

Tied to the Elephant: Organization and Obligation on the Overland Trail

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I. INTRODUCTION

The gold-seeking emigrants who went by the overland trail to the diggings of California seldom traveled alone. The few who did were usually men too poor to purchase a share of a wagon or, for one reason or another, unable or unwilling to work their way across the continent as hired hands.¹ Most, however, traveled to the Pacific as part of an organization: either shareholders of joint-stock companies,² partners in a mess,³ clients of passenger lines,⁴

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1. As a curiosity, overland diaries frequently mention men traveling alone, pushing a wheelbarrow or cart, or packing their provisions on their backs. See, e.g., G. COLE, IN THE EARLY DAYS ALONG THE OVERLAND TRAIL IN NEBRASKA TERRITORY, IN 1850, at 46 (1905); W. MAXWELL, CROSSING THE PLAINS DAYS OF '57: A NARRATIVE OF EARLY EMIGRANT TRAVEL TO CALIFORNIA BY THE OX-TEAM METHOD 24 (1915).

2. "The joint-stock companies were the corporations of the Overland Trail," Shaffer, *The Management of Organized Wagon Trains on the Overland Trail*, 55 Mo. HIST. REV. 355, 361 (1961). For the best available discussion of joint-stock companies on the overland trail, see O. HOWE, ARGONAUTS OF '49: HISTORY AND ADVENTURES OF THE EMIGRANT COMPANIES FROM MASSACHUSETTS 1849-1850, at 3-45 (1923) [hereinafter cited as HOWE, ARGONAUTS]. For printed examples of joint-stock constitutions, see Constitution of the Essex County and California Mining and Trading Company, *id.* at 214-17; Constitution of the Charlestown, [West] Virginia, Mining Company, in TRAIL TO CALIFORNIA: THE OVERLAND JOURNAL OF VINCENT GEIGER AND WAKEMAN BRYARLY 213-22 (D. Potter ed. 1945) [hereinafter cited as TRAIL].

3. A "mess" was generally a single wagon of three or four men. Reid, *Dividing the Elephant: The Separation of Mess and Joint Stock Property on the Overland Trail*, 28 HAST. L.J. 73, 74-78 (1976) [hereinafter cited as *Dividing*].

4. Companies advertised passage overland and sold tickets much like common carriers. See, e.g., entry for Apr. 4, 1850, C.W. Smith, Journal of a Trip to California Across the Continent From Weston, Mo. to Weber Creek, Cal. in the Summer of 1850 (ms., Cal. Historical Soc'y, San Francisco). The most famous passenger company was the Pioneer Line. See M. MATTES, THE GREAT PLATTE RIVER ROAD 33, 186 (1969) [hereinafter cited as M. MATTES].

The proprietors of this train promised their passengers, at Independence, that they should hold their Fourth of July at Sutter's [Sacramento], in California and the Fourth overtook them before they were half way. Something of a mistake,—but time waits for no man, much less for overloaded, and overdriven and badly selected mules. The passengers pay \$200, and cook their own food, watch the camp, harness and drive their own teams, and generally go on foot. This is paying pretty dear for the whistle. . . .

Entry for July 12, 1849, Israel Shipman Pelton Lord, Journal of 1849 (ms. HM19408,

or members of traveling groups.⁵ In addition, there was another legal technique overland emigrants utilized when binding themselves in mutual associations—they made contracts.

II. COLLECTIVE ORGANIZING CONTRACTS

Most organizing contracts were made east of the Missouri River, frequently before the emigrants left home.⁶ An interesting example was negotiated during January, 1849. Called a "compact," it was signed by 29 persons agreeing to form an organization that eventually took the name of the Sacramento Company.

We the undersigned, for the purpose of forming an association

Huntington Library, San Marino, Cal.). The most notorious of the passenger trains was that of Parker H. French, which broke up while still in Texas. C. LOCKWOOD, *MY TRIP TO CALIFORNIA IN 1850 WRITTEN SIXTY YEARS LATER* (n.d.); W. MILES, *JOURNAL OF THE SUFFERINGS AND HARDSHIPS OF CAPT. PARKER H. FRENCH'S OVERLAND EXPEDITION TO CALIFORNIA* (1851); Cardinell, *Adventures on the Plains*, 1 CAL. HIST. SOC'Y Q. 57 (1922); M. BALDRIDGE, *A REMINISCENCE OF THE PARKER H. FRENCH EXPEDITION THROUGH TEXAS & MEXICO TO CALIFORNIA IN THE SPRING OF 1850* (1959).

5. Traveling companies were formed, usually near the Missouri River, by a number of wagons, messes, partnerships, or small joint-stock companies for the purpose of travel only. They intended to disband after reaching the security of California. For examples of traveling-company constitutions that have been published, see Letter from Peter H. Burnett to James G. Bennett, Jan. 18, 1844, in *THE FRONTIER EXPERIENCE: READINGS IN THE TRANS-MISSISSIPPI WEST* 97-98, (R. Hine & E. Bingham eds. 1963); Letter from George L. Curry to the St. Louis Reveille, May 11, 1846, in *OVERLAND IN 1846: DIARIES AND LETTERS OF THE CALIFORNIA-OREGON TRAIL* 521-22 (D. Morgan ed. 1963); Constitution and By-Laws of the Green and Jersey County Company (1849), in E. PAGE, *WAGONS WEST: A STORY OF THE OREGON TRAIL* 336-41 (1930); Regulations of the Muscatine-California Emigrants Association (1849), in Lorch, *Iowa and the California Gold Rush of 1849*, 30 IOWA J. HIST. & POL. 307, 315-17 (1932) [hereinafter cited as Lorch]. For a discussion see D. BOORSTIN, *THE AMERICANS: THE NATIONAL EXPERIENCE* 65-71 (1965).

6. It would be wrong to think that organizing contracts were negotiated only at the start of the trip. Not all were made east of the Missouri River. Sometimes a group of wagons would already be traversing the overland trail when solicited to take other parties into their organization. The Havilah Company of New York was as far west as the Choctaw Nation (southwest of Fort Smith, Arkansas) when it "received three propositions from members of disbanded companys to accompany us, which we considered and accepted. They pay \$100 in cash and come under other obligation." Quoted in G. FOREMAN, *MARCY & THE GOLD SEEKERS: THE JOURNAL OF CAPTAIN R. B. MARCY, WITH AN ACCOUNT OF THE GOLD RUSH OVER THE SOUTHERN ROUTE* 188 (1939). What "other obligations" were stipulated is not stated, but by looking at promises obtained on similar occasions we may get a hint of what might be expected. A suggestion is found in a letter written by an emigrant belonging to a body attaching itself to a larger force. He was a member of a three- or four-man mess that joined a train of eleven wagons. It did so, he reported, "under an agreement for to help each other through and if [a] wagon breaks down the others to haul the plunder and if the team breaks down the others to assist in getting on." Letter from John Warnock to Cyrena Warnock, May 22, 1850 (ms. #420, State Hist. Soc'y of Missouri, Columbia).

to emigrate to California, early in the ensuing spring, do hereby agree and solemnly pledge ourselves to, and with each other mutually to start, proceed, and emigrate thither together, at such time and by such route as may be deemed expedient, and also to aid, protect and defend each other to the utmost of our abilities, in the enjoyment of life, liberty and security in the privileges and possessions of each respectively, under any circumstances, both on the route to and after arrival in California; to the faithful performance of which compact, according to its letter and spirit, we do hereby severally pledge to each other our sacred honor.⁷

It would be a mistake to ask what was meant by "faithful performance." This contract was less a compact of organization than a promise to organize in the future. It was written early during 1849, before the great migration had begun. Unaware as yet of how easily traveling companies would be formed, the contractors apparently intended to bind one another not to join rival groups. Had they been asked, the parties might have admitted they were thinking not so much of organization as of insurance: insurance that they would not be left behind.

Terms were not always what lawyers might want included. One would expect emigrants not merely seeking companions but hoping to create an efficient organization to get them to California to stipulate specific standards of conduct. They often did as the next section reveals, but not in every instance. Some agreements promised little except good behavior. "We had a written contract," one member of a very large company wrote, "which all signed binding every man to obey orders or be expelled from the train."⁸

There is a second potential conception that might mislead lawyers. On their faces, many organizing contracts seem legally meaningless because they were unenforceable. To judge these agreements on that basis would be to miss their significance. Overland contracts were made not because emigrants expected they could be enforced but because they expected them to be honored.⁹ Moral suasion and the ties of conscience, not judicial

7. Lorch, *supra* note 5, at 343. See also, T. Ressler, *Trails Divided: A Dissertation on the Overland Journey of Iowa "Forty-Niners" of the "Sacramento Mining Company" prepared from Original Sources 7* (typescript, Iowa State Hist. Dep't, Des Moines, n.d.).

8. J. Hudgins, *California in 1849*, at 2 (mimeograph typescript # 2189, State Hist. Soc'y of Missouri, Columbia, n.d.).

9. Reid, *Binding the Elephant: Contracts and Legal Obligations on the Overland Trail*, 21 *AM. J. LEGAL HIST.* (1977).

directive or police incentive, were the factors relied on to see promises kept. A case in point occurred along the Platte River in what is today the state of Nebraska. Dissension arose among the members of a four-man mess. Wanting to separate from his partners, one member went to the captain of the train to demand division of the mess property.

[T]he captain called a meeting of the company the members of which assembled before the waggon of the above named mess he there and then discharged the duty of speaking a few words by way of reprimand to the disaffected mess he reminded them of the contract they had entered in between each other at the start that they were bound by the laws of honor as they were all professors of religion by that also to pursue a different course and to be more careful in their intercourse with each other.¹⁰

The admonition was effective—at least for a time. “They all promised to [be] better for the future.”¹¹

III. CONTRACTS FOR ORGANIZATION

As previously suggested, organizing agreements made by individuals promising to accompany one another on the overland trail often stipulated the terms of association. Put another way, the rules of organization were defined in the contract. While these agreements could be as elaborate as joint-stock constitutions, they generally were much simpler. Emigrants forming a traveling company with common funds for buying equipment, could be as intent on securing their investment as formulating regulations to govern conduct. During February, 1850, for example, five men promised to contribute \$200 each and be ready to depart for California on a date certain. All decisions, including purchases, were to be made by majority vote “and each man binds himself to sq[u]ander no part of the funds the funds [sic] of the company by gambling or other pernicious practices.”¹²

If the men of this company started out in the belief that rules and regulations such as these would set the pattern of their social and legal intercourse, experience on the trail soon disabused them. This group was more typical than not in learning that the

10. Entry for May 24, 1850, G. Read, *Journal of a Trip to California in 1850* (ms. # R223, Iowa State Hist. Dep't).

11. *Id.*

12. Article of Agreement, Feb. 14, 1850, John Gish, *Correspondence While in California in 1850-51* (ms. Coe Collection # 220, Beinecke Library, Yale Univ.) [hereinafter cited as Gish, *Correspondence*].

chief utility of regulations and terms of association might well not be to regulate behavior but to furnish an excuse for division. One article of the agreement provided: "A. Mayes [is] Exempt from cost of Medicines and in Lieu thereof is to act as physician of the company free of charge and any practice he may obtain out of the company the proceeds go into the proceeds of the company."¹³ After the party had journeyed about 150 miles west of Salt Lake City, two members demanded a division of the concurrent property.¹⁴ They based their right to separate on the theory that, by hiring himself to a second company, one of the remaining three had breached the contract. They had to be relying on the quoted provision: outside income earned by the physician became part of the common funds. It was the only clause in the contract even remotely bearing on the matter. Obviously the third man was working for himself and the dividing twosome, wanting to break free of the company yet needing their share of the concurrent property for survival, were insisting on a very loose interpretation of the contract in order to have their way.¹⁵ Although their reasoning may not have reflected the law as then understood in American courts, it was typical of the insistence upon legality that characterized behavior on the overland trail.¹⁶

Some organizing contracts, anticipating the problem of individuals working for emigrants not members of the company, were

13. *Id.* "Proceeds" meant the common funds. The company was for traveling purposes only and it was not intended that it continue to function as an ownership and revenue-making unit once the men reached the gold diggings.

14. Whether or not personal animosity had arisen within the group, there was apparently no difficulty over how the concurrent property should be divided. "[W]hen we divided we got the waggon and five oxen. Singer and Mayes . . . got two yoaik." Letter from John Gish to ?, Apr. 28, 1851, Gish, Correspondence, *supra* note 12 [hereinafter cited as Letter]. It would seem that by retaining the wagon, the three remaining members received more property than did the dividing two. The explanation for such a division could be that those making the demand were in a less favorable negotiating position, though more likely it was because they wished to move more quickly by abandoning the wagon and "packing." It is very unlikely the majority dictated the proportions on a reluctant minority. It was an almost uniform practice on the overland trail to divide provisions and equipment according to concepts of property ownership, both private and concurrent. See generally, *Dividing*, *supra* note 3; Reid, *Sharing the Elephant: Partnership and Concurrent Property on the Overland Trail*, 45 *UMKC L. Rev.* 207 (1977).

15. According to one of the remaining three, the man had hired himself out at the "head of [S]weetwater." Letter, *supra* note 14. As the division took place in today's Utah or Nevada, the company traveled several hundred miles after the complained of breach occurred.

16. It is evident the others understood that the dividers based their demand on a narrow, technical interpretation and were motivated by other considerations; that breach of contract was an excuse, not a cause. "John did agree to work for Blair but I think they had other resans [sic] for dividing." *Id.*

clear on the point in issue, specifically providing for the mutual sharing of all income. Such agreements were modeled on the joint-stock associations popular in the east¹⁷ and, like them,¹⁸ expected that all income earned by a member would belong to the company.¹⁹ Although they were generally contracts between a few men planning to go to California, the instruments of agreement sometimes referred to the organization being formed as "a joint Stock association."²⁰ That description was not accurate, and probably was used more as an analogy than as a generic term. Those signing such contracts appreciated the similarity between their legal positions and that of the members of larger joint-stock companies who contributed to the acquisition of animals, wagons, and provisions by buying equal shares.

Some of the joint-stock companies also had another type of member: those who stayed at home. They purchased shares as an investment. In return for a specific part of the profits,²¹ they made it possible for young men without means to join the gold rush.²²

17. See note 2 *supra*.

18. For example, the "Agreement" of a "Mutual Joint Stock Company" formed in Lynn by Massachusetts and New Hampshire men provided "Each member shall devote the whole of his time and attention" to the organization. CONSTITUTION OF THE SAGAMORE AND CALIFORNIA MINING AND TRADING COMPANY 3 (1849) (printed brochure, Cal. Hist. Soc'y, San Francisco).

19. Witnesseth that the parties aforesaid have made up a party or company to go to California or elsewhere westwardly upon a gold hunting expedition, and they obligate themselves each to the others to contrive and labor for the general benefit . . . by washing, digging or mining for gold or hiring and working at any other occupation shall be a joint stock gain It being fully and clearly understood that the said parties are to share the gains equally and share alike. And the said parties agree to work in such places and in such manner and at such employments as a majority of the party shall think of most advantage to the joint interests of the party.

"Articles of a bargain and covenant made and entered into this 2nd day of April 1849, between Booker S. Jefferson, John T. Dutton, James N. Berger and Stephen G. Mannen, all of the County of Montgomery in the State of Missouri." Gregg, *Missourians in the Gold Rush*, 39 MO. HIST. REV. 137, 149 (1945) [hereinafter cited as Gregg, *Missourians*].

20. Fourteen Missourians, for example, stipulated: "We the undersigned after duly considering all the labour and toil dangers and sacrifices of an expedition and the advantages likely to result to ourselves our families, and Country, have firmly resolved to unite ourselves together in a 'Joint Stock association'." Articles of Agreement of the "William Muldrow and Company," signed in the County of Marion, State of Missouri, 28 January 1849 (ms. "Palmyra Envelope," Missouri Hist. Soc'y, St. Louis) [hereinafter cited as Articles of Agreement].

21. "The members of this Association shall consist of two classes, the active and the passive members; the active to proceed to California, and the passive to remain in New York, and their shares to be represented abroad by such substitutes as they might elect to proceed to California." Article 3, NEW YORK AND CALIFORNIA AURELIAN COMPANY 2 (1849) (printed brochure, Cal. Hist. Soc'y, San Francisco).

22. A variation on the pattern occurred in the contractual companies negotiated by

This arrangement was also copied by a few persons negotiating organizing contracts. Investors could outfit prospective emigrants by contracting with them for future repayment, a percentage of the gold mined, or labor to a day certain.

When a contract was being negotiated to organize a company that would not only travel to California, but, after arriving, continue as a unit for purpose of mining, the very nature of the enterprise dictated that those drafting the rules would give prime attention to activities after the company reached the diggings.²³ The terms of the agreement might almost ignore the problems and mechanics of the trip to California.²⁴ Still, the contract would prove important on the overland trail, not only as the constitution of the group, but because—as happened in the majority of cases—the company would disintegrate long before reaching California. Concurrent property would be distributed according to ownership, not brute strength, and the organizing contract determined ownership.²⁵

IV. INDIVIDUAL CONTRACTS OF ORGANIZATION

Another method of organizing companies for the overland trail was the personal contract. Although it could be used to create groups for mining and travel, it most often was used for travel alone. Somewhat rare, this contracting technique lent itself particularly well to single messes in which one man owned the wagon, draft animals, and all the provisions, and his companions negotiated with him individual agreements for passage. Probably the best known organization of the type, however, had 60 members and a capitalization of \$15,000.²⁶ The individual who put up this large sum and with whom all these men made personal agreements, was Wilson Shannon, a leading Cincinnati lawyer.²⁷ The

slaveholders. Thus one article of a Missouri agreement provided that a member was not required to go to California: "But in consideration of his not going with said company, he sends his negro man Sandy in his place, which constitutes him a full partner. But said Sandy shall not be required to do more than any other hand." Article 12, Articles of Agreement, *supra* note 20; Gregg, *Missourians*, *supra* note 19, at 150.

23. *E.g.*, Article 25 of one agreement prohibited members from forming "any other partnership private or public, secret or open, for the acquisition of minerals of any sort or gold or silver to which a majority of the members of this company shall not consent." Articles of Agreement, *supra* note 20.

24. Though the standard clause prohibiting work on Sunday might also proscribe travel. *Id.* Article 12.

25. *E.g.*, the case of the Boone County Company. *Dividing*, *supra* note 3, at 82-86.

26. Thomas, *Buckeye Argonauts*, 59 OHIO STATE ARCH. & HIST. Q. 256, 262 (1959).

27. Wilson Shannon served as Governor of Ohio from 1838 to 1840 and from 1842 to 1844, as United States Minister to Mexico from 1844 to 1845, and as a congressman from

company formed possessed no joint stock, no concurrent property. Shannon had personal contracts with individual members and each agreement was backed by a bond.²⁸

One might think that when an individual owned all the property and other members of the company were in his debt, many problems plaguing overland organizations would be eliminated. Such was not always true. Company members, after all, were not hired hands subject to dismissal at will. They were individuals who, for consideration (generally present and future labor), had been promised transportation to California. Even on the overland trail, there was a distinction between a servant and a contractor. The distinction was not too subtle for laymen, and even a lawyer could find himself bound by the terms of an agreement in a way he never intended. Where he might fire a lazy or unruly hired hand, he had to purchase a release from a slacker or troublemaker with whom he had a contract. Consider the situation of a Wisconsin attorney named Winslow Blake. He was the organizer of what he called "my company." By the time Blake reached Fort Laramie, he was complaining that many of his men were not disposed "to live up to the agreement they made with me."²⁹ Two wagons had already withdrawn and, as a result, "they say the work is too hard for them, & still they seem unwilling that any more should be added to [the] co[mpany]."³⁰ If the men were insisting on contractual rights, Blake must have been a frustrated lawyer, for soon he found himself trapped on two sides by the agreement he had undoubtedly drafted. When faced with the opposite problem—not how to add new members, but how to get rid of "a lazy fractious thievous fellow unworthy [of] the confidence of any man"³¹—Blake was forced to make concessions. The person whom the company wanted to expel, almost certainly a nonlawyer, had contractual rights that had to be acknowledged. At Jim Bridger's fur post, where the Salt Lake City road left the main trail to Oregon and California, Blake learned what it would cost to buy the contract. "He offered to leave [the] co[mpany] if I would pay him \$20. Concluded to do it, paid him \$20. . . . I am glad he is gone & so are all."³²

Ohio from 1853 to 1855. Stephenson, *Wilson Shannon*, 17 DIC. AM. BIO. 20 (1935).

28. Kemble, *Introduction* in *TO CALIFORNIA AND THE SOUTH SEAS: THE DIARY OF ALBERT G. OSBUN 1849-1851*, at x (J. Kemble ed. 1966) [hereinafter cited as *TO CALIFORNIA*].

29. Entry for June 11, 1852, W. Blake, *Journal* (ms. State Hist. Soc'y of Wis.).

30. *Id.*

31. Entry for June 29, 1852, *id.*

32. *Id.* "He got homesick & the Co. generally did not like him, so I gave him \$20 &

V. THE CALIFORNIA ASSOCIATION

No single agreement was typical of all the organizing contracts drafted by or for California emigrants. It might prove most valuable, therefore, to examine in detail the documents of a company which utilized most of the various contracting techniques of overland travelers. It was known as the California Association,³³ a group formed in Monroe, Michigan. Their purpose was not only to raise capital for an expedition to the digging, but to organize a gold-mining company whose earnings, after guaranteeing a profit to investors, would be divided equally among members. To accomplish their objective, the ten men planning to go to California by the overland trail signed a mutual agreement among themselves and made individual contracts with two lawyers furnishing the funds for their trip.

The lawyers³⁴ each contributed \$2,500, in return for which the ten men agreed to emigrate to California, work in the mines for two years,³⁵ pay their investors one-fourth of their net profits,³⁶ and communicate on a regular basis.³⁷ They posted no money, not

he went his way rejoicing." Letter from Winslow Blake to wife and children, July 21, 1852 (ms. State Hist. Soc'y of Wis.).

33. California Association: Articles Agreements and By Laws: Documents of the California Association of Monroe, Michigan 1849 (ms. C-B 101, Bancroft Library, Univ. of Cal., Berkeley) [hereinafter cited as California Association Documents].

34. They were Erastus C. Benedict of New York City and David A. Noble of Monroe. It is worth noting that although he did not make a wise investment in the California Association and stipulated conditions which under no circumstances could have protected his interests, Benedict was one of the best-known and successful lawyers of his day. 1 HISTORY OF THE BENCH AND BAR OF NEW YORK 259-60 (McAdam, Bischoff, Clark, Dykman, Cott & Reynolds eds. 1897). Benedict's name is still part of the title of a leading treatise on admiralty law.

35. "[P]roceed in company, properly armed and supplied & furnished for the expedition with all practicable dispatch to California setting out before the tenth day of March next and that we will work diligently during the period of two years according to our articles of Association." Agreement with Erastus C. Benedict, Feb. 20, 1849, California Association Documents, *supra* note 33, at 362.

36. "[A]ll of us shall give and remit, pay, assign and deliver to said Benedict one Equal Fourth part of all our acquisitions or gains during the whole period after deducting the necessary and reasonable expenses." *Id.* at 363.

37. "[B]y every convenient opportunity during the journey overland and by the first mail after our arriving at any place where there is a mail for New York and at least monthly . . ." *Id.* In addition to writing to investors the purser was bound to "keep a regular brief journal or diary of the expedition including the details of the expenses and acquisitions . . ." Articles of Association, Feb. 14, 1849, California Association Documents, *supra* note 33, at 359 [hereinafter cited as Articles]. The potential value to the investors of frequent communication and daily recording of expenses was demonstrated during one of the first nights in camp, just outside Independence, Missouri. "Our boys not being much under control," the purser wrote, "got into the habit of firing shot at the Swine which infest the camp and to day were caught at it. So we are obliged to pay

even a bond. In fact, except for agreeing each man was liable for liquidated damages if he abandoned the enterprise, the only thing pledged by the prospective emigrants was "our Sacred Honor."³⁸

The second contract, called the Articles of Association, was among the men themselves. They promised to work profitably together for two years,³⁹ "aid protect and defend" one another,⁴⁰ regard the general welfare,⁴¹ and obey the "regulations established by the wisdom and will of the majority of us for our common benefit."⁴² These regulations, dealing with elections, duties, removal of officers,⁴³ and supervision of travel and camp activities,⁴⁴ were "unalterable & irrepeatable,"⁴⁵ a restriction the investors probably inserted to protect their interests.⁴⁶ Another safeguard the lawyers formulated may have been the restriction placed on the captain's authority to convey company property. Although he was given "the full and complete powers of a commander in chief and all the powers which under martial Law a commander may exercise," he was to "have no other or further control over the funds and acquisitions in the charge of the Purser than any other associate under the articles of association."⁴⁷

At Independence, the "jumping off" place, the California

damages as we in justice ought." Entry for Apr. 12, 1849, D. Ashley, Records Kept by Him During the Journey Made by the Members of the California Association from Monroe, Mich to California: 1849 March 6 to 1850 April 16, at 290 (ms. C-B 101, Bancroft Library, Univ. of Cal., Berkeley) [hereinafter cited as Ashley, Records].

38. See note 110 *infra*. A contracting emigrant later pledged "my sacred honor." Agreement of William Wilson with Erastus C. Benedict, Feb. 20, 1849, California Association Documents, *supra* note 33, at 365-66.

39. Articles, *supra* note 37, at 357.

40. *Id.* at 358-61.

41. *Id.* at 358.

42. *Id.* at 357.

43. "Laws Rules and Regulations adopted 5 March 1849," California Association Documents, *supra* note 33, at 372-73 [hereinafter cited as Laws].

44. All duties were assigned "in rotation" and the officers were not exempt "but shall perform in their turn all duties that may be required of any members." *Id.* at 373-74. Apparently, they found it more convenient to permanently assign than to rotate assignments. "We are divided into 2 messes of five each one in each mess is a cook and the rest are horsemen, mule drivers, box builders and deck hands." Entry for Apr. 7, 1849, Ashley, Records, *supra* note 37, at 289.

45. Laws, *supra* note 43, at 374.

46. "But it shall be lawful at any time to make such further by laws, rules and regulations as the majority shall determine not inconsistent with our articles of association or the above seven by laws." *Id.* at 374.

47. *Id.* at 371. Thus when it was necessary to abandon a wagon and lighten loads (for example, to forty pounds of bacon per man), a meeting was called and the decision to discard property was arrived at by majority vote. Entry for May 31, 1849, Ashley, Records, *supra* note 37, at 305-06.

Association joined a traveling company.⁴⁸ The terms of their merger are not recorded but they certainly did not provide for commingling of property. No traveling company's constitution contained such provisions and for good reason. Separate property made it easier for groups to divide as this traveling company was soon bound to do. It had a collective membership of 130 men,⁴⁹ far too large for travel on the overland trail (even had there been reason for sizeable parties remaining together, which there was not).⁵⁰

Interestingly, despite various divisions, the California Association remained with remnants of its original traveling company until reaching the Carson River.⁵¹ More remarkably, the California Association did not itself divide. An impartial observer, watching its progress across the continent and witnessing the troubles that developed among its members, might have predicted it too would soon disband. Internal discord was of such intensity that an historian of the overland trail has called it "so representative" as to be worth study "in detail" for a revelation of the reasons why companies divided.⁵² The "first rumblings of discontent" were heard at Fort Laramie.⁵³ As the Association passed the Soda Springs,⁵⁴ the elected captain "declared his intention to abandon the co[mpany] whenever he reached a convenient

48. "[I]t was unanimously voted to proceed and join Russell's Co." Entry for Apr. 21, 1849, *id.* at 290.

49. Entry for May 6, 1849, *id.* at 297.

50. One reason for organizing into large traveling parties was security against Indian attacks about which emigrants were frequently warned. *See, e.g.*, The Frontier Guardian [Kanesville, Iowa], May 2, 1849, at 2, Col. 4. Before going very far, emigrants learned there was no danger. Thus a man who had passed through the Pawnee country and was entering the Sioux nation wrote:

At first we thought it necessary to band together in larger companies for mutual protection against the Indians. But having seen but very few, and they appearing friendly, and the emigrants being so numerous, we think it totally unnecessary. We can also obtain better grazing for our teams in small companies, besides enjoying a little more independence.

Entry for May 30, 1849, Diary of E.A. Spooner 1849-1850 (microfilm, Kansas State Hist. Soc'y, Topeka). *See also*, Letter of Aug. 23, 1849, in W. SENTER, *CROSSING THE CONTINENT TO CALIFORNIA GOLD FIELDS* (1938). For a detailed diary of '49 that never mentions even seeing an Indian, see Copy of Diary of Colonel James Tate 1849 (typescript, Missouri Hist. Soc'y, St. Louis).

51. At Ragtown, west of today's Fallon, Nevada. There the Association met and "Voted we admit no authority but that of our own officers on the route. We leave Russell's train." Entry for July 28, 1849, Ashley, Records, *supra* note 37, at 315.

52. O. COY, *THE GREAT TREK* 115 (1931).

53. *Id.* Fort Laramie, in today's eastern Wyoming, was where emigrants left the flat Platte River road and prepared themselves for the mountains.

54. Near today's Soda Springs, Idaho.

place.”⁵⁵ Along Nevada’s Humboldt River, he was again complaining, saying that “he had often been disregarded and did not mean to do anything more but would resign & abandon the Co[mpany] when in Cal[ifornia].”⁵⁶ The captain did not wait even that long. Once the California Association reached the safety of the Carson River, he “called a meeting of the Co[mpany] and resigned. It was accepted.”⁵⁷

It would not do to concentrate attention on dissension only. Contradictions abounded on the overland trail, and the California Association proved the rule as well as the exception. In the midst of social disharmony the lawyer can find legal harmony, a legal harmony induced by shared ideas of obligation and procedure. Out on the overland trail, in the hot, harsh, hostile environment of Nevada, the company members conducted their affairs in accord with their interpretation of the organizing contract. The captain did not resign until he called a meeting and had a legal forum for promulgating his decision. The membership surely understood that under their “Laws Rules and Regulations”⁵⁸ a call was necessary. The purser had also wanted to resign as early as the Humboldt River. “[The] Capt[ain] neglects to call a meeting for me to present my resignation,” he complained.⁵⁹ Apparently because there was no call, he was unable to resign, remaining in office until long after the company reached California. Moreover, at the time the captain resigned, a “motion was made to proceed to the election of [a new] captain.”⁶⁰ The motion was defeated and the previously-elected lieutenant, as the contract stipulated, assumed the role of “acting as Capt[ain].”⁶¹ He became the leader of a divided group, the majority of which wanted no leader, would vote for no leader, and would not even allow an election to be held, yet would continue as members of the com-

55. Entry for June 28, 1849, Ashley, Records, *supra* note 37, at 310.

56. Entry for July 12, 1849, *id.* at 313.

57. Entry for July 28, 1849, *id.* at 315.

58. The pertinent rule was:

The Captain shall be elected by a vote of Majority of the associates, and elected by the full period of Two years. Provided that the Captain may be removed at any time by the vote of a majority of the associates and in case of his death or resignation a majority shall elect from the associates ones to fill the vacancy.

Article 2, Laws, *supra* note 43, at 371-72. It is interesting to note the original election was held in the law office of the local investor. California Association Documents, *supra* note 33, at 374-75.

59. Entry for July 13, 1849, Ashley, Records, *supra* note 37, at 313.

60. Entry for July 28, 1849, *id.* at 315.

61. *Id.*

pany, following their own notions of contractual obligations more than the man giving orders.

Another point is evident. Personal discontent and animosities, not the physical perils of the overland trail, were the causes of dissension within the California Association. In this instance the two most common factors causing break-ups of companies, travel speed and failure of draft animals, were not considerations. Certainly not the speed of travel. When they arrived at the Carson River on 28 July, they were well in the vanguard of the emigration. Other groups would be torn apart by fast movers dissatisfied by slower wagons, but the men from Monroe, Michigan, had little cause to complain about their pace of travel. Moreover, they had not suffered the chief consequence of speed: the destruction of animals. The California Association even crossed the Forty-Mile Desert, the vast graveyard that year of thousands of oxen and horses, without losing any stock. Rather it was the contract itself that seems to have been pulling them apart. "Several avow their intention not to work as a joint Co[mpany],"⁶² the purser noted as early as the fifth day of travel down the Humboldt. Some of the men, having second thoughts about their obligations, had become discontented over the prospect of putting their earnings in a common fund with one half earmarked for investors not sharing the hardships of the trail and who, for the next two years, would continue to have a claim on their labor, no matter how many times the original investment was repaid. If the legal lesson does not surprise, the legal irony should. The lesson taught is the extent to which law, far from courts, police, and lawyers could effect events. The irony is that the very contract that had held the company together was also pulling it apart.

Once the men found themselves in what they thought an unfair contractual position, other complaints surfaced. In the vicinity of Donner Lake there was an "[u]proar for our medicine liquor."⁶³ Someone either wanted a drink or believed another was pilfering from the only source of supply. A member named George Withington was reported to be the "leader of the malcontents."⁶⁴ "No hope of keeping to rights,"⁶⁵ the purser wrote. Even the acting captain, responsible for holding the company together, was "of opinion it must break up."⁶⁶ Two days later another member,

62. Entry for July 12, 1849, *id.* at 313.

63. Entry for Aug. 3, 1849, *id.* at 316.

64. *Id.*

65. *Id.*

66. *Id.*

Henry Bulkley, refused “to obey orders”⁶⁷ and a third, John Baptiste Suzore,⁶⁸ threatened that the acting captain “had better look out for himself.”⁶⁹ Next day, Bulkley again “refused to do any duty. He and [William] Wilson ride ahead with the loose animals and do nothing else.”⁷⁰ And so it went into the California settlements, a company as much divided as united, with a leader but few followers.

The predictable did not occur. The California Association did not dissolve upon reaching “Suttersville.” As they lay by “preparing for our departure for the mines” only two men left the company.⁷¹ One was Withington, the so-called “leader of the malcontents.” Both the unhappy Bulkley and the threatening Suzore remained. No explanation is given why Withington left, but the other members assigned “as a reason that he could make more money in the shingle business than in mining,”⁷² an excuse not incompatible with the original contract if he was simply refusing to dig gold and was not repudiating his financial obligations.⁷³ The others went up to the diggings at or near Mormons Island, where, after a few days, the troublesome Suzore left them. His departure was the first resignation for which is given an explanation that seems clearly to violate the agreement with the investors. He was “homesick and intends to return home so soon as he can earn money enough.”⁷⁴ The remaining members continued moving about, even joining with a company of Missourians to build a dam,⁷⁵ but without much success.⁷⁶ Within less than one month of arriving in the diggings, they were “debating the project of going to San Francisco.”⁷⁷ The next day the decision was made. They voted to go to San Francisco. On that date there were seven members remaining.⁷⁸

67. Entry for Aug. 5, 1849, *id.* at 317.

68. Also spelled “Suzor.”

69. Entry for Aug. 5, 1849, Ashley, Records, *supra* note 37, at 317.

70. Entry for Aug. 6, 1849, *id.* at 317.

71. Entry for Aug. 15, 1849, *id.* at 318.

72. *Id.*

73. Under the agreement, each member was liable to the investors for half his income from any occupation. The liability was not limited to mining income.

74. Entry for Aug. 19, 1849, Ashley, Records, *supra* note 37, at 319.

75. Entry for Sept. 2, 1849, *id.* at 319. Damming was a method of mining. A river's stream was held back or diverted, and the bed was washed much like a placer.

76. “For the past week [we] have worked hard and made for Cal[ifornia] hardly living wages. We must leave the dam—too much work, too much water, too little gold, & with [it] we have a fair prospect of getting sick.” Entry for Sept. 9, 1849, *id.* at 320.

77. Entry for Sept. 16, 1849, *id.*

78. Entry for Sept. 17, 1849, *id.*

In San Francisco two of the men got work at \$12.00 a day and two others, unable to find employment, returned to Sacramento.⁷⁹ Within a week the California Association had only three members.⁸⁰ There was still a good deal of money left in the treasury, and the remaining members decided to invest in real estate.⁸¹ Their plans to construct a building, however, were "frustrated" when one member died and another became too sick to work.⁸² "It is now one year since we left home," the purser noted two months later. "Our Co[mpany] is all broke up. Stevens and myself are at San Jose & I do not know where the rest are. None of them have reported for months past."⁸³

VI. THE RESTRAINING FORCE OF CONTRACT

It would be easy to miss the lesson of the California Association. It is not a tale of human weakness, but of legal strength. Few overland companies remained together for so long a period, especially during the year of 1849. Almost all disintegrated on the trail.⁸⁴ Many did not even exhibit the dissension and personal bitterness that divided the men from Monroe, Michigan. They just passed into "inocuous disuetude"⁸⁵ because they were too large,⁸⁶ because wagons traveled at different speeds,⁸⁷ or because "men do not think alike."⁸⁸ Even those organizations that, like the California Association, made it into California as a body broke up before starting to mine.⁸⁹ One Forty-Niner asserted that

79. Entries for Oct. 7 & 12, 1849, *id.* at 322.

80. Entry for Oct. 14, 1849, *id.*

81. Entry for Nov. 1, 1849, *id.*

82. Entry for Jan. 1, 1850, *id.*

83. Entry for Mar. 6, 1850, *id.* at 323.

84. See, e.g., Entry for June 29, 1849, A. DELANO, *LIFE ON THE PLAINS AND AMONG THE DIGGINGS* 117 (1854); S. ROYCE, *A FRONTIER LADY: RECOLLECTIONS OF THE GOLD RUSH AND EARLY CALIFORNIA* 29 (1932).

85. D. LEEPER, *THE ARGONAUTS OF FORTY-NINE: SOME RECOLLECTIONS OF THE PLAINS AND DIGGINGS* 19 (1894).

86. Entry for June 13, 1849, [B. Clark], *Diary of a Journal From Missouri to California in 1849*, 23 *MO. HIST. REV.* 3, 21 (1928).

87. M. MATTES, *supra* note 4, at 36.

88. Entry for Aug. 14, 1849, I. Hale, *Diary of a Trip to California in 1849*, 2 *Q. SOC'Y CAL. PIONEERS* 61, 104 (1925).

89. See, e.g., Letter from John M. Knight to Samuel M. Knight, Aug. 28, 1849, (ms. # C-B 547, Bancroft Library, Univ. of Cal., Berkeley); Entry for Oct. 18, 1849, A. Batchelder, *Journal of a Tour Across the Continent of N. America . . . in 1849*, at 153 (ms. # C-B 614, Bancroft Library, Univ. of Cal., Berkeley); Entry for Aug. 17, 1849, *THE DIARIES OF PETER DECKER: OVERLAND TO CALIFORNIA IN 1849 AND LIFE IN THE MINES, 1850-1851*, at 163 (H. Giffen ed. 1966). Some were so anxious to disband they did so even though they owned much concurrent property. See, e.g., J. HANNON, *THE BOSTON-NEWTON COMPANY*

of all the companies crossing the plains only two were together in the diggings.⁹⁰ Yet, despite the odds, despite the bickering and outright hostilities of its members, the California Association was an exception to the pattern. A year after leaving home it was still in existence. The question that must be asked is, why?

The answer should surprise us, for the reality was not the expected. If students of human behavior were asked what factor caused some companies to be successful and cross the overland trail in harmony, the most likely answer would be leadership. Strong leaders, they might say, held groups together, weak leaders were a cause of division. In truth, leadership played a minor role.⁹¹ The two most important factors perpetuating organizations were property and legal obligation.

Property by far was the controlling consideration, especially concurrent property.⁹² Creating dependent property relationships could determine the makeup of a traveling group,⁹³ or the pattern of companionship.⁹⁴ Concurrent property, however, could be a source of division as well as of unity; and it could be both at the same time. The Granite State Company is an example in point. It owned a good deal of concurrent property, much of which was useless and jeopardizing the expedition by wearing down the pack mules. Any suggestion they lighten loads, however, was resisted

VENTURE: FROM MASSACHUSETTS TO CALIFORNIA IN 1849, at 197 (1969) [hereinafter cited as HANNON, VENTURE].

90. Undated entry (Dec. 1849), J. Audubon, *Overland by the Mexican Border Route*, in *THE COURSE OF EMPIRE: FIRST HAND ACCOUNTS OF CALIFORNIA IN THE DAYS OF THE GOLD RUSH OF '49*, at 98, 129 (H. Bary comp. 1931). Even the joint-stock companies that arrived by sea usually dissolved on the beach, surrounded by a wealth of concurrent property. See, e.g., HOWE, ARGONAUTS, *supra* note 2, at 7; Entry for Sept. 14, 1849, Journal of William F. Reed (ms. # C-F 214, Bancroft Library, Univ. of Cal., Berkeley); E. CHRISTMAN, *ONE MAN'S GOLD: THE LETTERS & JOURNAL OF A FORTY-NINER* 112 (F. Christman ed. 1930).

91. For example, a twenty-four member company from Monroe, Michigan, that went overland in 1852 respected their captain and revered his wife. In later years they would remember both with warmth and loyalty. Yet they separated on the plains due to the condition of their property. See G. COLE, *IN THE EARLY DAYS ALONG THE OVERLAND TRAIL IN NEBRASKA TERRITORY, IN 1852* (1905).

92. *Dividing*, *supra* note 3, at 86-89.

93. One company split on the issue of travel on Sunday. Eleven wagons rolled out, seven remained. "Four of the wagon[s] that went were very unwilling but were obliged to as they had an interest in some of the other teams." H. EATON, *THE OVERLAND TRAIL TO CALIFORNIA IN 1852*, at 94 (1974) [hereinafter cited as EATON, OVERLAND].

94. "At night there were some of us dissatisfied with the balance of the company and had been for some time and we hauled off and would like to have taken our capt. with us but he was so linked in the teams of the others that we could not." Entry for June 7, 1852, J. Fox, Memorandum of a Trip from Dalton, Sauk County, Wisconsin to Oregon and California Apr. 12, 1852—Aug. 12, 1854, at 16 (typescript, Cal. State Library, Sacramento); EATON, OVERLAND, *supra* note 93, at 140.

by those who would not abandon a single article.⁹⁵ Add to that controversy the fact that the company was "too large to travel in one body" and it is evident why some members became alarmed.⁹⁶ Yet the organization did not divide and the explanation was because it was "so situated . . . it cannot well be dissolved."⁹⁷ The reason was the very same cause pulling it apart: concurrent property. The Granite State Company, one member believed,

would have been dissolved long before it reached California had it not been for the beef cattle which were the means of holding it together. They were their principal dependence for food, and it was not practical to divide them among small squads, as they would have been of little benefit to them.⁹⁸

Obligations created by promise had an effect upon human behavior on the overland trail somewhat similar to that of concurrent property. Although contract was less adhesive than property, as a force holding together companies it was more binding than were such more obvious factors as leadership, friendship, or kinship. Even where men wanted to break free of an agreement, they usually did not ignore it. They used the contract itself as their excuse. David Dewolf was such an individual. Mining at Weaverville and doing very well, he warned his wife back in Ohio to keep his success a secret. The company was "all broke up," Dewolf explained, and he did not believe "they" could call on any member for a cent because

Walker & Barlow tried to act the rascals with us & did to some extent for they did not furnish us with an outfit according to the Constitution & more than that they retained some of the Companys money & every one of them are determined not to pay Walker & Barlow one cent of their earnings. If I do well I shall pay old man Sprague Ben & Spice handsomely for the money they put in for me but nothing further for a man to run the risk of his life coming to California be deprived of home & have to work tremendous hard (for it takes hard work to get gold even in California) & then have to give a large portion of it to men who did not as they agreed to do is not justice.⁹⁹

95. Entry for June 18, 1849, K. WEBSTER, *THE GOLD SEEKERS OF '49: A PERSONAL NARRATIVE OF THE OVERLAND TRAIL AND ADVENTURES IN CALIFORNIA AND OREGON FROM 1849 TO 1854*, at 49 (1917).

96. Entry for July 24, 1849, *id.* at 63.

97. *Id.*

98. Entry for Oct. 19, 1849, *id.* at 96.

99. Letter from David Dewolf to Matilda Dewolf, Dec. 12, 1849, *Diary of the Overland*

The obvious should not be taken for granted. At first blush one may too easily assume moral obligation was the reason contract on the overland trail could be a force binding men to duties they did not wish to perform. Deeper investigation shows a better explanation was fear of legal obligation. One of the few companies of '49 besides the California Association to remain in existence for a time after reaching California was that of Governor Wilson Shannon.¹⁰⁰ The men with whom he had personal contracts, hoping to force a dissolution of his company, began "doing all they can to dissatisfy the Gov[ernor] so as to have it broken." Even when the "much depressed" Shannon admitted defeat, it took several days of offers and counter offers to reach a settlement. While wanting to mine for themselves rather than for Shannon, the men acknowledged the obligation owed him had to be honored in some other manner.¹⁰¹

The members of the California Association seem to have felt the same pressure that held together the men bound to Governor Shannon. There is no other explanation for their behavior or why they defied the nearly universal rule that even the best organized companies could not survive on the overland trail. Consciousness of liability shaped the pattern of their conduct. A two-thirds majority could expel a member "for misconduct,"¹⁰² yet none of the "malcontents" was expelled, not even the man who threatened the acting captain.¹⁰³ One consideration has to be that, although expulsion did not exact a forfeiture or penalty upon the delinquent,¹⁰⁴ it did mean each remaining member, as part of a diminished company, faced a proportionally greater individual responsibility for debts owed investors. Conversely, the malcontents surely seeking dissolution were reluctant to resign unilaterally. In other organizations without contractual obligations, emigrants

Trail and Letters of 1849-50 of Captain David Dewolf 56 (typescript, Newberry Library, Chicago).

100. See text to notes 26-28 *supra*.

101. The Gov. has made several propositions to the [company] to dissolve, none of which they would accept. He told them to day to propose themselves. They met & agreed to dissolve provided the Gove. would give them their dividend of the Gold, & give up their bonds. He with reluctance accepted. And he commenced settling. A few of the men however dissented & proposed paying him as soon as able \$200 each to pay for expenses bringing them out. [Three] gave their duebills for it. Some of the others promised it verbally.

Entries for Dec. 11 and 15, 1849, To CALIFORNIA, *supra* note 28, at 61.

102. Article Fifth, Articles, *supra* note 37, at 358 [hereinafter cited as Article Fifth].

103. See text to notes 64 and 69 *supra*.

104. The rules provided only that he lost all rights, privileges, and claim on the concurrent property. Article Fifth, *supra* note 102, at 358.

with less motivation than they did not sulk or make trouble, hoping their exasperated companions would take the initiative and disband the association. They demanded separation and forced the division of concurrent property.¹⁰⁵ Like Shannon's men, the members of the California Association suppressed urgings of individualism. Instead, they continued over the Sierras, not only reaching Sacramento as a unit but going into the diggings where they mined in three different locations, built a dam in partnership with another company, and had at least one "[d]iv[idend] of our gains."¹⁰⁶ When they voted to abandon mining, all members remaining in the California Association went to San Francisco, including two opposing the decision,¹⁰⁷ one of whom thought it "a most foolish movement."¹⁰⁸

The most convincing explanation for this unusual behavior is legal motivation. The contract, and the liability the contract implied, kept the California Association together. The same might be thought true for the large joint-stock companies from which members walked away with hardly a second glance. There was a difference, however, a difference the average emigrant apparently appreciated. Whether or not the joint-stock company as a corporation was liable to its investors, the individual members and associates generally were not. The penalty for abandoning a joint-stock enterprise was forfeiture of all claims against the company.¹⁰⁹ Whatever sense of moral obligation individual emigrants leaving such groups may have felt, they did not have to be concerned about legal obligation. Apparently members of the California Association did feel legally bound. They had signed personal contracts making themselves liable for more than mere forfeiture of rights. Liquidated damages had been specified "in addi-

105. *Dividing*, *supra* note 3, at 78-88.

106. Entry for Sept. 9, 1849, Ashley, *Records*, *supra* note 37, at 320.

107. Two members dissented. Entry for Sept. 17, 1849, *id.*

108. Entry for Oct. 7, 1849, *id.* at 322.

109. *See, e.g.*, Article IX, Rules and Regulations of the Mutual Protection Trading and Mining Company [of Boston, Massachusetts, 1849], printed flier pasted inside the cover of A. Stevens, *Journal of the Passage of the Mutual Protection Trading and Mining Company in the Barque Emma Isadore From Boston Towards California 1849* (ms. Cal. State Library, Sacramento). Even when the stockholders were investors, paying the way for others who substituted for them, the penalty upon a substitute for abandonment was almost always forfeiture. "Any member who is a substitute for a stockholder who shall leave the Company without their consent shall forfeit all interest in goods and chattels of every kind to said stockholder" Article XVI, By Laws of the Essex County and California Mining and Trading Company, in HOWE, *ARGONAUTS*, *supra* note 2, at 216. For a judicial interpretation of forfeiture, see *Von Schmidt v. Huntington*, 1 Cal. 55, 69-72 (1850).

tion to all legal obligations attaching," surely an ominous sounding clause to laymen aware that it had been drafted by lawyers intending to protect their own interests.¹¹⁰

VII. CONCLUSION

Common sense may advise us to resist the conclusion, but what else can be deduced from our evidence? In defiance of the extreme individualism that shaped the pattern of social and legal behavior on the overland trail and in the diggings, the California Association remained intact as an organization for about a year. Almost alone of the hundreds of companies formed during 1849, it both completed the trip and mined some gold. Plagued with greater dissension than many groups that broke up on the plains of Nebraska or on the beaches of California, the only characteristic distinguishing the California Association from other companies was the several contracts the members had made with their investors and among themselves. Legal obligation was the binding force holding them together.

It is worth a final minute to consider the behavior of Delos Ashley. He was the purser of the California Association; the man who had thought it "foolish" to go to San Francisco but had gone nonetheless. He had wanted to resign on the Humboldt River, but not being allowed to,¹¹¹ remained in office and continued to execute his official duties. Among these duties he was charged with the responsibility of keeping the company diary, a task he periodically performed even after he must have realized the organization could never function as originally planned. When the end came and Ashley faithfully recorded the last entry in the company's journal, he made it clear the sense of obligation keeping him in office had also tied him to the Association. There were only two members remaining.

I am going to the mines. I have nothing to do in San Jose. Stevens will remain here at work. . . . From this time Stevens and myself will do as the rest do, go on our own hook.

110. In case any associate shall abandon the Company at any time during the said period he shall forfeit all rights and privileges of an associate and all his acquisitions and all the sum of Five Hundred Dollars, and in addition to all legal obligations attaching to the above articles we do hereby each and all severally pledge to each other our Sacred Honor, that [we] will in all things faithfully carry on and abide by all the provisions and conventions in the above articles contained.

Article Ninth, Articles, *supra* note 37, at 360.

111. See note 59 *supra*.

All is lost an[d] the Company is dissolved and I shall no longer keep a record.¹¹²

Not every emigrant traversing the overland trail during 1849 got a glimpse of the elephant.¹¹³ The members of the California Association were part of a distinct minority. They not only saw the elephant; they were tied to her as well.

112. Entry for Apr. 16, 1850, Ashley, Records, *supra* note 37, at 323.

113. Travelers on the overland trail generally referred to themselves as "emigrants" and to their adventures as "seeing the elephant." To cross the continent was to "see the elephant." The trip itself was sometimes called the "elephant." TRAIL, *supra* note 2, at 187 n.1; HANNON, VENTURE, *supra* note 89, at 114 n.11; M. MATTES, *supra* note 4, at 61.