
REPORT
OF THE
ATTORNEY GENERAL
OF
THE STATE OF NEVADA,
FOR THE
YEARS 1875 AND 1876.

REPORT

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THE STATE OF NEVADA.

1870

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REPORT.

OFFICE OF THE ATTORNEY GENERAL, STATE OF NEVADA, }
CARSON CITY, January 1st, 1876. }

His Excellency,

L. R. BRADLEY,

Governor of the State of Nevada:

SIR: In accordance with the requirements of law, I have the honor herewith to submit to you this my annual report.

My official term began on the fourth day of January, 1875.

Since entering upon the discharge of my official duties I have, in behalf of the State, been engaged in the trial and superintendence, in the Supreme Court of the State, of the following cases:

THE STATE OF NEVADA *vs.* CENTRAL PACIFIC RAILROAD COMPANY No. 1, and SAME *vs.* SAME No. 2.—Both of these cases were on appeal from the District Court of the Second Judicial District, in and for the County of Washoe, and involved the legality and constitutionality of the taxes assessed to and levied upon the property of the defendant which was embraced within the limits of the said County of Washoe, at the time of the assessment by the Assessor of that county. Both cases were pending and set for hearing by the appellate tribunal of the State before I was installed in office, and were under the management of my predecessor and General Robert M. Clarke. The latter gentleman made the argument in them before the Supreme Court, at the January Term, 1875, and subsequently the judgment of the Court below was affirmed, in both cases, by the appellate Court, and shortly thereafter, Chief Justice Hawley in the meantime having denied to appellant a writ of error to the Supreme Court of the United States, the judgment obtained in the Court below was fully paid, and satisfaction duly entered of record by the District Attorney of Washoe County.

Thus ended, to the advantage of the State, a long and vexatious litigation, and thus has been set at rest the much mooted and embarrassing question as to whether the State possessed the constitutional power to levy taxes, and enforce their collection, upon the property of railroad corporations within its limits, organized and existing under and by virtue of the laws of the Congress of the United States.

Much credit is due to the energy and ability of my predecessor, Gen-

eral Buckner and his assistant, General Robert M. Clarke, who conducted the legal proceedings in the Courts in these cases, and to the valuable assistance rendered them by the State Controller, the Hon. W. W. Hobart, from the institution of the respective suits until their final and successful termination; and I may be permitted to add, that the fidelity and energy of the local authorities of Washoe County are not to be lightly estimated, when we consider the happy result of these two very important cases.

Also, at the before named January Term of the Supreme Court, were argued and submitted the following cases:

STATE vs. JOHN DONOVAN.—Appealed from the Eighth Judicial District Court, County of White Pine. Judgment affirmed.

STATE vs. JOHN B. SMITH.—Appealed from the Third Judicial District Court, Esmeralda County. Judgment affirmed.

STATE vs. JOHN MYATT.—Appealed from the Ninth Judicial District Court, Elko County. Judgment affirmed.

Ex Rel. FLACK vs. F. A. ROGERS.—This was an application of the relator, Flack, for a writ of mandamus to compel the respondent, Rogers, who is the County Auditor of Elko County, to draw his warrant on the County Treasurer of that county, for the payment of relator's salary, as District Judge of said Ninth Judicial District, at the rate of five thousand dollars per annum instead of four thousand. The writ was denied.

STATE vs. I. EN.—On a charge of grand larceny, appealed from the Sixth Judicial District Court, of Eureka County. Judgment affirmed.

STATE vs. PETER RIGG.—Appealed by defendant from Humboldt County Fourth Judicial District Court. Charge, burglary. Judgment affirmed.

JULY TERM, 1875.

STATE vs. J. W. ROVER.—This case was one wherein the defendant was convicted of the murder of one Sharp. The jury which tried the case found the defendant "guilty, as charged in the indictment;" the appeal was taken to the Supreme Court by the defendant on the following grounds:

That the verdict failed to designate the *degree* of murder of which defendant was found guilty.

Also, defendant claimed his discharge on the alleged ground that he had been once placed in jeopardy by the trial which he had had, and that he could not legally be again tried on the same charge. The case came up from Humboldt County, in the Fourth Judicial District. Judgment of the Court below reversed and cause remanded for a new trial.

Ex Parte THOS. RYAN.—This was an application for a writ of habeas corpus by the petitioner, who claimed that he was unlawfully confined in the State Prison of Nevada. His application denied.

STATE vs. CHAS. HUFF.—This is a case on appeal from Storey County. Defendant appealed from the judgment of the District Court of that county, wherein he had been convicted of the crime of murder in the second degree. The case has been argued and submitted, and is still undecided by the Court.

OCTOBER TERM, 1875.

STATE vs. SAM'L WATKINS.—This is a burglary case wherein the defendant appeals from the judgment obtained against him, in the Fourth

Judicial District Court in and for the County of Humboldt. Argued and submitted and remains undecided.

On the 29th day of the last December, an action of ejectment was commenced in the Circuit Court of the United States, of the Ninth Circuit, District of Nevada, by John H. Adams and William S. Mesick, against the State Board of State Prison Commissioners of the State of Nevada, and M. R. Elstner and P. C. Hyman, the Warden and ex-Warden of said Prison, having for its object the recovery of the possession of the land and premises whereon are situated the present State Prison of this State. This is an important suit, and involves the State's title to the land before named.

The foregoing comprises a list of all the cases wherein the State has been a party, or in which it has an interest, since I entered upon the discharge of my official duties as the Attorney General of the State.

Respectfully,

JOHN R. KITTRELL,
Attorney General.

REPORT.

OFFICE OF THE ATTORNEY GENERAL, STATE OF NEVADA, }
CARSON CITY, January 1st, 1877. }

His Excellency,

L. R. BRADLEY,

Governor of the State of Nevada:

In accordance with the requirements of law, I have the honor herewith to submit my second annual report.

Since the date of my last report, I have, on behalf of the State, been engaged in the Supreme Court in the trial and superintendence of the following cases:

STATE vs. HUFF.—Judgment reversed and new trial ordered. The new trial has been had in the District Court of Ormsby County, and the defendant acquitted.

STATE vs. WATKINS.—Judgment affirmed.

STATE vs. RAYMOND.—Judgment affirmed.

STATE vs. McCLEAR.—Judgment reversed, on the ground that the Jury Law of eighteen hundred and seventy-five was unconstitutional, and under this law the jury which tried the case was obtained. A new trial was granted to the defendant, and on his second trial he was convicted, and remanded to the State Prison.

STATE vs. DEARST.—Judgment affirmed.

STATE vs. PICKETT.—Judgment reversed on the same ground as McClear's case, and a new trial ordered.

Ex-parte **BIRINSKY, on a writ of certiorari.**—Judgment affirmed.

STATE vs. JAMES L. JOHNSON.—Judgment reversed on the ground of the unconstitutionality of the Jury Law of eighteen hundred and seventy-five; a new trial granted and had, and the defendant returned to State Prison.

STATE vs. JAMES JOHNSON.—Judgment reversed on the ground of the unconstitutionality of the Jury Law of eighteen hundred and seventy-five.

STATE vs. NELSON.—Judgment affirmed.

STATE vs. PETER LARKIN.—Judgment affirmed.

STATE vs. ROVER.—Judgment reversed on the ground of error in in-

struction to the jury. In this case, the Millain case was overruled so far as the instruction upon a reasonable doubt was concerned.

STATE vs. O'CONNOR.—Judgment affirmed.

STATE vs. AH HUNG.—Judgment affirmed.

Since my last annual report, assisted by General Robert M. Clarke, I have tried, in the United States Circuit Court, the case of Adams et als. vs. Bradley et als. This is an action of ejectment, involving the State's title to the land and premises of the Carson State Prison. It was a jury trial, which resulted in a disagreement of the jury; they having stood six for plaintiffs and six for defendants. Plaintiffs have submitted a motion for judgment on special findings of the jury, and that motion is set for argument on the third day of the present month.

In addition to this last named case, on behalf of the State, some time in September last, I instituted suit against Johnson & Blossom, of Douglas County, to recover the sum of one thousand six hundred and nineteen dollars and twenty-three cents, due and owing from them to the State for boots and shoes sold by the Warden of the State Prison. Subsequently to the commencement of this action, the defendants filed their petition in the Court of Bankruptcy, and all of their assets have been turned over to the assignee in bankruptcy.

The claim of the State being by law a preferred claim is deemed to be secure; the estate of the bankrupts being considered amply sufficient to pay it. The proper legal proofs of the demand have been made by myself, and I doubt not the money will be collected in the due course of settlement.

All of which is respectfully submitted.

JOHN R. KITTRELL,
Attorney General State of Nevada.