
FIRST ANNUAL REPORT
OF THE
ATTORNEY-GENERAL.

1885.

REPORT.

OFFICE OF THE ATTORNEY GENERAL,
CARSON CITY, NEVADA, January 1, 1886. }

His Excellency,

JEWETT W. ADAMS,

Governor of the State of Nevada :

Sir : I have the honor to submit, for your Excellency's consideration, the following report of the business of this office for the year A. D. 1885, the third year of my incumbency. On the first day of January, 1884, there were two cases pending in the Supreme Court on appeal and undecided, viz : 'The State of Nevada, respondent, vs. James Warren, appellant, and The State of Nevada, respondent, vs. Lizzie Lindsay, appellant, as shown by my last annual report. Both of these cases have been since decided. In the first, the judgment of the District Court was reversed, and the cause remanded for a new trial ; in the second, the judgment of the lower Court was affirmed. The decision of these cases cleared up and disposed of the criminal calendar of this office for the year 1884.

During the year 1885 the criminal cases appealed to the Supreme Court are the following :

The State of Nevada, Respondent, vs. George I. Slingerland, Appellant.

Appellant was convicted in the Sixth Judicial District Court, in and for Eureka county, of the crime of grand larceny. The case was argued orally, and the judgment of imprisonment for one year was affirmed.

State of Nevada, Respondent, vs. Clarence Gray, Appellant.

Appellant was convicted in the Fourth Judicial District, in and for Humboldt county, of the crime of murder in the first degree, and

sentenced to death. Pending the appeal, stay of execution was granted. The case was argued orally, the judgment affirmed and the District Court directed to fix a day for carrying the sentence into execution.

State of Nevada, Respondent, vs. John Maynard, Appellant.

Appellant was convicted in the Sixth Judicial District Court, in and for Eureka county, of the crime of grand larceny, and sentenced to the State Prison for the term of two years. The case was submitted by counsel on briefs, and is yet undecided.

State of Nevada, Respondent, vs. George W. Ward, Appellant.

Appellant was convicted in the Fourth Judicial District Court, in and for Elko county, of the crime of grand larceny, and sentenced to the State Prison for the term of three years. Case submitted on briefs, and still pending.

State of Nevada, Respondent, vs. Antono Marshal, Appellant.

Appellant was convicted in the Third Judicial District Court, in and for Esmeralda county, of the crime of manslaughter, and sentenced to the State Prison for the term of ten years. The case was submitted on briefs, and is still pending.

The civil cases determined by that tribunal in which the State was a party are three in number, viz : First :

The State of Nevada ex rel. W. H. Davenport, Attorney General, Plaintiff, vs. Charles E. Laughton, Defendant.

This was an original proceeding in the nature of a *quo warranto*, to test the right of the Lieutenant Governor of this State to act as ex-officio State Librarian, he having permitted the official bond originally filed by him as such Librarian to become defective and void, and having failed to file a new bond, as required by law. The case was argued orally, and briefs were submitted by counsel to the Court. In an elaborate and carefully considered opinion, the Court held that the maintenance of a good and sufficient bond, as required by law, was an indispensable condition to the exercise, by the Lieutenant Governor, of the duties of said office; that he having failed to maintain such a bond, the office was *ipso facto* vacant, and judgment of ouster was accordingly rendered. Second :

The State of Nevada ex rel. W. H. Davenport, Attorney General, Plaintiff, vs. George Horton, Horace A. Bowley and A. D. Smith, Defendants.

This was also a *quo warranto* proceeding, instituted in the Supreme Court, to oust the defendants from the offices of School Trustees of Empire School District of Ormsby county, upon the specific ground that they had never taken the oath of office as required by law. It appeared by the pleadings and evidence that the defendants had taken what purported to be their official oaths, before the judges of the election for School Trustees, held in May, 1885, in and for said Empire School District, and before no other officer. The oath thus taken was held to be utterly invalid, and judgment of ouster was rendered against each and all of the defendants. Third:

The State of Nevada, ex. rel., W. H. Davenport, Attorney General, Plaintiff, vs. M. Harris, J. Jenes and F. Koltz, Defendants.

This was a proceeding of the same nature, brought to oust the defendants from the offices of School Trustees of Genoa School District No. 2, of Douglas county, Nevada. The defendants were elected in the month of May, 1885, under the provisions of the Act supplemental to the general school law of this State, approved March 12, 1885, and claimed the right to hold said offices and exercise the functions thereof under and by virtue of such election. The question involved was the constitutionality of the Act under which they were elected, the position of the State being that the Act was unconstitutional, in so far as it provided for the election of Trustees for the term of *five* years, which provision could not be segregated from the others without leaving the Act faulty, imperfect and incapable of execution. This view was sustained by the Supreme Court, and judgment of ouster was rendered. The effect of these two decisions upon the school law was to leave the offices of School Trustees in the hands of those persons who were elected at the general election held November 4, 1884, and they furthermore leave in full force and effect section 22 of the general school law as amended March 7, statutes of 1873, p. 156, providing for the election of School Trustees.

In addition to the foregoing cases in the Supreme Court, I have also to report the civil case of S. P. Davis vs. the State of Nevada, in which the plaintiff sought to recover the sum of \$100, a balance alleged to be due from the State for printing. Under the provisions of the Act of 1885, entitled "An Act Relative to the Proving of Indian War Claims," the plaintiff published the notice to claimants as in said Act provided. For this service he charged the State \$126, of which the Board of Examiners allowed \$110. The State Controller refused to draw his warrant for any sum in excess of twenty-six dollars, leaving a balance of \$100, according to plaintiff's claim, or eighty-four dollars under the allowance of the Board of Examiners, which the plaintiff was ready to accept.

In the Justice's Court the plaintiff recorded a judgment for the sum of eighty-four dollars with costs, and upon appeal taken by the State to the Second Judicial District Court in and for Ormsby county, the judgment was affirmed, which disposed of the case. The judgment and costs have been fully paid and satisfied. I deem it proper to say that the plaintiff's demand, except as to the sum of twenty-six dollars, was resisted by the State against my better judgment, and that at the trial the State was represented by special counsel. I at all times believed that the plaintiff had a valid claim for \$110, before the allowance of the twenty-six dollars by the Controller. This allowance was based upon the idea that such printing could only be paid for at the rate of one insertion per week. But the special statute under which the printing was done, is mandatory in its requirement that the notice shall be published in *each issue of a daily newspaper*. I therefore regarded it as an exception to the general rule relating to public printing, and deemed the plaintiff legally entitled to pay for each insertion to the number of twenty-six—that being the number of issues during the thirty days that the notice was directed to be published. In this view the Courts concurred as shown by the result. This statement is not intended as a reflection upon any other person or official. I am entirely satisfied that our efficient State Controller was actuated by no other motive than the praiseworthy one of protecting the State against what he deemed to be an unjust and illegal demand. But I feel it necessary to explain what to some may appear to be an inconsistency in my own official conduct in point, as a member of the Board of Examiners, allowing the claim to the extent above mentioned, and afterwards resisting payment in the Courts.

I have also to report that I have collected and paid to the Warden of the State Prison, the sum of forty-six dollars and ninety-six cents balance due from Casper Fricke to the State Prison, for merchandise in 1881 and 1882.

During the year I have been the recipient of numerous inquiries from public officials both State and county, relative to legal questions of public and general interest, to all of which I have given due consideration, and endeavored to make suitable replies. Whenever practicable, my opinions have been given in writing, copies of which have generally been preserved and placed on file in my office for future examination and reference.

For obvious reasons I defer all suggestions looking to the amendment of the laws as they now stand, until my next annual report.

All of which is very respectfully submitted.

W. H. DAVENPORT,

Attorney General.