

REPORT

SECOND ANNUAL REPORT

OF THE

ATTORNEY GENERAL

FOR THE YEAR 1880.

REPORT.

OFFICE OF THE ATTORNEY-GENERAL, }
STATE OF NEVADA, }
CARSON CITY, January 1st, 1881. }

HIS EXCELLENCY,

JOHN H. KINKEAD,

GOVERNOR OF THE STATE OF NEVADA:

Sir: I have the honor to submit to Your Excellency this, my second, annual report of the business transacted through my office.

Since the date of my last report, the following cases have been passed upon by the Supreme Court:

State of Nevada vs. The Northern Belle Mill and Mining Company.

Judgment affirmed.

State of Nevada vs. The California Mining Company.

Case No. 1.

After the adjournment of the Legislature of 1879, I asked permission of the Supreme Court to reargue this case for the purpose of testing the Constitutionality of an Act of the Legislature of this State, entitled "An Act to discontinue legislation touching inequitable claims for taxes and penalties." Statute 1879, page 143. Approved March 17, 1879.

The Court held that it was not in the power of a District Attorney to compromise a tax suit, nor to receive less than the full amount due for taxes, penalties and costs; the Court also held the law to be in violation of Sections 20 and 21 of Article 4, of the Constitution of this State, and therefore inoperative and void.

State of Nevada vs. The California Mining Company.

Case No. 2.

State of Nevada vs. The Consolidated Virginia Mining Company.

Cases Nos. 1 and 2.

These three cases are in all material respects the same as the case of *The State vs. The California Mining Company, No. 1*, and upon the authority in that case the judgments of the Court below were reversed, with permission to the defendants to answer within a reasonable time.

State of Nevada vs. William Soule.

Judgment reversed and cause remanded for new trial.

State of Nevada vs. John Davis.

Indicted for jail-breaking. Judgment affirmed.

State of Nevada vs. M. Marks.

Convicted of an assault with intent to kill. Judgment affirmed.

In the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the District of Nevada. In Re, Rudolph on habeas corpus.

Judge Sawyer holds the law (commonly known as the "Drummer Act") to be Constitutional, and does not conflict with Subdivision 3 of Section 8, of the Constitution of the United States, and remanded the prisoner to the custody of the Sheriff of Storey county. No writ of error has, as yet, been applied for in this case, nor do I think the petitioner will apply for one, as the Supreme Court of the United States has affirmed similar judgments from other States, and admitting the power of the several States to impose a license tax on traveling merchants or solicitors.

State of Nevada vs. Robert Frazier.

Appealed from the Sixth Judicial District Court in and for the County of Lincoln, from an order granting a change of venire.

Appeal dismissed upon the ground that no appeal can be taken from an order granting or refusing to change the place of trial, it not being a final judgment.

State of Nevada vs. Ah Sam.

Appealed from the Fourth Judicial District Court in and for the County of Humboldt. Convicted of the crime of resorting to a place kept for the purpose of smoking opium. Judgment affirmed.

State of Nevada vs. James Foley and George Tracy.

Appealed from the First Judicial District Court, in and for the County of Storey; charge, burglary. The judgment in this case was reversed and cause sent back for new trial, on the ground that the principal and only eye-witness upon which the conviction was had was a person who had been tried, convicted and sentenced to the California State Prison on two charges of felonies, had served out his full term of imprisonment on both charges, was pardoned and restored to citizenship by the Governor of the State of California on one of the offenses, but has not been pardoned or restored to citizenship for the other.

Under Section 1,441, Compiled Laws of this State, a person against whom judgment has been rendered, upon a conviction for felony, unless pardoned, shall not be a witness.

State of Nevada vs. John T. Pritchard.

Appealed from the Second Judicial District Court, in and for the County of Ormsby; charge, murder. Convicted of murder in the first degree. Sentenced to be hanged. Appealed from an order overruling defendant's motion for a new trial.

Judgment reversed and cause remanded for a new trial, on the ground that the Court erred in refusing the defendant the right of a peremptory challenge to a juror after the panel was full but before the jurors were sworn to try the cause.

This cause is again on appeal to the Supreme Court. Pritchard has had his second trial in the same Court; found guilty of murder in the second degree; sentenced to confinement in the State Prison for life. Moved for a new trial, upon the ground that the Court erred in allowing a challenge to one of the jurors, taken by the State after the jurors had been sworn to try the cause.

Pritchard's attorney applied to the Judges of the Supreme Court for a writ of habeas corpus, claiming that the petitioner should be discharged from custody, upon the ground that the jury having been

sworn to try the case, the defendant was placed in jeopardy by the allowing of said challenge by the Court. The petition was dismissed, the Court holding that habeas corpus was not the proper remedy in cases of this kind, and his action would have to be prosecuted by appeal. This appeal will be argued at the January term of the Supreme Court, in 1881.

State of Nevada vs. Charles Wesley Hymer.

Appealed from the Fourth Judicial District Court, Humboldt County. Convicted of murder in the first degree; sentenced to be hanged. Appealed from an order overruling defendant's motion for a new trial. Judgment affirmed. Made application to the Board of Pardons for a commutation of sentence to imprisonment for life. Request denied, and Hymer was hanged on the 27th day of April, 1880.

Ex Parte George White and Joseph Perque.

On writ of habeas corpus. The petitioners were arrested, and pleaded guilty to a charge of misdemeanor on the 1st day of February, 1880. Waived the time prescribed by the statute for passing sentence. The Justice of the Peace thereupon passed sentence and rendered judgment, imposing a fine and imprisonment. The 1st day of February being Sunday, the judgment rendered by the Justice of the Peace was null and void.

State of Nevada vs. G. W. McLane, Jr., and Frank McIntire.

Appealed from the Sixth Judicial District Court, in and for the County of Lincoln. Convicted of murder in the first degree, and sentenced to be hanged.

Appealed from an order overruling a motion for new trial.

Judgment affirmed as to McIntire, and reversed as to McLane.

McIntire made application to the Board of Pardons for a commutation of sentence from death penalty to that of imprisonment in the State Prison, which application was granted, and the term of imprisonment fixed for life. McLane was put upon his second trial on the 25th day of November, A. D. 1880, in White Pine County, a change of venue having been granted.

State of Nevada vs. Jose Lopez.

Appealed from the Seventh Judicial District Court, Elko County. Convicted of murder in the first degree; sentenced to be hanged.

Appealed from an order overruling a motion for a new trial.

Judgment reversed and new trial granted, on the ground that the jury were permitted to view the premises where the homicide is alleged to have been committed, and while there received evidence from a person not under oath and had not been sworn as a witness, and the statements were made in the absence of the defendant.

State of Nevada vs. Ralph Johnson and J. B. Murphy.

Appealed from the Sixth Judicial District Court, Eureka County. Convicted of the crime of robbery. Sentenced to the State Prison for the term of two years each. Appealed from an order overruling a motion for a new trial. Submitted on briefs. Not yet decided.

State of Nevada vs. Ah Goun.

Appealed from the Sixth Judicial District Court, in and for Eureka County. Convicted of selling opium. Sentenced to one year in the State Prison. Appealed from the judgment of the Court. Appellant claims that the law under which he was convicted is unconstitutional, because it is in conflict with the fourteenth amendment of the Constitution of the United States.

State of Nevada vs. Antone Vasques.

Appealed from the Sixth Judicial District Court, in and for Eureka County. Charged with the crime of murder; convicted of murder in the second degree; sentenced to the State Prison for fifteen years. Appealed from an order overruling a motion for a new trial. Submitted on briefs.

State of Nevada vs. William Pierce.

Appealed from the Second Judicial District Court, in and for the County of Ormsby. Charged with the crime of murder; convicted of murder in the second degree; sentenced to the State Prison for twenty years. Appealed from an order overruling motion for a new trial. Judgment affirmed.

State of Nevada vs. Ou Gee How.

Appealed from the First Judicial District Court, Storey County. The defendant was indicted for a violation of the opium law. He demurred to the indictment; demurrer was overruled; he was con-

victed ; moved for an arrest of judgment ; motion overruled ; and he was sentenced to imprisonment in the State Prison. Appealed from the judgment of the Court. Judgment reversed, and cause remanded on the ground of defects in the indictment.

Ex Parte William Willoughby on Writ of Habeas Corpus.

The petitioner had been arrested and was committed to await the action of the Grand Jury, charged with "being an accessory before the fact" to the murder of P. L. Traver.

Petition dismissed and petitioner remanded to the custody of the Sheriff.

State of Nevada ex rel. James Farris vs. A. J. Hatch, Surveyor-General of the State of Nevada.

This was a petition for a writ of mandamus, to compel A. J. Hatch, as Register of the State Land Office, to issue a patent in the name of James Farris, for land purchased from this State by one Joseph T. Mier, James Farris being the grantee of the said Joseph T. Mier, claimed that the patent should issue to him and in his own name.

The petition was dismissed, the Court holding that the patent should issue in the name of the party making the application to purchase the land from the State.

Since the making of my last report, I have learned that no claim has ever been made by the State of Nevada, or any of its agents, for the five per cent. to which this State is entitled for lands remaining unsold within her territorial limits, under the Act of Congress of March 3d, 1857, and set apart as reservations for the various tribes of Indians. I have made out and sent to John Mullan and S. I. Wails a Power of Attorney to act for the State of Nevada in this matter, and to ask, demand and receive all sums of money that may be due this State from the Government of the United States. Under and by virtue of said Power of Attorney, the persons therein named did, on the 8th day of March, A. D. 1880, make a demand upon the Commissioner of the General Land Office, at Washington, D. C., to state an account between the United States and the State of Nevada, of the amount due this State for the lands so situate, but the Commissioner of the General Land Office declines to make any such statement, basing his refusal so to do upon a decision of R. W. Taylor, First Comptroller, rendered November 4th, 1875, in rejecting a similar claim from Nebraska.

Before any further action can be had, the attorneys for the State at Washington will be put to considerable trouble and expense, and

there is no appropriation from which they can be paid, and all they ask is a percentage upon whatever amount they may be able to collect for the State. I would therefore ask the Legislature, through your Excellency, that the Board of Examiners be authorized to allow John Mullan and S. I. Wails twenty-five per cent. on all amounts collected from the United States, due this State of Nevada, and in case there be no money collected, there will be nothing to pay by this State.

The amount due to this State from the General Government for lands set apart as Indian Reservations, in this State, is the sum of \$51,313 40. As yet I have been unable to ascertain the amount due this State from the Government on account of Indian War Claims.

The thanks of the people of this State are due to John Mullan, our land agent at Washington, D. C., for the very able manner in which he has guarded the interests of the State in the selection and protection of the school lands and the prompt manner in which he has always attended to any and all business intrusted to him by the State officials, whose duty it is to look after the land interests of this State.

I would recommend through you, to the Legislature, amendments to the following titles and sections of our laws:

Title eleven.

By repealing Section 1441 of our Compiled Laws and "permitting all persons of sound mind, and children over the age of ten years to be witnesses," and the jury are to be the exclusive judges of the credibility of the witness.

By amending Section 1442 of our Compiled Laws and "permitting the husband to be examined as a witness for or against his wife, with her consent, and the wife to be examined as a witness for or against her husband, with his consent."

By amending Section 1055, of Chapter LI, of the Compiled Laws, repealing all of said section after the word "the" in the third line from the top of said section, and amending the same by inserting the following: "Court may issue an open venire, directed to the Sheriff, to summon either immediately, or for a day fixed, from the citizens of the county, but not from the by-standers, a sufficient number of persons to complete the trial jury, or form a new trial jury, as the case may be. The persons thus summoned shall be as competent trial jurors in all respects as if drawn from the jury box, or summoned before the commencement of the term."

There are portions of our election laws that ought to be amended. For instance, I think the law should be so changed as to require a residence in the State for one year, and in the county six months, before a party would be entitled to vote: but before this could be done, it would be necessary to change Section 1, Article II, of our Constitution. By an amendment of this kind, making a residence of one year in the State and six months within the county before a party is entitled to vote, would prevent the disgraceful practice which has been adopted on more than one occasion in this State, of sending voters from one county into another for the purpose of securing the election of some particular candidate.

I would recommend the amending of Section 2534, of Chapter LXI, of our Compiled Laws, "making it the duty of the Board of County Commissioners, and their clerk, to make an abstract of the votes cast, and sending the same to the Secretary of State.

By imposing a penalty of a fine or imprisonment, or both, upon the County Commissioners for neglecting or refusing to make an order directing their clerk to make out and send to the Secretary of State the abstract of votes cast; and upon the clerk for failing or refusing to make out and send to the Secretary of State the abstract as required by said section.

And also make a similar amendment to Section 2538 of the same chapter.

Under our present law it is in the power of the Board of County Commissioners and its clerk, of one of our populous counties, to deprive a candidate of his certificate of election to which he was legally entitled, and no punishment can be inflicted upon the guilty parties for the great wrong they would perpetrate upon the people.

There are other matters requiring attention which it may be as well to call the attention of the Legislature through its members.

I have the honor to be, very respectfully,

M. A. MURPHY,

Attorney General.