

REPORT

SECOND ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

FOR THE YEAR 1884.

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 the discharge of my official duties as Attorney General, 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, viz:

F. Livingston et al. Appellants, vs. The State of Nevada, Respondent.

This case was argued and submitted at the April term of the Supreme Court, and the judgment of the lower Court affirmed. As was stated in my last report for the year 1883, this action was instituted in the District Court of the Second Judicial District, in and for Ormsby county, Nevada, to recover the sum of sixteen thousand one hundred and eighty-five and seventeen one-hundredths (\$16,185 $\frac{17}{100}$) dollars, with interest on six thousand nine hundred and thirty-nine and fifty-six one-hundredths (\$6,939 $\frac{56}{100}$) dollars from the 1st day of February, A. D. 1879, and also for interest on the sum of nine thousand two hundred and forty-five and fifty-nine one-hundredths (\$9,245 $\frac{59}{100}$) dollars from the 1st day of April, A. D. 1879, at the rate of ten per cent. per annum, amounting in the aggregate to something over twenty-two thousand (\$22,000) dollars, the same being claimed by plaintiffs as the balance due them from the State for and on account of the purchase by the State from the plaintiffs 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," approved January 28, 1879.

The Supreme Court held that the method of computation adopted by the Commissioners, under the Act aforesaid, by which they arrived at the amount the State should pay for said bonds, was the only correct method of computation. The difference in the modes of computation, as claimed by the parties, respectively, was something over \$22,000 in favor of the State.

The Supreme Court fully sustained the theory and action of our Commissioners, and thus was ended and put to rest a claim which had been menacing the finances of the State for some time.

The costs taxed against the plaintiffs, amounting to \$236⁹⁰/₁₀₀, have been collected and returned to the State Treasury.

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 State Land Register, to accept the application of the relator, an alien resident Chinaman, to purchase from the State of Nevada public lands 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.

Writ denied upon the ground that foreigners who are, or who may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property as native born citizens. (Article 1, Section 16, Constitution of Nevada.)

Since the date of my last report the following new cases have been entered in the Supreme Court, viz :

The State of Nevada, Respondent, vs. James Warren, Appellant.

Appealed from the Third Judicial District Court, in and for Esmeralda county. Charged with the crime of murder, convicted of murder in the second degree and sentenced to imprisonment in the State Prison for the term of forty years. Argued and submitted on briefs.

State of Nevada, Respondent, vs. Charley Dan, Appellant.

Appealed from the Second Judicial District Court, in and for

Ormsby county, from a judgment and conviction of burglary, and sentenced to imprisonment for the term of three (3) years. Argued and submitted. Judgment affirmed.

State of Nevada, Respondent, vs. Charles Angelo, Appellant.

Appealed from the Second Judicial District Court, in and for Ormsby county. Charged with the crime of making an overt attempt to escape from the State Prison. Convicted and sentenced to imprisonment for the term of four years. Judgment affirmed.

The State of Nevada, Respondent, vs. Lizzie Lindsay, Appellant.

Appealed from the Second Judicial District Court, in and for Ormsby county. Charged with the crime of murder, committed by means of poison, and convicted of murder in the second degree and sentenced to imprisonment in the State Prison for the term of twenty-five years. Argued and submitted on briefs.

State of Nevada, Respondent, vs. James E. Coombs, Appellant.

Appealed from the Seventh Judicial District Court, in and for Washoe county. Charged with murder, and convicted of murder in the second degree. Appeal dismissed for want of prosecution. Motion to reinstate appeal denied.

On the 15th of November, 1884, I instituted a suit in the Third Judicial District Court, in and for Lyon county, in the name of the members of the Board of State Prison Commissioners, as plaintiffs, against J. S. Craig, as defendant, to recover the sum of \$322 due the State Prison, and caused an attachment to be issued therein. The amount of claim and costs have been paid.

It is made the duty of the Attorney General, in his annual report, to make such suggestions as shall appear to him calculated to improve the laws of the State, and in the discharge of that duty I would suggest to your Excellency, and through you to the Legislature, the following amendments and corrections to the laws of the State :

I would suggest the revision and amendment, in several particulars, of the Act of the Legislature of 1883, entitled "an Act providing for the licensing of traveling merchants and soliciting agents, commonly known as drummers."

The Act in its present form has been the source of considerable revenue during the past two years, and its requirements have been

generally observed. My attention has been called to but few infractions of the law, and those were not of an intentional character, but arising from a difference of opinion between the Controller and myself on the one part, and the applicant for a license on the other, as to what was the correct interpretation of the law, and in some instances the Controller and myself have thought it advisable, in view of its conceded imperfections, to accede to the few apparent infractions, rather than test the constitutionality of the law, until the same could be amended and remodeled at the session of the coming Legislature.

That clause of the law which discriminates in favor of our own citizens as against the traveling merchant, etc., named in the Act is, in my opinion, unconstitutional, and should be stricken out so as not to endanger the strict enforcement of the law. The Act should be amended by prohibiting the sale of cigars and tobacco under and by virtue of either a grocer's or liquor license.

The agent of any wholesale or retail house or firm carrying on or dealing in more than one of the classes of business enumerated in the Act, should be required to procure a license for each class, and such traveling merchant or agent should also be required to take out a separate license for each house or firm represented by him.

The transaction of business under the Act, without first procuring the license therein provided for, should be expressly prohibited, and all contracts made by such traveling merchant, without having a license as therein provided, should be declared illegal and void. This would have a tendency to enforce a strict observance of the law on the part of the agent.

Other and further amendments will be suggested and embodied in a bill to be presented for the consideration of the Legislature, which will remedy the defects of the present one and be more effectual in securing revenue for the State.

My attention has been called to an Act of the Legislature, approved March 7, 1881 (Statutes of 1881, page 165), entitled "an Act to provide for the maintenance of the public schools in the State of Nevada." This Act was intended to amend Section 31 of an Act entitled "an Act to provide for the maintenance of public schools," approved March 20, 1865. (Compiled Laws, Sec. 3350.)

In the passage of this law the requirements of Article 4, Section 17, of the Constitution of this State, were not observed in that the section of the law, as amended, was not re-enacted and published at length as required by the Constitution. The Act affects important interests and its validity should not be left in doubt. I deem this matter of sufficient importance to suggest that Section 31 of the original Act be amended in the manner provided by the Constitution, so as to avoid, in the future, any question as to its validity or the enforcement of its provisions.

I would recommend that Section 424 of the Criminal Practice Act (Section 2049, Compiled Laws), be so amended that in case where a District Judge shall refuse to allow an exception in accordance with

the facts, any party aggrieved thereby may petition the Supreme Court for leave to prove the same in such mode and manner and according to such regulations as the Supreme Court may by rules impose.

The Legislature of 1883, in legislating upon the subject of compensation for county and township officers, to take effect on the 1st of January, 1885, enacted several laws, having for their object the abolishment of the salary system and the adoption of a mode of compensation embracing fees and salaries.

The subject matter has been left in such doubt and confusion that it cannot with certainty be determined in what manner the various officers in the different counties are to be compensated. In view of the doubts which necessarily arise by reason of this confusion, and the fact that suits have already been commenced, and others contemplated, to determine the construction and legality of the several Acts attempting to regulate the fees and salaries of such officers, I am prompted to suggest that such amendments be made and new laws enacted as will remove the doubts now existing, render harmonious the whole system of compensation of officers in township and county and make them of uniform operation, as near as may be, throughout the various counties.

The Act entitled "an Act concerning sureties on official bonds," approved January 31, 1883, is ambiguous and unintelligible by reason of its verbiage, faulty punctuation and ill-constructed paragraphs, and in view of the necessity of such a law, and the importance of having it in such form as not to be evaded, nor subject to misconstruction, I suggest that the law be remodeled and put in such shape as will preclude evasion.

"An Act to provide for the better observance of the first day of the week, commonly known as Sunday," which became a law on the 14th day of February, 1883, without the approval of your Excellency, and which was subsequently declared unconstitutional by the Hon. District Court, in and for Storey county, should be repealed.

There are other matters coming within the scope of a report from this office, the suggestion of which for the present will be deferred, inasmuch as the same can be brought to the attention of the Legislature through your Excellency, during its session, and I beg to assure you of my desire to co-operate with your Excellency and the Legislature in the furtherance of such legislation looking to the improvement of our laws and other matters relating thereto as may be presented.

Respectfully submitted,

W. H. DAVENPORT,

Attorney General.

