SECOND ANNUAL REPORT

OF THE

ATTORNEY-GENERAL.

1886.

REPORT.

OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 1, 1887.

His Excellency,

JEWETT W. ADAMS,

Governor of the State of Nevada.

SIR: I have the honor to submit to Your Excellency this, my annual report of the conduct of the affairs of this office for the year A. D. 1886.

At the date of my last report there were three criminal cases on appeal to the Supreme Court, which had been argued or submitted on briefs, and which were still pending in that tribunal. These cases were the following, viz: The State of Nevada vs. John Maynard, convicted of grand larceny; the State of Nevada vs. George W. Ward, also convicted of grand larceny; and the State of Nevada vs. Antono Marshal, convicted of manslaughter. In all of these cases decisions have since been rendered. The judgment in the first named having been reversed, while those in the two latter were affirmed.

During the year 1886 but three criminal cases have been appealed to the Supreme Court, namely:

The State of Nevada, Respondent, vs. Emmitt Jones and W. J. Bryan, Appellants.

These appellants were jointly indicted for the crime of burglary, and tried and convicted in the Seventh Judicial District Court in and for Washoe county. In the Supreme Court the judgment was affirmed as to Bryan, and reversed as to Jones, upon the ground that the evidence was insufficient to sustain his conviction.

The State of Nevada, Respondent, vs. John Cardelli, Appellant.

This case was appealed from the First Judicial District Court, in

and for Storey county, in which Court the defendant was indicted for the crime of grand larceny. Tried, convicted and sentenced to the State Prison for the term of four years.

This case was argued orally and by briefs, and the judgment of the District Court affirmed.

The State of Nevada, Respondent, vs. Edward Crutchly, Appellant.

Appellant was convicted in the Sixth Judicial District Court, in and for White Pine county, of the crime of murder in the first degree and sentenced to death.

The case was submitted on briefs and the judgment affirmed.

In addition to the foregoing, four civil proceedings, in which the State was directly or indirectly interested, have been tried and determined in the Supreme Court. First:

The State of Nevada upon the relation of J. F. Hallock, State Controller, vs. D. B. Boyd, Treasurer of Washoe County.

This was a mandamus proceeding instituted by the State Controller to compel the respondent to pay to the State Treasurer the sum of $171 80, being ten per cent. of the State's proportion of poll taxes collected by respondent as Treasurer of Washoe county.

It was claimed on behalf of respondent that the sum in controversy was to be reserved by him and paid into the County Treasury under the provisions of the Act of March 5, 1885 (statutes 1885, p. 62.) Upon the other hand the relater (the Controller) contended that the Act in question only applied to moneys collected by the *Assessor*. With this view the Supreme Court agreed. A peremptory writ of mandate was issued requiring respondent to forthwith pay said sum into the State Treasury. The money has been paid in conformity with the requirement of the writ and the matter fully settled. The statute having now been interpreted by our highest judicial authority it is not probable that any further litigation will arise thereunder. Second:

E. D. Turner, Sheriff of Lincoln county, Appellant, vs. G. H. Fish, Auditor of Lincoln county, Respondent.

In this case appellant, as Sheriff of Lincoln county, applied to the District Court of the Sixth Judicial District, in and for said county, for a peremptory writ of mandate requiring respondent, as Auditor, to draw his warrant in favor of appellant for months salary. The District Court made an order denying the mandamus and an appeal was taken from the order.

Appellant claimed that the Act of March 1, 1883, repealing the

salary law of 1879, was unconstitutional by reason of the fact that Section 2 made an exception of Ormsby county and left the salary law in full force therein, thus depriving the law of the uniformity prescribed by the Constitution. Hence it was urged that the salary law was still in effect, and that appellant was entitled to the salary therein provided. The Supreme Court held that the unconstitutionality of the second section did not affect the first, which was the repealing section; that the salary law was absolutely repealed, and that the District Court properly refused the mandamus. Third:

The State of Nevada, upon the relation of Charles E. Laughton, vs. J. F. Hallock, State Controller.

The relator applied to the Supreme Court for a writ of mandamus to compel the respondent, as State Controller, to issue his warrant for the salary of relator as Lieutenant-Governor for eight months, aggregating $1,800. Respondent demurred to the petition, upon the grounds that the salary allowed by law to the Lieutenant-Governor was for his services in various capacities, including that of ex-officio State Librarian, and that the petition failed to show that the relator had held that office and performed its duties during the time for which the salary was claimed. The demurrer was sustained, and the petitioner declining to amend, the writ was denied. From this decision it follows that to entitle the Lieutenant-Governor to the salary provided by the Act of February 17, 1883, he must also be the legal incumbent of both the ex-officio offices therein named. Lastly:

The State of Nevada ex rel. O. H. Gallup vs. J. F. Hallock, State Controller.

Mr. Gallup, the relator, having been appointed to the office of State Librarian, made vacant by the ouster of the Lieutenant-Governor, presented his claim for services, at the rate of $150 per month, to the State Board of Examiners. The Board fixed the salary of said Librarian at $150 per month, and allowed the claim for fifteen months' services, aggregating $2,250. The State Controller refusing to draw his warrant for the amount allowed by the Board, the relator petitioned the Supreme Court for a writ of mandate, compelling him to draw it. The case was finally submitted to that Court on the 27th day of December, 1886, and upon the 31st day of the same month the Court rendered its decision denying the writ. The decision of the Court was based mainly upon the ground that the appropriation out of which the claim was allowed was intended for the payment of the Lieutenant-Governor in various ex officio capacities, and being in *solido*, with no provision for separation, there was no appropriation for the payment of the State Librarian as a separate and distinct officer. Mr. Justice Hawley, in a separate concurring opinion, holds that the State Librarian, being a public officer, his salary does not come within the purview of Article V., Section

21 of the Constitution, and that the Board of Examiners had no power to act upon it, and hence that the allowance was void.

In view of the complications which have arisen in connection with the office of Lieutenant-Governor, I can do no less than suggest the propriety of a complete remodeling of the law relative to the duties and compensation of that officer. The attaching of ex-officio duties to this office has led to much confusion and uncertainty, not only in the matter of his compensation, but also in regard to his status as an officer. It seems to me that the Lieutenant-Governor, *as such*, should receive a salary commensurate with the dignity and importance of his office. Of course the Legislature can devolve as many duties upon him as may be thought proper, but they should be his duties as Lieutenant-Governor, and not ex-officio. I also wish to suggest, that the Supreme Court, having decided that General Statutes, Sections 1351 to 1360, both inclusive, relative to public schools, are unconstitutional, the Legislature, at its coming session, should so amend the school law as to make it conform to such decision.

As in former years I have written numerous official letters, embodying my views upon various questions of law of greater or less importance in the administration of our State and county affairs, and have endeavored to neglect nothing that came within the legitimate scope of my official duties, which end with this report.

Although during my term of office I have suffered greatly from physical indisposition, I resign the office to my successor with the satisfaction of believing that the interests of the State have not materially suffered through any acts or omissions of mine. All of which is respectfully submitted.

W. H. DAVENPORT,

Attorney-General.