of justice. He later wrote to his father, describing himself as *"possessed with mixed emotions to find such a total disregard of law, of right, of justice, of humanity, of public decency and morality, in the village I had resided for so long, and when too I had done so much to punish crime, as was admitted generally."*

Higby responded to this form of justice by pushing harder for convictions of criminals and harsh sentences which gained him the moniker Bloody Bill Higby,



William Higby. Unknown Source, taken from the *"Adirondack Almanac"* with no source noted.

while also gaining him a reputation among criminals as his courtroom was to be avoided at all costs.

After six years Higby went on to serve in positions of Judge and Senator. He also won three terms in the House of Representatives. As an avid supporter of Lincoln he was often a guest at the White House. His obituary in the *Boston Record*, December 1, 1887, noted that among his many achievements he also received another prominent position. *"At the close of his second term in Congress he was appointed by President Grant as Collector of Internal Revenue for the first district in California, which position he held with credit to himself and the satisfaction of the govern-*

ment during that and the succeeding administration."

Vigilante justice was not limited to one mining camp; it was relatively common and often rampant. In 1850, when a stabbing occurred in Volcano, justice was dealt out at the hands of a group of vigilantes without due process, as the alleged culprit was lynched within a half hour of the crime. If a victim was stabbed and the wound was not fatal, the culprit could receive lashes; the victim and townsfolk witnessed the punishments. However, if the victim died later, the perpetrator could be hung the following day, creating a double punishment.

In the early 1850s Jim Hill, a man known for his bad character, entered a Campo Seco store with his cohorts and held a pistol to the head of the proprietor while his partners emptied the safe of its contents. Not one to lay low, soon thereafter Hill showed up at a low Spanish house in Sonora where he got into a fight with a stranger, stole his gun and beat the man about the head with his own gun and fired at him as he ran into the street crying for help. Soon Sheriff George Work found Hill and took him to the Sonora jail.

In the morning a crowd of citizens took Hill from the jail and brought him to Campo Seco for a lynch-law trial with a predictable verdict of guilty and a sentence of death. Hill addressed the crowd which had eagerly congregated to witness his death and asked for mercy. The crowd was torn, pistols were drawn, and confusion ensued. During the chaos Sheriff Work

absconded with the prisoner in hopes of returning him to the Sonora jail. Yet word of Hill and his crimes had traveled to Sonora before Hill's arrival creating a call to arms for the citizens of Sonora.

E. Linobergh, a prominent merchant, called the citizens utilizing a gong as he walked through the streets. Tired of what they perceived to be a lack of qualified law enforcement, due to recent escapes of prisoners, the crowd surrounded the jail to thwart the entrance of the Sheriff with Hill. Again, chaos ensued, this time the Sheriff would not get his man. Local merchant, Frank Cheatham, blocked the entrance to the jail, pointed his weapon at the Sheriff and said, "Let the man go George, or I'll shoot." Within fifteen minutes vigilante justice was meted out and Hill was hanging from the oak tree behind the El Dorado Hotel.

Judicial Channels Gone Awry: the Chilean War of Calaveras County

Sometimes, even with the law on their side, miners—often immigrants—were left holding the short end of the stick. Chileans immigrated in large numbers to the Mother Lode, bringing with them years of mining expertise. The Chileans who lived near Mokelumne Hill, functioned in a loose government lead by Dr. Concha, who was protected by Lieutenants, proved time and time again their skill for extracting gold from their mines.

The Anglo miners in the area were not happy with the Chileans' success and formed a group of disgruntled miners, under Judge Collier, to pen a series of articles and laws to establish their rights as American citizens. The first law was to expel all foreigners. This tactic did not have the desired effect; claim jumping and looting ensued the very next day. While the Anglos expected the Chileans to fight back with fists and weapons, they were surprised to find they chose to fight back through legal channels.

A group of Chileans traveled to Stockton to the authorities there and told them of their mistreatment at the hands of the Anglos under Judge Collier. They were taken seriously and granted a warrant for Judge Collier's arrest. However, upon returning home, Judge Scollan, the judge recognized by Stockton officials, accompanied two of the *patrones* (guardians) to the Anglo camp to serve the warrant, but when the Anglos refused to comply, Judge Scollan claimed he would do no more. The Chileans returned

to their camp disheartened but not beaten. Some of the miners chose to take up arms and take care of the Anglos themselves and invaded Iowa Cabins, a digging nearby, in hopes of capturing the criminals and taking them to justice. Records of the fight that ensued are as varied as the miners.

"Suddenly our tent flaps were thrown aside and a dozen guns were pointed at us," wrote Colonel James Ayers in his memoirs. *"We were ordered to come outside, and each one as we reached the door was seized and his arms bound together behind with cords... There was such flourishing of pistols and knives that I feared some of us would be killed by accident if not design."*

Another report from the diary of John Garland Ricker stated that the *"Chileans came in large numbers and broke down the doors of cabins where they found miners sleeping or playing cards and overcame them."*

Ramon Jil Navarro, a native Argentinean raised in Chile, claimed that the Chileans showed their good hearts by not taking anything from the camp; even items that had been stolen from their own camp by the Anglos. They also administered first aid and fed their prisoners.

Either way, the captured Anglos were marched to Judge Scollan's residence. With little aid from Scollan, the Chileans' had no choice but to march their prisoners to Stockton. Within hours, the Chileans were overtaken by an angry posse of Americans. The captors became the captured.

The Chileans were taken back to Calaveras and put on trial on December 31, 1849. Not taken into account during the makeshift trial were the illegal laws penned and unlawfully enforced upon the Chilean miners, nor the legal warrant from Stockton for Judge Collier's arrest, nor the effort of the Chilean's to use legal avenues prior to force, nor the humane treatment the Chilean's administered to the Anglos during their captivity. Heavy sentences were handed down and administered January 1, 1850: 3 sentenced to death by firing squad, five to receive 50 public lashings and shaved heads, three sentenced to 30 public lashings and cropped ears with the remaining tied to tree limbs and *"whipped so the blood spurted from their lungs,"* as recounted by Navarro, not even the *"sobbing pleas"* of the son of one of the dying men could *"inspire pity"* among the Anglos, *"such men as they were."*

New justice arrives in the Mother Lode —Superior Court Judge comes to Calaveras County

Since 1864, county judges had overseen much of the judicial needs of the community. However, in 1879, per the newly adopted California Constitution, nominations were being accepted for the recently formed position of Superior Court Judge of Calaveras County. Charles Victor Gottschalk was nominated by the County Democratic Convention that same year and elected as the first Superior Court Judge of Calaveras County; a position he held for 23 years.

Born in Louisiana in 1827, Charles Victor Gottschalk graduated from the University of Pennsylvania in 1845 in the hopes of following in his father's footsteps and entering a life of medicine, yet found himself a merchant. By 1850, news of the gold finds in California had Gottschalk packing his bags in search of his share of all that glitters.

After ten years of mining Gottschalk opted for employment within county government. He held the positions of Deputy Sheriff, Deputy County Clerk, Deputy Assessor and Road Commissioner. By the late 1860s Gottschalk had developed an interest in law, eventually being admitted into practice and began practicing law in Calaveras County in the early 1870s. Before becoming a Superior Court Judge, he ran for District Attorney on the Democratic ticket in 1877, defeating incumbent District Attorney W.T. Lewis, a Republican.

While the Honorable Charles Gottschalk certainly presided over many trials, both civil and criminal, he is best known for the sentencing of Charles E. Boles, aka, C. E. Bolton, aka Charles E. Bowles, aka Black Bart; gentleman bandit.

Though Black Bart had many aliases, he also fancied himself a poet and was known to use the moniker the Po8. Black Bart stood accused of holding up Wells Fargo stage driver Reason McConnell on November 3, 1883, at Funk Hill near Copperopolis. It was



Judge Charles Victor Gottschalk c. 1882.
Historical Society Photo.

alleged that Black Bart made off with an estimated 228 ounces of gold amalgam having a value of \$4,104.00 and some United States minted coins valued at \$533.00.

Though Bart stood accused of the aforementioned robbery, it was alleged that he was responsible for multiple Wells Fargo stage coach robberies across Northern California. It was rumored he robbed the stages with an unloaded shotgun and used manners not akin to the ruffian lifestyle he was pursuing. At some of the robbery sites he left poems; a bold calling card of sorts.

For the crime he was standing accused of, Bart had received a gunshot wound, causing him to drop some of his personal belongings including a handkerchief with a laundry mark F.X.O.7. That handkerchief was his undoing. With the handkerchief in hand Wells Fargo detectives James Hume and Henry "Harry" Morse scoured seemingly every laundry service in San Francisco in search of the one that used that mark. They hit pay dirt when they located Ferguson & Biggs California Laundry on Bush Street and were able to trace the handkerchief back to one C. E. Bolton.

At Black Bart's arraignment hearing he waived his right to be represented by counsel. When Black Bart appeared in Gottschalk's courtroom, he wore clothing not of a miner, but of a man of some stature, seemingly prepared to take on District Attorney W. T. Lewis, and Calaveras County Sheriff Benjamin

K. Thorn as the District Attorney's investigating officer. The courtroom held local spectators as well as many legal parties such as James B. Hume, Wells Fargo's chief detective; Harry Morse, Wells Fargo special agent and one-time Sheriff of Alameda County; and Captain Appleton W. Stone of the San Francisco Police Department, the department credited with the discovery and capture of Black Bart.

When asked by Gottschalk how Bolton would plead, Lewis rose to his feet and responded that the defendant "*wishes to withdraw his plea of 'not guilty' and enter a plea of 'guilty'.*"

Gottschalk questioned if Bart understood to change his plea would also be giving up his right to a jury trial, to summon witnesses as well as to face his accusers. All this Bart claimed to understand:

"I understand, your Honor."

"And you could be sentenced up to a term of fifteen years in State prison?"

"Yes, sir."

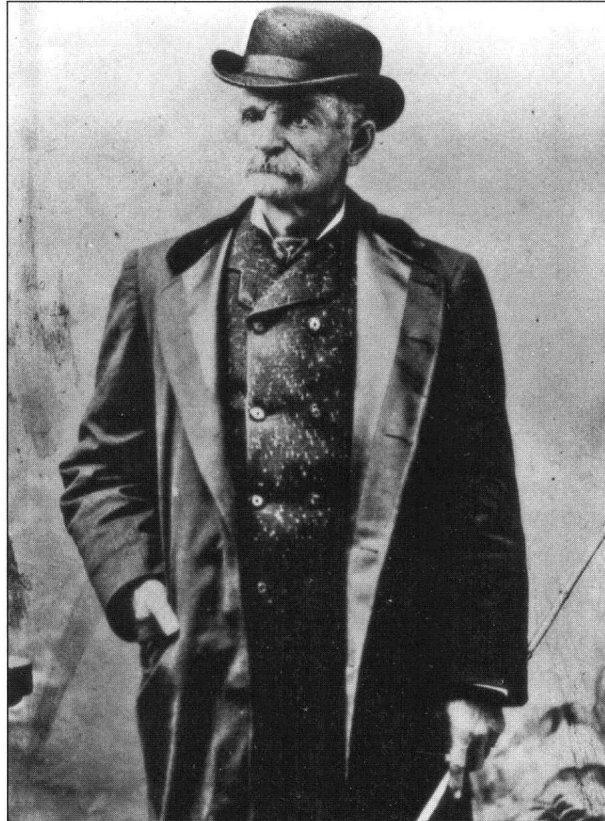
"Very well. To the charge of having committed one count of robbery in the First Degree, Penal Code Section 211, how do you plead?"

"I plead, 'guilty'."

Bart received a six-year sentence to San Quentin Prison. Just eighteen days after committing the Funk Hill robbery Bart was in the custody of San Quentin Prison as Charles E. Bolton; prisoner number 11046.

After serving four years and two months, Bolton was freed on January 21, 1888—the Goodwin Act of 1864 allowed prisoners time off their sentence for good behavior, a probable explanation for his early release. Reporters awaited his release. When asked by reporters if he was going to rob anymore stage-coaches, Bolton, with failing hearing and eyesight, responded, *"No, gentlemen, I am through with crime."* Wanting more information, another reporter asked if he would continue to write poetry at which Bolton replied, *"Now didn't you hear me say I am through with crime?"* Shortly after his release Bolton disappeared without a trace.

Gottschalk continued to serve as Superior Court Judge until his defeat in 1903, at which time he opened his own law office in San Andreas. His eyesight was failing and he lacked enough clients to cover the office expenses. He worried he was burdening his beloved wife, who was twenty-six years younger. On March 2, 1906, Gottschalk went to the county recorder and deeded all his



Charles E. Bolton, the name known as Black Bart.
Historical Society Photo.

holdings and possessions to his wife. He then went to his office and carefully penned farewell letters to his family, and a love letter to his wife with instructions for his burial. He pressed the muzzle of his revolver to his right ear and pulled the trigger.

Judge Gottschalk was highly respected, with a reputation beyond reproach. Few of his decisions were overturned. The *Calaveras Prospect*, January 10, 1903, noted a resolution which was passed by the Bar Association of Calaveras County at his retirement ceremony:

"Resolved, That during his long term in office Judge Gottschalk has displayed in a high degree

the attributes of a Judicial mind and by his breadth of understanding, his fidelity to the law of the land, his impartiality and farness of purpose, he has gained the respect of litigants and attorneys alike. That his career has been an active one, for during his experience in presiding over this Court he has finally disposed of 800 cases in probate and 1450 civil cases, of which 812 cases have been contested and passed to final judgement."

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Calaveras County Historical Society

30 No. Main Street P.O. Box 721 San Andreas, CA 95249

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The Calaveras County Historical Society is a non-profit corporation. It meets on the fourth Thursday of each month in various communities throughout the County. Locations and scheduled programs are announced in advance. Some meetings include a dinner program, and visitors are always welcome.

The Society operates the Calaveras County Museum which is open daily from 10:00 to 4:00 in the historic County courthouse located at 30 Main Street in San Andreas; and the historic Red Barn Museum at 891 Mountain Ranch Road, also in San Andreas, which is open Thursday to Sunday, 10:00 to 4:00.

The Society's office is located in historic San Andreas, the Calaveras County seat. Visitors are always welcome to stop by the office for assistance with research, and are encouraged to visit the museums while in the area. The office is open Monday through Friday from 8:30 to 4:00, and the telephone number is (209) 754-1058, or contact us at: CCHS@goldrush.com; Red Barn Museum (209) 754-0800.

January–March 2018

New Members:

Brian Connery—Angels Camp
Catherine Mistely—Mokelumne Hill
Taven Dennis & Rose Rinker—Mountain Ranch
Tim Magnuson & Holly Cessna—Arnold
Tyra Dragomanovich—Angels Camp

Donations:

Ted Shannon—Cash donation
San Andreas Rotary—Cash donation
Billie Wirtenoff—Display case from original courthouse
Leo Quintana—Butte Fire memorial display