Dec 7, 1853

Olney, Justice. I concur with the Chief Justice that no part of Oregon is Indian country as defined by the act of 1834 and that none of the provisions of that act were put in force here by the law establishing the territorial government. It was a local statute and was no more extended here by the last clause of section 14 of our organic act than were the local laws of the District of Columbia. That clause extended over us the general laws of the United States, under which we possessed the right to import and sell to all classes of customers goods of every description spirits and wines included. I arrive at the same conclusion with the Chief Justice that up to June 5. 1850 there were no restrictions or regulations touching the sale of spirits or other commodities to Indians. On that day Congress enacted "That the law regulating trade and intercourse with the Indian tribes east of the Rocky Mountains, or such provisions of the same as may be applicable, be extended over the Indian tribes in the Territory of Oregon". The law referred to is the act of 1834. By omitting to declare which of its provisions, if any, are applicable, Congress has devolved this task upon the Courts. No rule being given by which to determine which are and which are not applicable, our first, and perhaps most difficult, duty is fix upon such a rule. The Chief Justice thinks this particular provision beneficial to the whites, and therefore applicable. He makes "the true interests of the white population," or in other words, his ideas of what is expedient for them, the test of applicability. In this I have not as yet been able to concur. Congress has declared that this Indian code, in its application to Oregon, shall adapt itself to the existing

State of things. If therefore any of its provisions con=
flict with existing laws or rights under those laws,
the former and not the latter must give way,
thus making the rights of the whites, under exist=
ing laws, the test of applicability; and as the right
of unrestrained trafic with the Indians is admitted
to have existed, the Indian Code must adjust
itself to, and not destroy, that right.

I certify that the foregoing is the substance of
my remarks on the occasion therein
referred to. Salem Dec. 7th 1853
Cyrus Olney Judge

Justice Clerk's
Opinion
Orans &c. pages 489-490