
FIRST ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

FOR THE YEAR 1883.

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REPORT.

OFFICE OF THE ATTORNEY GENERAL,
STATE OF NEVADA. }
CARSON CITY, January 1st, 1884. }

To His Excellency,

JEWETT W. ADAMS,

Governor of the State of Nevada :

Sir : In pursuance of the Statutes, in such cases made and provided, I have the honor to submit for your consideration this, my first annual report, as Attorney General, for the year ending December 31st, 1883 :

I entered upon the discharge of my official duties on the 1st day of January, 1883. My immediate predecessor in office, during his term, suggested many amendments to the laws of the State, most of which were acted upon by the Legislature, and the laws amended in conformity with such suggestions, and, as I believe, much improved. There are some further amendments which I propose in my next report to suggest to your Excellency, and through you to the succeeding Legislature.

I have the honor to report to your Excellency that the Revenue laws of the State are being satisfactorily executed and complied with; that what is known as the Drummer Act, passed at the session of 1883, is working advantageously to the State, and whilst there may be, and doubtless are, some evasions of it, yet its provisions are generally being observed, and the State, under the operation thereof, has received between eight and nine thousand dollars since the law went into effect March 12, 1882.

I have been frequently called upon for official opinions, and have given such opinions either verbally or in writing. Those which have been written are preserved in this office for reference and future use.

In pursuance of an amendatory Act of the Legislature of 1883, passed February 19, 1883, directing the Board of Examiners "to

employ one or more attorneys at the City of Washington, District of Columbia, to prosecute the claims of the State of Nevada against the General Government for the five (5) per cent. due this State from the General Government on unsold lands within the Territorial limits, and set apart as Indian reservations; for the prosecution of the claims of the State against the General Government, for money expended in suppressing Indian outbreaks and wars occurring in this State, and for money expended by the State of Nevada as successor to the Territory of Nevada, in aid of the United States Government during and on account of the war of the rebellion, and allowing such attorney or attorneys, so employed, fifteen (15) per cent. of all moneys collected from said source, to be in full payment for attorneys' fees and expenses of litigation," I will state that on March 7, 1883, the Board of Examiners employed Captain John Mullan to attend to all matters covered by said law.

A full list of claims in favor of the State has heretofore been furnished Captain Mullan by the State Controller, and from recent correspondence between said Controller and Captain Mullan I am informed that said claims are being arranged and adjusted with the view of the proper presentation of the same to the United States authorities. Up to the present time, however, the State has not realized anything from either of the class of claims mentioned in said Act.

The law makes it incumbent upon me to attend to and prosecute all criminal cases on appeal to the Supreme Court, and to attend to all other cases in which the State is interested, and I herewith present a list of such cases attended to by me and the disposition and present status of the same.

State of Nevada, Plaintiff and Respondent, vs. O. Lengrie, Defendant and Appellant.

Appealed from the Third Judicial District Court, in and for Esmeralda county. The defendant was indicted for the crime of murder, and upon trial was convicted of the crime of manslaughter and sentenced to imprisonment for the term of eight years. Judgment affirmed.

John Robinson, Plaintiff and Respondent, vs. A. A. Longley, Defendant and Appellant.

Appealed from the Second Judicial District Court, in and for Washoe county. This case involved the question as to the legality of an assessment and collection of taxes in Washoe county from the plaintiff, by the defendant, the Assessor of said county, upon the personal property of plaintiff, then being temporarily in said county. The Court below held the assessment and collection illegal, and rendered judgment for the plaintiff, from which the defendant appealed.

The State being interested in a portion of said taxes collected, I felt it my duty to attend to the case in the Supreme Court. Upon hearing, the Supreme Court held that the taxes were illegally assessed and collected, and affirmed the judgment of the lower Court.

F. Livingston, Plaintiff, vs. The State of Nevada, Defendant.

This was an action instituted in the District Court of the Second Judicial District, in and for Ormsby county, by plaintiff against defendant to recover the sum of \$16,185 $\frac{17}{100}$, with interest on \$6,939 $\frac{55}{100}$ from the 1st day of February, 1879, and also for interest on the sum of \$9,245 $\frac{59}{100}$ from the 1st day of April, 1879, all at the rate of 10 per cent per annum, amounting in the aggregate to something over \$22,000, the same being alleged by plaintiff as the balance due him from the State for and on account of the sale by him to defendant in the year 1879 of the \$380,000 Territorial bonds, authorized to be purchased by the State under an Act of the Legislature of the State of Nevada, entitled "An Act to amend an Act to provide for the purchase for the benefit of the State School Fund of the bonds of this State known as the Territorial bonds," passed January 28, 1879.

This case being for the recovery of a large amount of money, and the questions involved therein being numerous and intricate, the Legislature at its session of 1883 passed an Act authorizing the Board of Examiners to employ assistant counsel on behalf of the State, and making an appropriation for the payment of such counsel. In pursuance thereof the Board of Examiners employed W. E. F. Deal, Esq., as assistant counsel for the defendant, and I hereby take pleasure in acknowledging the exceedingly efficient and valuable services of Mr. Deal in the trial of the case. The case was in due time tried, and on the 22nd day of May, A. D. 1883, judgment for the defendant was rendered. Motion for a new trial was made by plaintiff and the same overruled. Plaintiff files notice of appeal to the Supreme Court and an undertaking on appeal, at which point the case now rests. The case will doubtless be determined at the January term of the Supreme Court.

State of Nevada, Plaintiff and Respondent, vs. Helen T. Loveless, Defendant and Appellant.

Appealed from the Fourth Judicial District Court, in and for Humboldt county. The defendant was convicted of the crime of grand larceny, under the Statutes of 1881, for stealing a calf, and sentenced to imprisonment for the term of eighteen months. Defendant appeals, and claims that the Court below erred in instructing the jury. Upon hearing, the judgment was affirmed.

The State of Nevada ex rel. John R. Newnham, Relator, vs. The State Board of Education, Respondents.

This was an original proceeding in mandamus instituted in the Supreme Court to compel the respondents to adopt Appleton's series of readers for use in the public schools of Nevada, in accordance (as the relator claims) with the action of respondents with reference thereto had on the 1st day of December, 1879. Mandamus denied.

The State of Nevada ex rel. Daniel S. Truman, District Attorney of Nye county, Relator, vs. D. C. McKenney, District Judge of the Fifth Judicial District in and for Nye county, Respondent.

This was also an original proceeding in mandamus instituted in the Supreme Court to compel the respondent to proceed and try in the said State Court an Indian indicted for the murder of another Indian off of an Indian reservation and within the jurisdictional limits of Nye county. This case involved an exceedingly important question, viz: Has a State Court, in Nevada, jurisdiction to try an Indian for the murder of another Indian within her jurisdictional limits?

The Court, in a very elaborate and exhaustive decision, denied the application, and held that our Courts had no jurisdiction in the premises. The Court intimated, however, that if the State had, by special enactment, taken and assumed jurisdiction over the Indians for criminal offenses committed one upon another the decision might have been different. The advisability of recommending the enactment of such a law will be the subject of consideration in my next report.

State of Nevada ex rel. Fook Ling, Relator, vs. C. S. Preble, Surveyor General, etc., respondent.

Mandamus in the Supreme Court to compel the respondent, as Land Register, to accept the application of the relator, an alien resident Chinaman, to purchase from the State of Nevada public land under the Act of the Legislature of the State of Nevada, entitled "An Act to provide for the selection and sale of lands that have been or may hereafter be granted by the United States to the State of Nevada," approved March 5, 1873.

This case has been argued and submitted to the Court. No decision has yet been rendered.

In the matter of the Estate of Thomas S. Holden, Deceased.

The sum of \$362 $\frac{3}{10}$ has escheated from the above-entitled estate

to the State of Nevada, and the same has been paid into the State Treasury as required by law. The estate was administered upon and final settlement made in Washoe county.

Respectfully submitted,

W. H. DAVENPORT,

Attorney General.