ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

FOR THE YEAR 1888.

REPORT.

Office of the Attorney-General,
State of Nevada, Carson City, January 1, 1889.

To His Excellency,

C. C. Stevenson,

Governor of the State of Nevada.

Sir: In pursuance of the requirements of Section 1782, General Laws of Nevada, I have the honor to submit for your consideration my annual report, as Attorney-General, for the year ending December 31, 1888.

Since my last report the following business has been argued, submitted and disposed of in the Supreme Court of this State, there being but one civil case now pending in that Court in which the State is interested, viz.: Stevenson et al. vs. Reno Reduction, etc., Works, spoken of in my last report.

A brief history of cases is here appended:

State of Nevada, Respondent (Attorney-General and J. D. Torreyson, District Attorney), vs. George C. Campbell, Appellant (H. F. Bartine, T. D. Edwards and Jas. R. Judge).

This was an appeal taken by defendant Campbell from the verdict of a jury convicting him of the crime of rape, under which verdict and judgment he had been sentenced to ten years' imprisonment by Hon. R. Rising, District Judge. The case was argued orally and submitted on briefs. The case was reversed by decision rendered.

State of Nevada, ex rel. J. F. Alexander (Attorney-General), vs. F. J. McCullough, Respondent (T. D. Edwards, Esq.)

This was a case in the nature of *quo warranto*, brought against the respondent, as Warden, to test the validity of the Act of February 8, 1877, Statutes 1877, p. 66, providing for election of Warden by the Legislature. I brought the suit by instruction of the Board of Prison Commissioners. The Board so instructed me, in order to determine the extent of its power and authority in the control and management of the State Prison, two committees from two separate Legislatures having recommended that the entire control of said institution was, and ought to be, in the said Board of Prison Commissioners. (See Senate Journal, 1885, p. 85, for Report of Committee on State Prison, signed P. N. Marker, Chairman. See, also,

Appendix to Journals of Senate and Assembly, Thirteenth Session, p. —, for report of Joint Committee on Assembly Bill, No. 95, signed R. S. Clapp, Chairman.) The case was argued and submitted April 3, 1888, and dismissed on April 7, following.

The Board of Commissioners then by formal order removed said McCullough as such Warden, and the case to test their action in that behalf was again brought and re-argued, and submitted April 30, 1888. It was thereafter and on July 3, 1888, dismissed, the Court refusing to pass upon the case for reasons given in its written opinion. I will be ready at any time to furnish more particular information concerning the cause to any one desiring it.

In re Miles Finlen, Habeas Corpus, W. E. F. Deal for Applicant; Attorney-General and F. M. Huffaker.

The applicant, Finlen, was charged with the crime of murder. This was an application "to be let to bail." The Hon. Chief Justice, O. R. Leonard, to whom the petition was addressed, decided to hear testimony, but in his written opinion subsequently rendered, denied the application.

The State of Nevada, Appellant (Attorney-General and John Reynolds, District Attorney,) vs. John T. Lamb, Respondent (P. M. Bowler and W. M. Granger).

In this case the State, by the District Attorney of Nye county, appealed from an order sustaining defendant's demurrer to the indictment. The case was sent to this Court without any proper record, as required, and was for that reason dismissed.

The State of Nevada ex rel. J. F. Hallock, Relator (Attorney-General) vs. H Donnelly, Treasurer, etc., (R. M. Beatty, District Attorney).

This was an application for writ of mandate to compel Respondent to "pay in" certain percentages of poll tax collections withheld by him. The Controller and myself believed that the Constitution secured one-half of all such money to the State, and that the Legislature had no power to take any of that one-half and devote it to county purposes. The writ was refused November, 1888.

The State of Nevada, Respondent (Attorney-General and W. D. Jones, District Attorney) vs. Joseph Espinozei, Appelant (D. S. Truman and D. C. McKinney).

The defendant was convicted of the crime of larceny, and sentenced to ten years' imprisonment therefor. He perfected his appeal which was argued and submitted on briefs. The judgment was affirmed.

The State of Nevada, Appellant, vs. J. R. Withington, Respondent. This case was also sent to the Supreme Court without any sufficient record for consideration and was dismissed at my motion, the District-Attorney agreeing thereto.

The State of Nevada ex rel. George B. Whitney, Relator (T. Coffin) vs. A. M. Finley, Registry Agent, Respondent (J. D. Torreyson and T. H. Wells).

This was a case brought to test the validity of the law of 1887, pages 106-7-8, better known as the "Mormon Oath" law. Although present, I took no part therein, being convinced that the law was

CORRECTION

THE DOCUMENT IMMEDIATELY PRECEEDING
THIS CORRECTION TARGET HAS BEEN
REPHOTOGRAPHED TO ASSURE LEGIBILITY.
THE REPHOTOGRAPHED DOCUMENT APPEARS
IMMEDIATELY FOLLOWING THIS TARGET.

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This was a case brought to test the validity of the law of 1887, pages 106-7-8, better known as the "Mormon Oath" law. Although present, I took no part therein, being convinced that the law was

unsound. The Court decided from the Bench that the law was unconstitutional and void.

The State of Nevada ex rel. C. H. Galusha, Relator (Attorney-General) vs. Henry C. Davis, Respondent (T. H. Wells).

This case was by *quo warranto*, and was brought after conferring with the Governor in writing. The importance of determining in advance the time when the Legislature of 1889 ought to meet made the suit necessary. Amendments Nos. 1 and 8 stood on substantially the same ground, and their validity could only be tested in advance by attack upon the Lieutenant-Governor as *ex-officio* State Librarian. The case was argued orally and submitted, and authorities filed. The Court gave judgment for defendant, thus declaring the proposed amendments, and each of them, invalid, His Honor Justice Hawley dissenting. I call especial attention of those whom it may concern, to the written opinions of the Justices, in connection with Statutes of 1887, pages 122–135, and will offer further information upon proper request. The following communication is self-explanatory:

TAXATION OF GRANTED LANDS.

CARSON CITY, NEVADA, August 29, 1887.

C. H. STODDARD, ESQ., ASSESSOR WASHOE COUNTY—*Sir:* In reply to your request for a construction of sections one, two, three and four of chapter 764, Statutes of the United States, approved July 10, 1886, I have to say:

That the Supreme Court of the United States, in Northern Pacific Railroad Company versus Traill County, 115 United States Reports, page 600, has discussed the body of that statute

They say: First—That under the granting acts of 1862, 1864 and 1874, made by Congress in favor of various corporations, the lands given were not assessable for State, county or municipal purposes, because Congress had a right to, and did attach to said Acts a condition for the pre-payment of surveying costs, before such title as would be assessable had vested or could vest in any of said companies.

The decision by Justice Miller reviews all the cases decided by that Court. He also restates the law to be, that Congress has full right in a proper case to amend, add to, or repeal, any conditions attaching at the time of grant.

The Court says in conclusion: "We are aware of the use being made of this principle by the companies who, having earned the lands, neglect to pay these costs in order to prevent taxation. The remedy lies with Congress, and is of easy application. If that body will take steps to enforce its lien for these costs of surveys, by sale of the lands or by forfeiture of title, the Treasury of the United States would soon be reimbursed for its expense in making the surveys, and the States and Territories, in which the lands lay, be remitted to their appropriate rights of taxation. The Courts do no more than declare the law as it exists."

In view of this decision, and the fact that it was filed December

7, 1885, I call your attention to the provisions of the Act of July, 1886, mentioned, and with the query whether this Act became law in consequence and in the light of Justice Miller's decision. (U. S. Statutes, 1885–6, page 143).

Section 1 removes the exemption from taxation by reason of the lien above named. This provision does not apply to unsurveyed lands; any purchaser of such lands at tax-sale, will take the same subject to lien for these costs in favor of the Government.

Section 2 provides for summary collection of such costs, upon the part of the Government, from the corporation.

Section 3 declares the right of forfeiture to still remain in the Government.

Section 4 provides that such costs become due upon demand by the Secretary of the Interior, and also declares the right of Congress to further alter, amend or repeal this or previous Acts upon the subject.

Bearing in mind, if you please, that this in no wise refers to lands not surveyed, I believe that the decision and statute quoted are a portion of each other—one made in pursuance of the other—and as such, a full answer to the question you ask, and in a clearer form than I command. Yours respectfully,

JOHN F. ALEXANDER,
Attorney-General.

A copy of the above letter was mailed by me to each Assessor in this State. So far as heard from I am not informed that the instruction given has been followed, except in two counties of the State, viz: Washoe county and Lander county. In Washoe county the railroad company refused to pay on lands not patented to the company, which resulted in the tax suit of State of Nevada, Plaintiff, vs. Central Pacific Railroad Company, a corporation, Defendant.

This case involved the taxes on a large body of land granted, but not patented as yet, to said company. The defendant appeared by its attorneys, Joseph D. Redding, Esq., of San Francisco, and Messrs. Baker and Wines, of Eureka, and I. B. Marshall, Esq., of Reno. I co-operated with the District Attorney of Washoe county at his request. I interposed a demurrer to the answer of defendants, which demurrer was sustained, after argument, by Hon. R. R. Bigelow, District Judge, upon the main point involved. His Honor's decision, which I forwarded to the proper officer, in each county, says substantially, that all surveyed lands, which are known to be non-mineral, and not the subject of private ownership, and which have been granted, are taxable. I am informed, through the District Attorney of Washoe county, that the defendant has, through extension of the time allowed, taken an appeal to the Supreme Court, where the question will be again passed upon, if in proper form.

The same company has also refused to pay the same tax for the current year, and the District Attorney-elect has already prepared papers to bring suit for the same. I am in communication with

said officer in regard to said suit and am asked to assist in the trial thereof.

I have also to inform your Excellency that the same course has been pursued by said company in Lander county. Suit has been, or is about to be, commenced in said county, and the Commissioners thereof have employed extra counsel therein. I respectfully ask that you direct me as to any part you may deem it best for me to bear in behalf of the State in said litigation. I also invite your attention and consideration of the merits involved in my letter of instruction above, and the action so far had, and taken thereon.

The following letter, which was addressed to the County Assessors of this State in response to written inquiry, will also explain both question and answer:

ASSESSMENT OF NON-PATENTED STATE LANDS.

CARSON CITY, NEVADA, March 19, 1888.

County Assessor, ... County:

The following question has been sent to this office for answer: "Has the State and county a right to tax lands that have been applied for or contracted, for which no patent has been issued?"

Reply—Yes. All property of every kind, nature and description, both real and personal, with certain specified exceptions, is to be taxed. Even as to public United States lands, the occupant's possession and improvements are to be valued and taxed as other property. (People vs. Shearer, 30 Cal. 661; People vs. Black Diamond Coal Mining Company, 37 Cal. 54).

"If a party is entitled to enter Government land, the Receiver gives him a certificate of entry, setting out the facts, by means of which, in due time, he receives a patent. 'The contract of purchase is complete when the certificate of entry is executed and delivered, and the land ceases to be a part of the public domain. To deny right of taxation until patent issued would be a hardship on the State.' (United States Supreme Court in Witherspoon vs. Duncan, 4 Wall. 218. This case is in accord with Carroll vs. Safford, 3 How. United States 441; Union Pacific Railroad Company vs. Prescott, 16 Wall. 193, and cited in Van Brocklin vs. Tennessee, 117 United States 169.) Our statutes relating to the subject of this query are substantially like those of California. (See California Political Code, 3617; 3659 California Statutes 1887-8, page 720; General Laws of Nevada, 1081, 331; Statutes of 1887, page 112). The applicant secures a valuable precedence, interest in, claim to, or right of possession of 'property,' which will in due time ripen into patent, or return his money. The money would be taxable; why should not its equivalent be also?"

"The definition of property subject to taxation in the Constitution and Statutes is broad enough to include the possessory right, or imperfect interest, acquired by a purchaser from the State prior to pay-

ment of the purchase money or patent, and the State is not estopped from assessing the same." (People vs. Donnelly, 58 Cal. 144.) Such right or interest has a substantial, salable and often great value, and should be estimated upon the same principles as govern valuation of other property. (People vs. Shearer, 30 Cal. 661, and State vs. Central Pacific Railroad Company, 10 Nev. 63-4.) See Wright vs. Cradelbaugh, 3 Nev.) The interest in, claim to and right of possession, *not legal title.* Mandamus would lie to enforce assessment.
Very respectfully,

JOHN F. ALEXANDER,
Attorney-General.

I am not in receipt of any information showing to what extent this construction of the law has been followed by the Assessors, although it has been to some extent. I call your attention thereto, particularly as affecting the revenues of the State, and especially in connection with "An Act defining the rights of applicants for and contractors to purchase land from the State of Nevada, and providing for maintaining certain actions concerning such land," approved March 5, 1887. (See Statutes 1887, page 124.)

In the matter of the estate and guardianship of Frederika Schoene, an insane person.

This case arose out of the following facts: The person named was an insane person, and had been for a long time confined or treated as a ward of the State. I was informed that her husband had died in the State of Indiana, leaving property which should be paid in for the care and keeping of said insane person. The laws of Indiana require an examination at the time when any such application is made. I made and filed the necessary papers, and procured an order for a present examination of said patient, which was had according to law. On the same day of such examination the patient died, and not being able to discover any heirs, the proceeding there ended.

H. T. Hoadley, as Treasurer of Eureka county, failed to pay into the State Treasury certain moneys received by him in his official capacity, and belonging to the State of Nevada, until after the time prescribed by law. The Controller, after extending the time and demanding payment, instructed me to bring suit against said officer for the amount due with penalties. (See General Laws, Sec. 1814, et. seq.) I brought said suit in the District Court of the State, in and for Ormsby county. In the meantime the amount of money due the State had been, at least before judgment paid. The Controller agreeing that we had no right to compromise any penalty, the case was further prosecuted, and judgment recovered against said officer for said penalty, amounting in all to nineteen hundred and seventy-seven and ninety-four one-hundredths dollars, including costs. Thereafter a motion for new trial was made by defendant, which was denied by Hon. R. Rising, presiding Judge. I caused an execution to be issued upon said judgment, which was returned by the Sheriff of Eureka county unsatisfied, either in whole or in part.

Before the return of said execution, said defendant took steps to appeal his case, which appeal is not yet perfected. I have been further instructed by the State Controller to commence action against the bondsmen of said officer, when the state of the record shall make the same proper. Certain correspondence relative to this case is on file in my office, and in the office of the State Controller, and the attention of those interested is invited thereto.

I was informed, by the State Board of Commissioners for the Care of the Indigent Insane, that certain parties were occupying a portion of the State's land, near Reno, as of right. This information resulted in the suit of the State of Nevada (plaintiff) *vs.* H. Murphy (defendant.) This was a suit to eject defendant from a part of the State's land. A demurrer was filed, which was afterwards withdrawn and judgment allowed to go in favor of the State, by consent. The other party I induced to withdraw peaceably, without suit or expense to the State.

C. C. Stevenson et al., Board of Commissioners for the Care of the Indigent Insane (defendants and appellants) *vs.* Reno Reduction Works, etc. (respondents.)

In this case a motion for new trial was made and denied, defendants having appealed, and the case will be re-submitted upon briefs already filed at the opening of court, January 7, 1889. I acknowledge able and valuable assistance rendered by my associates—R. H. Lindsay, Esq., and T. H. Wells, Esq.—in this case.

STATE PRISON, ETC.

I have made certain suggestions concerning the control of this institution elsewhere. All improvements at the Prison during the past two years have been made by the Warden, by and with the consent of the Board of Prison Commissioners, and attention is invited thereto.

I have instructed the Warden that no credit can be allowed a prisoner until after the time expires which earned it. A different custom had prevailed heretofore. (See letter.)

It has also been the custom for many years to allow all discharged prisoners the sum of forty dollars. (See Section 1427, General Laws.) At my suggestion the discretionary allowance of fifteen dollars, which was custom, is now made to depend upon conduct of prisoner, and is allowed or rejected by the Board, as is deemed proper.

I have collected and paid to the Warden the sum of $82 36 on boot and shoe accounts, coming from previous administration, and have provided for some further collections on same account. This has been without cost to the State.

The Warden reports Hyman accounts $6,177 20; Batterman accounts, $19,140 91; Garrard accounts, $824 52, and sundry accounts from Bell administration.

These accounts should all be, in some manner, disposed of by collection or cancelation to prevent their being carried on the books as dead weight indefinitely.

The action of the Board of Pardons, of which I am a member, is recorded in the report of your Excellency.

At my advice all claims for Armory rent, etc., from the various militia companies, are first passed upon by the State Board of Military Auditors under seal, and then sent to the various Boards of Commissioners for payment. This ensures constant communication as to the condition of the companies for record and information.

I mailed 3,000 letters of inquiry touching the condition of the State. The result of that inquiry is at the command of the Legislature. The matter was undertaken of my own motion, and while the result was unsatisfactory I have at least shown that no proper report can be made upon the subject therein embraced except by personal investigation. A copy of the inquiry is in this report and will be furnished with printed copies thereof. I shall be glad to offer further information upon request.

RECOMMENDATIONS.

I respectfully recommend that the Act of February 8, 1877, which will be found on page 66 of the Statutes of 1877, be repealed; and that the Act of March 7, 1873, and which will be found on pages 181-2-3-4 and 5, exclusive of Section twenty-three, that is, the last portion thereof, be re-enacted. This for reasons hereinabove partly stated.

I recommend that a law be passed at this Session requiring the District Attorneys of the various counties to report to this office each year, as is done in most States of the Union. I have attempted to secure such reports by invitation, and the result will be found in "Schedule A." In order to provide for this necessity, I have prepared a bill which will be found herein as "Schedule B."

I respectfully recommend that the section of the Criminal Practice Act concerning peremptory challenges be so amended as to give the State the same number thereof as is, or may be, allowed to the defendant.

I respectfully recommend that the Criminal Practice Act be further amended so as to allow the State to take depositions upon the same terms and conditions as now specified for the defendant.

I also respectfully recommend that any extra allowance made by either branch of the Legislature be embodied in a bill or Act, which shall take the usual course, instead of making the same by resolution, as heretofore. I think such resolutions are without warrant and shall not indorse any allowance thereunder.

I recommend that the various County Clerks of this State be ordered to forward to this office in each year a copy of the calendar of their respective courts, and that the same may be given to the Legislature as a valuable guide for any proposed redistricting of the State for judicial purposes.

I give herein a list of the cases, both criminal and civil, disposed of by the Supreme Court of this State during the years 1887-88, which will be found marked "Schedule C."

I respectfully recommend that the Board of Pardons be given power to compel the attendance of witnesses; to punish for contempt the same as before the Board of Examiners. (See Secs. 1897, 8, 9, Gen. Laws of Nevada.)

I respectfully recommend that Section 1431 of General Laws be amended so as to cause the notices required therein, to be served upon the District Judge and District Attorney, respectively, who tried the defendant, because their successors never know anything about the case. I shall also ask said Board to adopt a rule requiring that all written statements submitted shall be properly authenticated.

I agree with the suggestion heretofore made, that the fee and salary system of this State, for county government, is in great confusion. I respectfully recommend that the various officers of the counties be allowed a sufficient salary for *purely* and *simply county* business, or services rendered the county as an individual; that a *just* fee bill be enacted; and that for all services performed by the officer for individuals, other than the county, he be allowed to charge and retain for himself the legal fee. A law of this kind may be made uniform and just, as well to the officer, the county and the people; at present officers charge and collect constructive fees while under salary; they receive part fees and part salaries; there are salaried and feed officers in the same county, and the feed officers perform the services, or most of them; it costs more in one county than in another to have the same service performed. Different fee systems are in force in the same county, and no two counties are alike. In this connection I desire to call attention to Section 1460-1-2, General Laws, and the operation thereof in counties where officers are salaried; also in the same sense and connection to Section 1457, General Laws, and these references are made in the face of the sums paid out thereon, which may be learned in the office of State Controller.

I respectfully recommend the repeal or modification of "An Act providing for the manner of submitting Constitutional amendments to the voters of the State of Nevada," (Statutes 1887, page 122), because the same is defective in title; it is inconsistent and self-contradictory; it is not possible to comply with said Act without invading the exclusive province of the Legislature, or of the courts.

I respectfully recommend a further limitation of the power of the Board of Examiners in passing upon bills for which no specific appropriation has already been made; and requiring, expressly, that all claims shall be duly verified before presentation to said Board.

I respectfully recommend that the Board of State Printing Commissioners be given discretionary control of the number and extent of the publications to be made in, and by the State Printing Office, *ad interim*, and before the meeting of the next Legislature; and that said Board be granted a reasonable appropriation for contingent publications which cannot be provided for or foreseen by this Legislature.

It is a fact that property in this State is not assessed, as a whole,

at more than forty per cent. of its "true value." This is against law. (See Revenue Laws.) If it is possible, the Legislature should insure obedience to the plain letter and spirit of the law governing and directing valuation of property for purposes of revenue. This course, if pursued, will render entirely safe and easy a material reduction in the rate of State taxation. This would inure to the benefit of the State at large and to its credit and standing, and as well to the prosperity of every citizen. I wish to be particularly understood. It is not the fact that corporations alone seek to evade taxation, the prominent citizens of this State are equally culpable. The Legislature should see that a correct valuation is placed upon property in this State. This would guarantee that a State rate of forty cents would insure better results than the present rate of ninety cents. I respectfully recommend that a law be enacted requiring that all foreign corporations, doing business within this State, be required to designate some person, a resident of the State, upon whom service of civil process can be made. This is the law in California and other States.

I respectfully recommend that if the State laws are to be republished, that they be codified, and that such work be committed to professional men.

I respectfully recommend the advisability of providing for one official reporter to attend upon the various Courts of Record whenever so directed by the Presiding District Judge of this State. This would add certainty, convenience and a saving of time and money in the transaction of court business.

In conclusion, the above recommendations are made under Section 1782, General Laws of Nevada.

This office has, during the past year, been called upon for opinions upon all subjects named in my last report, besides many others not therein named. I find from the record in this office, so far as retained, that the number of such communications recorded and their variety during the past two years largely exceeds that of any previous four years. This shows an increased demand upon this office by way of inquiry, which I am, and shall be glad to meet. All questions properly addressed have been answered orally or in writing.

I shall be glad to assist either the Executive, Legislative or other officers of the State, and invite the advice or suggestions of any such officer concerning my duties.

Yours, respectfully,

JOHN F. ALEXANDER,
Attorney-General.

SCHEDULE A.

On December 8, last, I mailed to the several District Attorneys a request for report of criminal business, costs, etc. Following is the result so far received:

CHURCHILL COUNTY—LEM ALLEN, ESQ., DISTRICT ATTORNEY.

Prosecutions in District Court, none; in Justice Court, none. This officer reports, "We have had no criminal business in the last two years."

DOUGLAS COUNTY—D. W. VIRGIN, ESQ., DISTRICT ATTORNEY.

Prosecutions in District Court, 9; prosecutions in Justice Court, 10. The offenses were: Grand larceny, 1; murder, 1; burglary, 3; assault with intent to kill, 1; petit larceny, 1; assault and battery, 5; disturbing peace, 1; drawing deadly weapon, 2; refusal to give assessment, 1, and other misdemeanors. Not prosecuted or dismissed, 12; convicted and sentenced, 10; acquitted, 3. State Prison, 6; County Jail, 2; fined, etc., 10. Cost and expense to county about $2,003. Fines and costs imposed, $284 25. Fines and costs collected, $257 25. (Amount actually paid in 1887 and 1888—$72.)

ELKO COUNTY—G. F. TALBOT, ESQ., DISTRICT ATTORNEY.

Prosecutions in District Court, 15; in Justice Court, estimated, 40. The offenses were: Grand larceny, 1; assault with intent to kill, 4; burglarly, 2; murder, 2; marking stock, 4; destroying fence, 1; petit larceny, 8; selling whisky to Indians, 3; and other misdemeanors. Dismissed, 1; convicted and sentenced, 8; acquitted, 1; State Prison, 8; County Jail, 35. Fines collected, $329. Cost and expense to county, juries, etc., about $15,100.

ESMERALDA COUNTY—BENJAMIN CURLER, ESQ., DISTRICT ATTORNEY.

Prosecutions in District Court, 5; in Justice Court, 1. The offenses were: Selling whisky to Indians, 3; assault with intent to kill, 2; misdemeanor, 1; not prosecuted or dismissed, 1; convicted and sentenced, 5; acquitted, 1; State Prison, 3; County Jail, 2; fines, 1. Cost and expense to county, $2,197 45. Fines and costs imposed, $250. Fines and costs collected, none.

EUREKA COUNTY—R. M. BEATTY, ESQ., DISTRICT ATTORNEY.

No report received.

HUMBOLDT COUNTY—S. J. BONNIFIELD, ESQ., DISTRICT ATTORNEY.

No report received.

LANDER COUNTY—W. D. JONES, ESQ., DISTRICT ATTORNEY.

Prosecutions in District Court, 9; in Justice Court, 38. The offenses were: Grand larceny, 5; murder, 2; selling whisky to Indians, 4; assault with intent, etc., 2, and various misdemeanors. Cases quashed in both courts, 17; not prosecuted or dismissed, both courts, 17; convicted and sentenced, 30; acquitted, 13; continued open, 4; State Prison, 4; County Jail, 14; fined, 26. Of this number, 12 paid and 14 served their time. Cost and expense to county, estimated at $1,397 05. This officer also tried a case at Battle Mountain for keeping house of prostitution on public street, etc; plea of guilty, and fined $75 and costs, which were paid.

LINCOLN COUNTY—T. J. OSBORNE, ESQ., DISTRICT ATTORNEY.

No report received—probably owing to lack of mail facilities.

LYON COUNTY—GEORGE W. KEITH, ESQ., DISTRICT ATTORNEY.

Prosecutions in District Court, 5; in Justice Court, 30. The offenses were: Grand larceny, 3; rape, 1; assault with intent to kill, 1, and various misdemeanors. Not prosecuted or dismissed, 13; convicted and sentenced, all in Justice Court, 29; acquitted, 3; State Prison, none; County Jail, 14; fined, 29. Costs and expense to county in 1887 and 1888 about, including juries, etc., $933 05; amount of fines paid, $297; cases pending, 2.

NYE COUNTY—JOHN REYNOLDS, DISTRICT ATTORNEY.

No report received, probably owing to distance from Capital.

ORMSBY COUNTY—J. D. TORREYSON, ESQ., DISTRICT ATTORNEY.

Prosecutions in District Court, 11; in Justice Court, 99. The offenses were: Rape, 1; housebreaking, 1; selling liquor to Indians, 3; embezzlement, 1; burglary, 1; assault with a deadly weapon, 2; murder, 1; (Black case, jury disagreed); assault and battery, 1; (appeal from Justice Court.)

The misdemeanors prosecuted in the Justice Court are as follows: Assault and battery, 26; vagrancy, 28; embezzlement, 3; petit larceny, 13; drawing and exhibiting a deadly weapon, 6; disturbing the peace, 10; malicious mischief, 3.

Cases continued open, 25—principally for vagrancy; acquitted in District Court, 1; in Justice Court, 17; sent to State Prison, 8; County Jail, 43; fined, 41; fines paid, $268.

Costs in District Court, including fees of grand and trial jurors, $1,641 60.

It is impossible for me to give the costs incurred in the prosecution of cases in the Justice Court, for the reason that the Justice of the Peace, in a number of cases, has not marked the amount of costs upon his docket.

In the foregoing report I have not included the cases prosecuted by me in the Recorder's Court.

I beg to call your attention to the fact that there have been fewer prosecutions in this county, in the last two years, for the crime of selling liquor to Indians, than at any other time during my holding of this office. This, I think, is due to the fact that the Legislature, two years ago, passed a law making this crime a felony.

STOREY COUNTY--F. M. HUFFAKER, ESQ., DISTRICT ATTORNEY.

No report received owing to lack of time. This officer says:

"There should, in my opinion, be one change in our law to the effect that in criminal trials, no opinion formed from reading newspapers, should disqualify a juror, if he can state that he can and will fairly and impartially try the defendant, on the evidence that may be given in Court. Something of this nature should be enacted, or our criminal trials will continue to be farcical."

WASHOE COUNTY—PIERCE EVANS, ESQ., DISTRICT ATTORNEY.

No report received.

WHITE PINE COUNTY—O. H. GREY, ESQ., DISTRICT ATTORNEY.

The incumbent was recently appointed; hence, no report.

SCHEDULE B.

AN ACT

To be entitled "An Act to require District Attorneys to make certain reports to the Attorney-General."

The people of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. That on the first day of December, 1890, and biennially at said date thereafter, the several District Attorneys or other persons charged by law with the prosecution of criminals, shall make report in writing to the Attorney-General, stating the number and character of prosecutions for the two years ending on the first day of November preceding the date aforesaid within the territory embraced in the limits of the office for which the reports are made respectively. The number of persons convicted, and the average punishment on conviction; the number of persons acquitted, or as to whom prosecutions were abated or dismissed, and the number of prosecutions pending at end of time covered by report. Also the costs of such prosecutions to each county, and the amount of fines paid therein.

SEC. 2. *Be it further enacted*, That any District Attorney, or other person charged by law with the prosecution of criminals, who fails to make a full report, as and within the time required by Section 1 of this Act, shall forfeit to the State of Nevada the sum of two hundred dollars, to be recovered on motion of the Attorney-General in the District Court in and for the proper county, on ten days' notice of such motion.

SEC. 3. *Be it further enacted*, That all Acts, and parts of Acts, in conflict with this Act, be, and the same are hereby repealed.

SCHEDULE C.

SUPREME COURT CALENDAR, 1887-8.

John Rosina, Respondent, vs. N. S. Trowbridge, Appellant.
John H. Kinkead et al., Appellants, vs. J. M. Benton, et al., Respondents.
State of Nevada ex rel., Jacob Springer, Relator, vs. C. S. Preble, Land Register, Respondent. (Mandamus.)
State of Nevada ex rel., D. B. Sohl, Relator, vs. C. S. Preble, Land Register. (Mandamus.)
R. H. Elam et al., Appellants, vs. W. E. Griffin et al., Respondents.
W. A. Earles et al., Respondents, vs. Thomas H. Gilham, Appellant.
W. A. Earles et al., Respondents, vs. Thomas H. Gilham, Appellant.
Charles Ferraris, Administrator, etc., Respondent, vs. Matthew Kyle, Appellant.
The State of Nevada ex rel., Wells Drury, Relator, vs. J. F. Hallock, State Controller, Respondent. (Mandamus.)
State of Nevada ex rel., S. H. Wright, Relator, vs. W. C. Dovey, Superintendent of Public Instruction, Respondent. (Mandamus.)
The State of Nevada ex rel., C. C. Stevenson et al., Relators, vs. George Tufly, State Treasurer, Respondent. (Mandamus.)
George P. Randall, Appellant, vs. County of Lyon, Respondent.
L. B. Frankel & Co. vs. Their Creditors.
Phillip Reese, Appellant, vs. J. H. Kinkead et al., Respondents.
State of Nevada, ex rel., Michael O'Mera, Relator, vs. John Ross, County Auditor, Respondent. (Mandamus.)
State of Nevada, Respondent, vs. One-Armed Jim.
Joseph W. Jerrett, Respondent, vs. Daniel Mahan.
Ex parte Rosenblatt, habeas corpus.
James A. Leete, Respondent, vs. D. Sutherland, Appellant.
S. E. Burbank, Respondent, vs. Frank Rivers, Appellant.
State of Nevada, ex rel., E. P. Wilkins, Relator, vs. J. F. Hallock, State Controller, Respondent. (Mandamus.)
The Lang Syne Gold Mining Company, Appellant, vs. G. McM. Ross, et al., Respondents.
State of Nevada, ex rel., Springer, vs. C. S. Preble, Land Register, Respondent. (Mandamus rehearing.)
W. W. Lapham, Appellant, vs. Wm. F. Osborne, Respondent.
Jerome B. Mathewson, Appellant, vs. M. T. Boyle, et al., County Commissioners, etc.
State of Nevada, ex rel., Patterson & Gregory, vs. D. D. Donovan, Sheriff, etc. (Mandamus.)
The State of Nevada, Respondent, vs. George C. Campbell, Appellant.

Warren Shoecraft, Respondent, vs. S. M. Beard et al., Appellants.
Elwood Bailey, Appellant, vs. Sylvie Papina, Respondent.
Ex-parte H. Robinson. (Habeas corpus.)
E. Kuehn, Respondent, vs. P. Paroni.
Mary J. Powell, Respondent, vs. D. C. Campbell, Appellant.
J. B. Gallagher, Administrator, etc., Respondent, vs. A. J. Holland, Appellant.
H. F. Ross, Respondent, vs. Bank of Gold Hill et al., Richard Mercer and C. C. Stevenson, Appellants.
State of Nevada ex rel. J. F. Alexander, Attorney-General, vs. F. J. McCullough, Respondent. (Quo warranto.)
In re. Miles Finlen, habeas corpus.
The State of Nevada, Appellant, vs. John T. Lamb, Respondent.
The State of Nevada ex rel. J. F. Hallock, Relator, vs. H. Donnelly, Treasurer, etc. (Mandamus.)
The State of Nevada, Respondent, vs. Joseph Espinozei, Appellant.
The State of Nevada, Appellant, vs. J. R. Withington.
The State of Nevada ex rel. George B. Whitney, Relator, vs. A. M. Finley, Registry Agent, Respondent. (Mandamus.)
The State of Nevada ex rel. C. H. Galusha, Relator, vs. Henry C. Davis, Respondent. (Quo warranto.)

REPORT.

Office of Attorney General,
Carson City, Nevada, January 5, 1893.

To His Excellency, R. K. Colcord, Governor of the State of Nevada:

Sir: I have the honor to submit for your consideration a report of the business transacted by this office for the years 1891 and 1892, as required by law.

JAMES D. TORREYSON,
Attorney General.

1—H

REPORT.

Office of Attorney General,
Carson City, Nevada, January 5, 1893.

To His Excellency, R. K. Colcord, Governor of the State of Nevada:

Sir: When I assumed charge of this office there were no criminal cases pending in the Supreme Court of this State.

The case of the Reno Smelting, Milling and Reduction Works vs. C. C. Stevenson, *et al.*, was pending, however, and for a complete history of this case I refer you to the report of the Commissioners for the Indigent Insane of Nevada for the years 1889 and 1890.

This case was tried and a decision rendered against the defendant, and an appeal was taken to the Supreme Court of this State, and a decision rendered in April, 1889, reversing the decision of the lower court and granting a new trial therein. The new trial took place June 2, 1890, and a decision was rendered in September following, which was in effect: that the State had no right to take water from the Truckee at any point where it was raised above its natural level by reason of the dam of the Reno Smelting. Milling and Reduction Works. From this decision a motion for a new trial was made and an appeal contemplated being taken to the Supreme Court of this State. This was the state of the case when I assumed charge of this office.

Upon investigating the records I found that a statement on motion for a new trial had been prepared by my predecessor in office and filed in the office of the County Clerk of Washoe county, Nevada. Upon investigating the record I ascertained that my predecessor had neglected to sign his name to the statement on motion for a new trial as attorney for the State of Nevada.

I made and filed a motion for leave to amend said statement by adding and inserting the name of my predecessor as attorney for the State.

This motion was argued at length and denied by Judge Cheney of the District Court of Washoe county.

It then became necessary to appeal the case to the Supreme Court of this State and have a decision rendered, as to whether or not the *nisi prius* court was correct in its decision, and if not, then to have a decision upon the merits of the case. I consulted freely

with the Board of Commissioners for the care of the Insane of this State, and against whose predecessors in office this suit was pending, as to the advisability of appealing the case to the Supreme Court of this State. After considerable research and discussion said Commissioners declined to have said case appealed, and instructed me to dismiss the case, which I accordingly did.

I now submit to you a synopsis of the various cases decided by the Supreme Court of this State during the past two years, in which the State of Nevada was a party and in which the public have an interest.

The State of Nevada, respondent, vs. Samuel G. Depoister, appellant. The defendant was indicted in the District Court of Humboldt county, Nevada, tried and convicted for the crime of rape upon the person of Bertha May Sadler, of the age of about seven years. An appeal was taken by the defendant to the Supreme Court and the judgment of the lower court was affirmed.

The State of Nevada, appellant, vs. the Central Pacific Railroad Company, respondent, No. 1,335.

This was an action brought to recover from the defendant the taxes due Lander county for the year 1889. Included in the property assessed are $29\frac{15}{100}$ miles of road bed and main track of the railroad, at a valuation of $14,000 per mile.

Upon the trial, the record of the Board of Equalization of Lander county, offered in evidence, shows that on September 24, 1889, the railroad company filed a complaint with the Board, asking that its assessment be reduced to $9,000 per mile; at the same time one Dickson filed a complaint asking that it be raised to $20,000 per mile. The two complaints were heard together, and on the same day the Board made an order that the assessment remain as fixed by the Assessor at $14,000 per mile.

On October 7, 1889, the Board met again and a motion to reconsider their action was adopted. Thereupon another motion was made and also adopted to reduce the assessment to $12,000 per mile.

The questions involved in this case are of vital importance to the people of this State.

The Supreme Court decided that the county Boards of Equalization are of special and limited jurisdiction, and have only such powers as are conferred upon them by statute. That after complaint is made as to the assessed valuation of any piece of property, and said complaint is heard and determined by the Board, and said Board decide and determine said complaint and fix the valuation of the property, that there is no provision in the law for a new trial, a rehearing or any further consideration of the matter. That the power to reconsider, not being expressly given by the statute, does not exist.

In other words, that where the Board of Equalization, upon a complaint made as to the valuation of property, and after hearing

and determining all of the proofs introduced before it arrives at a judgment and fixes the valuation of said property, that its judgment is *res adjudicata*, and that the same cannot be reconsidered.

A petition for rehearing was presented in this case, which was denied, and in denying said petition the Court says that "the action of the Board of Equalization fixing values is final and conclusive where taken honestly and in good faith."

The next case in which the State appealed as a party was: The county of Esmeralda, respondent, vs. the State of Nevada, appellant. This action was tried in the District Court of Ormsby county, Nevada, to recover from the State the sum of $592 40, alleged to be due as a balance incurred by the county of Esmeralda under the special Election Law of 1889. In the lower court judgment was rendered against the State of Nevada. An appeal was taken by the State to the Supreme Court and the judgment of the lower court was reversed and the cause remanded, the Court holding that the statute of 1889, under which said claim was sought to be made a charge against the State, was adopted for the purpose of reimbursing the counties their expenses at the special election, but since the county had neither paid said claim nor allowed it, so as to make a legal charge against the county, that no expenses had been incurred by the county, and it should not, therefore, recover.

The next case was that of the State of Nevada, respondent, vs. Charley Lung, appellant, an appeal from the District Court of Humboldt county, Nevada. The defendant was charged with an attempt to commit rape. He was convicted in the lower court, but upon an appeal to the Supreme Court the judgment of the lower court was reversed, and I am informed that the lower court discharged the defendant.

The next case was that of the State of Nevada *ex. rel.*, L. A. Dunkle vs. W. S. Beard. This was an appeal from the District Court of the county of Eureka, and the question was whether the relator as Sheriff of Eureka county was entitled to retain the commissions provided for in section 133 of the Revenue Law of 1891 for the collection of licenses. [Statutes of Nevada, 1891, page 182.]

The Court held that the Sheriff of Eureka county being a salaried officer, and the law providing that his salary should be the only compensation allowed or paid for any and all services and *ex-officio* services of every kind and character rendered by said Sheriff, that said Sheriff was not entitled to retain the commissions provided for under section 123 of the Revenue Law of 1891.

The State of Nevada vs. D. S. Shaw *et. al.*, was an appeal from the District Court of Eureka county. This case also involves questions of vital importance to the taxpayers of the various counties in

this State. It is commonly understood that the decision in this case repeals the decision of the Supreme Court of this State heretofore rendered and published in the case of Barnes vs. Woodbury, reported in the Seventeenth Nevada reports, page 383, and commonly known as "The Home Ranch Decision." But this is not a fact as a careful reading of the two decisions will convince even a layman.

The question decided in Barnes vs. Woodbury was that Barnes, the respondent, owned and resided upon real estate in Eureka county, and during the winter months his cattle were kept thereon. This land was at all times the home ranch where his business was conducted and had his cattle cared for and managed. During the grazing season the cattle were permitted to graze upon the public domain in both Eureka and White Pine counties, and at the time of the assessment the cattle were grazing within the boundaries of White Pine county, where they were assessed. Barnes owned no real estate in White Pine county.

The Court decided upon the statement of facts as set forth in the complaint that the *situs* of the cattle for the purpose of taxation was at the home ranch in Eureka county, where they belonged.

It was not because the home ranch was situated in Eureka county that the stock was held to be assessable there, but because that was their home or habitat.

In the case of the State of Nevada vs. Shaw, a different state of facts existed. In this case, the defendant owned and resided upon a ranch in Eureka county, about twelve miles north of the Nye county line. He was the possessory owner of several pieces of real estate in Nye county known as ranches, upon which were situated cabins and corrals, used in the care and management of a band of cattle running in their vicinity. No one, however, lived in the places and the cattle were cared for and managed from the ranch in Eureka county.

The defendant, Shaw, claimed that as his home ranch from which the cattle were cared for and managed was in Eureka county, they were only subject to taxation in the latter county. It appears that the cattle assessed, or a portion of them, were habitually kept upon a range in Nye county. They were bred, born, branded and raised there; most of them had never been out of that county, they had but very little to do with their home ranch where their owner resided except that the beef cattle, when gathered for sale were taken there and sometimes poor ones were driven in for feed for a short time, after which they were either driven or turned back upon the ranges. This was only done occasionally and for a mere temporary purpose while grass was scarce, and did not change the *situs* of the cattle, whose home or habitat was in Nye county.

The Court decided that the evidence in the case showed that the great bulk of the cattle had never been in Eureka county and in no

sense did they belong there; that their home, their habitat, the place they belonged, and the place where one would expect to find them was in Nye county, and that they were properly assessed in Nye county.

The next case is that of the State of Nevada *ex rel.*, L. F. Dunn, relator, vs. the Board of County Commissioners of Humboldt county, respondents.

The relator, as Clerk of Humboldt county was, prior to 1891, entitled to a salary of $2,400 per annum, to be allowed by the County Commissioners of that county. This was, however, by the Act of March 9, 1891 [Statutes 1891, page 30], reduced to $1,200 per annum, to be paid by warrant drawn by the Auditor upon the Salary Fund. The relator claimed that the Act was unconstitutional upon the ground that both the Act and its title embraced more than one subject, to-wit: The subject of salaries and the subject of consolidating officers. The Court denied the writ, holding that the Act was a valid and constitutional Act.

The State of Nevada, respondent, vs. The Central Pacific Railroad Company, appellant, No. 1,353, and the State of Nevada, appellant, vs. The Central Pacific Railroad Company, respondent, No. 1,356, were cross-appeals. In the year 1888 the defendant was assessed upon its railroad and a large amount of other property, including the possessory claim to both surveyed and unsurveyed land embraced within the United States land grants of 1862 and 1864 to the Pacific Railroad. Upon all the property, except land, the defendant tendered the taxes due before they became delinquent and subsequent to the commencement of the action upon demand of the District Attorney. The amount so tendered was paid to him. The action was then continued for the purpose of recovering the taxes due upon the lands and the penalties upon the other taxes assessed upon the theory that the tender was not sufficient. The State recovered for the taxes and penalties upon the surveyed lands and from this part of the judgment the defendant appeals. But the Court held that the unsurveyed lands were not subject to taxation, and that the tender and payment of the other taxes were sufficient to avoid the penalties, and from the rulings the State appeals. Both judgments were affirmed by the Supreme Court.

The State of Nevada, appellant, vs. the Central Pacific Railroad Company, respondent, No. 1,354, and the State of Nevada, respondent, vs. the Central Pacific Railroad Company, appellant, were also cross appeals. The action was brought to recover taxes for the year 1889 upon the same lands as those under consideration in the cases of the State of Nevada vs. the Central Pacific Railroad Company, Nos. 1,353 and 1,356, heretofore referred to. The questions presented concerning the taxability of a possessory claim to sur-

veyed and unsurveyed lands within the defendant's land grant, were the same as those presented in the cases mentioned, to wit: Nos. 1,353 and 1,356. The ruling of the Court in the beforementioned cases upon these points was followed. The only other question involved was that concerning a plea of estoppel by a former judgment set up by the defendant. The judgments of the lower court were affirmed.

The State of Nevada, appellant, vs. the Central Pacific Railroad Company, respondent, No. 1,355, and the State of Nevada, respondent, vs. the Central Pacific Railroad Company, appellant, No. 1,358, involved the same questions as were passed upon in appeals numbered 1,353 and 1,356 as to the right of the State to assess certain lands granted to the Central Pacific Railroad Company by the Government, and the same judgment was made upon the questions involved as rendered in the other appeals. But in this case a further and additional point is decided: "It appears from the agreed statement of facts that the Assessor assessed the railroad for the year 1890 at $14,000 per mile and the surveyed lands at 50 cents per acre. That the Board of Equalization met on the fifteenth day of September; there being no business before them they adjourned over to the twentieth day of October.

On the second day of October two members of the Board met, set aside the order of adjournment made and entered in the minutes of the proceedings of the Board of the fifteenth day of September, and reduced the valuation placed upon said railroad from $14,000 per mile to $12,000 per mile, and from 50 cents per acre to 12½ cents per acre on the land. Upon this valuation the company paid its taxes upon the railroad, but refused to pay upon the land, claiming that the said land was exempt from taxation.

The State claims that the Board of Equalization having met on the fifteenth day of September, which was the third Monday, and the day fixed by the statute for the Board to meet, and no business coming before them, and they adjourning over until the twentieth day of October, that the meeting held on the second day of October by two members of said Board was unauthorized and illegal, and their acts null and void.

The railroad company contends that the Board had the power to meet and act on any time or on any day between the third Monday in September and the first Monday in October.

Upon this statement of facts the Court says: "We cannot agree in the views expressed by the appellant that the Board was required to remain in session from the third Monday in September until the first Monday in October. Our understanding of that section is that they shall meet on the third Monday in September, and if there is any business presented to them they shall remain in session, adjourning over from day to day until all complaints presented are disposed of, when they may adjourn for the term, or to some future

day in the term fixed by law. It was not the intention of the framers of the law that the Board should remain in session sixteen or twenty days if there was no business for them to transact, and if a taxpayer had a grievance to bring before the Board he should be present on the first day of their meeting and state his grievance or notify them that he has a complaint to present, and requesting them to set a day during the term in which he can be heard.

The term of the Board of Equalization is fixed by law and its duration limited. When they meet at the proper time they may adjourn from day to day, or to any day fixed by law for them to transact business, but when they did meet on the 15th day of September, 1890, and adjourn to the 20th day of October, there ceased to be any Board of Equalization after that day for that year, as their powers ceased on the first Monday in October as a Board of Equalization, except to examine the cases mentioned in the statute, and this does not fall within that class of cases.

Therefore, when the two members of the Board of Equalization met on the 2d day of October, 1890, not having given notice of such meeting, and proceeded to hear the complaint of the Central Pacific Railroad Company and reduced the Assessor's valuation of the railroad from $14,000 to $12,000 per mile, their acts were unauthorized and illegal, and therefore void.

The judgment was affirmed.

The State of Nevada *ex rel.* J. A. Blossom, relator, vs. R. L. Horton, State Controller, respondent. This was an original proceeding brought by Blossom against the Controller to compel him to draw his warrant for the sum of $1,765, as a bounty for digging an artesian well, under the Act of 1889. The Board of Examiners allowed the claim for the full amount of $1,765; the claim was presented to the Controller for his allowance, and the Controller, upon my advice, refused to allow it or draw his warrant for the same. It appeared that a well had been sunk on the same quarter section of land upon which the Blossom well was sunk, and a bounty paid thereon under the Act of 1887. The Court held that where a party had sunk a well and obtained a bounty under the Act of 1887, that it was not the intention or the understanding of the Legislature that another person could enter upon the same quarter section of land, sink a well and obtain the bounty provided for under the provisions of the Act of 1889. The writ was accordingly denied.

The State of Nevada vs. Thomas Murphy, respondent. Appeal from the District Court of Storey county. This case was appealed by the State from an order overruling a demurrer to a plea of former conviction interposed by the defendant and directing that the defendant be thereupon discharged from custody.

The defendant moved to dismiss the appeal upon the ground that

there was no bill of exceptions or statement in the case. The motion was granted and the appeal dismissed.

The State of Nevada *ex rel.* S. Summerfield, relator, vs. W. G. Clarke, appellant.

In this case the facts show that while the appellant was legally exercising the office of Notary Public in this State, he was appointed Receiver of Public Money in the United States Land Office at Carson City.

The Court below held that the two offices were incompatible under the provisions of Section 9 of Article IV. of the Constitution of Nevada, which reads as follows: "No person holding any lucrative office under the Government of the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided,* that Postmasters whose compensation does not exceed $500 per annum, or Commissioners of Deeds, shall not be deemed as holding a lucrative office."

The appellant contended that the office of Notary Public was not a "civil office of profit under this State," within the meaning of this section, and was the only question presented to the court for its decision.

The judgment of the lower court was affirmed, the Court holding that a Notary Public came within the provisions of this section of the Constitution.

REPORTS OF DISTRICT ATTORNEYS.

The Legislature of 1889 passed an Act entitled "An Act to require District Attorneys to make certain reports to the Attorney General."

The following reports of the various District Attorneys throughout the State will show that a great number of prosecutions have not been reported to the Attorney General, for the reason that they are prosecutions had in Justices' Courts and away from the county seats of the different counties, and it is not at all practicable for the several District Attorneys of the State to be present in Justices Courts in the various precincts within their counties. Thus it will be seen that a great many petit crimes and the costs and fines cannot and have not been reported to this office. I would respectfully suggest that the law be amended so as to compel the Justices of the Peace in the various counties throughout the State to report to the respective District Attorneys each month the number and character of prosecutions, the number of persons convicted and the average punishment on conviction, the number of persons acquitted or as to whom prosecutions were abated or dismissed, also the costs of each prosecution and the amount of fines paid therein; also that it be amended, compelling District Attorneys to make a statement of the facts in every case in which the defendant pleads guilty. As to the remaining portion of the Act, I believe it to be most excellent and has been of material aid to the Board of Pardons during the past two years.

In case the Legislature should ever deem it expedient to consolidate counties these reports of the various District Attorneys would be of great benefit and contain a fund of information

You will notice that a great number of the reports are incomplete, for the reason that the District Attorneys in some of the counties have been unable to ascertain the number of prosecutions, convictions, acquittals, dismissals, etc., and the costs and fines paid, for the reason that it has not been practicable, nor is there any provision made in the law for them to go to the various precincts and ascertain these facts.

Churchill County—William Murphy, District Attorney.

This officer reports that there has been no criminal business done in either 1891 or 1892.

Douglas County—D. W. Virgin, District Attorney.

REPORT FOR 1891.

Whole number of cases prosecuted, 9; convictions, 3; acquittals, 1; dismissals, 2; pending, 3; average punishments on convictions: imprisonment, 1 year; fines, $2 55; whole amount of money paid as fines, $5 10; whole amount of costs paid by county, $594 20. The offenses were: Assault and battery, 2; selling liquor to Indians, 2; grand larceny, 4; petit larceny, 1.

REPORT FOR 1892.

Whole number of convictions, 7, as follows: Assault and battery, 3; disturbing the peace, 2; petit larceny, 1; selling liquor to Indians, 1. Average punishment for assault and battery, $6 66; average punishment for disturbing the peace, $7; average punishment for petit larceny, 12 days in the County Jail. The other cases were ignored by the Grand Jury and two more cases of assault and battery were tried by jury and the defendants acquitted. One case of embezzlement: The defendant was tried and acquitted.

The aggregate amount of fines paid in during the year 1892 was $29, and the aggregate expense to Douglas county of the above prosecutions was $1,540 25.

Elko County—J. A. Plummer, District Attorney.

REPORT FOR 1891.

Whole number of cases prosecuted, 6; whole number of convictions, 5; whole number of acquittals, 1; whole amount of cost paid by county, about $3,350. The offenses were: Murder, 1; burglary, 1; obtaining money under false pretenses, 1; selling liquor to Indians, 3. In addition to the above, 33 persons were committed to the County Jail for various petit offenses.

REPORT FOR 1892.

I have the honor to report that the prosecutions in Elko county for the year ending December 1, 1892, cover one case of grand larceny; dismissed upon the plea of guilty of petit larceny being entered, and one case of grand larceny, in which a verdict of not guilty was returned by the jury. Cost to the county about $500. This does not include prosecutions in the various Justices Court in Elko county.

Esmeralda County—P. M. Bowler, District Attorney.

REPORT FOR 1891.

Whole number of prosecutions in District Court, 5; whole number of convictions, 4; whole number of cases pending 1 (jury dis-

agreed); average punishment on convictions, 18 months; whole amount of costs paid by county, $3,050.

The offenses were: Selling whisky to Indians, 3; grand larceny, 1; assault with deadly weapon with intent to kill, 1.

REPORT FOR 1892.

Whole number of prosecutions, 8; whole number of convictions, 3; whole number of cases acquitted, 1; whole number of cases dismissed, 2; whole number of cases pending, 2; whole amount of costs paid by county, about $800.

The offenses were: Murder, 1; assault with deadly weapon with intent to kill, 1; disturbing the peace, 2; petit larceny, 1; disposing of opium, 1.

Eureka County---Peter Breen, District Attorney.

REPORT FOR 1891.

Whole number of cases prosecuted, 3; whole number of convictions, 3. The offenses were: Housebreaking, 2; selling liquor to Indians, 1; average punishment, 15⅓ months; whole number prosecuted and convicted in Justice Court, 21; whole number prosecuted and acquitted, 4; number dismissed, 3. The offenses were: Assault and battery, 9; disturbing the peace, 11; shearing sheep in the town limits, 2; drawing deadly weapon, 2; having opium pipe in possession, 1; selling opium, 1; total amount of fines collected, $55; uncollected, $294; average punishment, 15½ days. [The amount of costs to the county is not stated.]

REPORT FOR 1892.

Whole number of cases prosecuted, 5; whole number of convictions, 4; whole number of acquittals, 1; whole number of cases pending, 5; to-wit: housebreaking, 1; selling whisky to Indian, 1; grand larceny, 1; obstructing railroad track, 1; murder, 1; average punishment, 24½ months. [The above applies to the District Court and the costs of prosecution are not stated.] Prosecutions in Justice Court, 19; convicted, 12; acquitted, 4; dismissed, 3. The offenses were: Assault and battery, 8; disturbing the peace, 6; drawing and exhibiting a deadly weapon, 2; malicious mischief, 1; selling meat without exhibiting the hide, 1; selling goods without license, 1; the average punishment, 9 days in County Jail; fines collected, $61; fines uncollected, $358. [The amount of costs incurred in the prosecution of the above offenses have not been stated.]

Humboldt County—E. L. Williams, District Attorney.

REPORT FOR 1891.

Whole number of prosecutions, 120; felonies, 31; misdemeanors, 89; number of convictions, 86; number of dismissals and acquittals, 34.

There were twelve convictions of felony with an average punish-

ment of $6\frac{3}{4}$ years; there were 54 convictions of misdemeanor of an average punishment of a fraction over 30 days; the costs incurred by the county, including Trial and Grand Jurors, board of prisoners in county jail, Sheriff and Constable fees, Justices' fees, janitor's fees, reporting and interpreting and attorneys' fees for defendants, $14,350 94. The amount of fines collected, exclusive of costs, $145 50.

REPORT FOR 1892.

Whole number of prosecutions, 85; felony, 15; misdemeanors, 70; convictions, 42; acquittals, 43; average punishments, $10\frac{1}{42}$ months; number pending, 1; amount of fines collected, $193 13; cost of prosecutions, including salary of $3,000 paid to Sheriff and his deputy, make a total cost of $7,737 79.

Lander County—James B. Egan, District Attorney.

REPORT FOR 1891.

Whole number of prosecutions, 3; convictions, none; acquittals, 1; dismissals, 1; pending, 1. The offenses were: An assault with a deadly weapon, etc., 1; grand larceny, 2. The costs of prosecution, etc., are not stated.

REPORT FOR 1892.

Whole number of prosecutions, 3; abated, 1; dismissal, 1; pending, 1. The offenses were: Selling liquor to Indians, 1; horse stealing, 1; rape, 1. Costs of prosecution, $197 95.

Lyon County—R. W. Apsey, District Attorney.

REPORT FOR 1891.

Whole number of cases prosecuted in District Court, 3. The offenses were: Burglary, 1; attempt to break jail, 1; drawing a deadly weapon, 1. Convictions, 1; acquittals, 1; dismissals, 1. Costs of prosecutions, $1,067 14.

Whole number of cases prosecuted in Justice Court, 5. The offenses were: Assault and battery, 4; resorting to opium joints and smoking opium therein, 1; drawing a deadly weapon, 1; petit larceny, 1. Convictions, 3; acquittals, 1; dismissals, 1. Cost of prosecutions, $135 85; fines collected, $45.

In addition to the above, there are probably eight or ten criminal cases that were prosecuted in the various townships in the Justice Courts, resulting in convictions wherein judgments were rendered imposing fines or imprisonments, but as I was not present at any of said trials, I do not include a synopsis of the same in this report.

REPORT FOR 1892.

Number of felonies prosecuted on examination before Justices' Court, 4; number held, none; number discharged, 4. Cost to the county for prosecutions, $85. Number of misdemeanors prosecuted,

3; number convicted, 2; acquitted, 1. Total amount of fines paid, $27; average punishment by fine, $13 50.

Nye County---J. M. Gooding, District Attorney.

REPORT FOR 1891.

Whole number of cases prosecuted, 3; acquitted, 3. The offenses were: Murder, 1; cruelty to animals, 2.

[The costs of prosecutions, etc., are not stated.]

No report for 1892.

Ormsby County---S. Summerfield, District Attorney.

REPORT FOR 1891.

Whole number of prosecutions in District Court, 10; convictions, 7; average punishment, $2\frac{3}{7}$ years; acquittals, 1; dismissals, 2; fines paid, none; costs paid by Ormsby county, $1,070 90. Character of offenses: Vending liquor to Indians, 4; embezzlement, 1; obtaining goods by false pretenses, 1; burglary, 2; housebreaking, 1; grand larceny, 1.

Whole number of prosecutions in Justice Court, 54; convictions, 19; average punishment, fine $15, jail 17 days; bound over on examination, 11; discharged on examination, 1; acquittals, 1; dismissals, 17; pending, 5; fines paid, $100; costs paid by Ormsby county, $306. Character of offenses: Embezzlement, 2; allowing minors to gamble, 1; assault and battery, 14; peddling without a license, 4; vending liquor to Indians, 6; vagrancy, 6; threatening to kill, 1; disturbing the peace, 2; petit larceny, 5; receiving stolen goods, 1; obtaining goods by false pretenses, 2; burglary, 5; malicious mischief, 1; attempt to bribe, 1; housebreaking, 1; keeping house of ill fame within school house limit, 2.

Whole number of prosecutions in Recorder's Court, 92; convictions, 71; average punishment, fine $10 30, jail 21 days; acquittals, 4; dismissals, 14; pending, 3; fines paid, $166; costs paid by Carson City, $289 25. Character of offenses: Drunkenness, 43; disturbing the peace, 30; fast driving, 4; violating revenue laws, 11; vagrancy, 2; giving exhibitions without license, 1; Indians remaining in city after dark, 1.

REPORT FOR 1892.

Whole number of prosecutions in District Court, 14; convictions, 8; average punishment, $1\frac{3}{4}$ years; acquittals, 2; dismissals, 4; fines paid, none; costs paid by Ormsby county, $1,412 90. Character of offenses: Assault with deadly weapon, 3; attempt to rape, 1; burglary, 1; escape from State Prison, 1; grand larceny, 3; vending liquor to Indians, 5.

Whole number of prosecutions in Justice Court, 82; convictions, 32; average punishment, fine $10, jail 12 days; bound over on examination, 15; discharged on examination, 6; acquittals, 7;

dismissals, 12; pending, 12; fines paid, $143; costs paid by Ormsby county, $830 50. Character of offenses: Assault and battery, 17; assault with deadly weapon, 4; attempt at rape, 1; burglary, 3; disturbing the peace, 15; obtaining goods by false pretenses, 2; grand larceny, 6; housebreaking, 1; malicious mischief, 5; peddling without license, 1; petit larceny, 3; perjury, 1; vagrancy, 11; vending liquor to minors, 2; vending liquor to Indians, 5; violating 12 o'clock law, 2; violating revenue law, 3.

In Recorder's Court: Prosecutions, 55; convictions, 48; average punishment fine, $25; jail, 18 days; acquittals, 1; dismissals, 2; pending, 4; fines paid, $16; costs paid by Carson City, $158 25. Character of offenses: Contempt of Court, 1; drunkenness, 30; disturbing the peace, 17; fast driving, 5; obstructing streets, 1; shooting on streets, 1.

Storey County—C. E. Mack, District Attorney.

REPORT FOR 1891.

Summary of cases prosecuted in District Court and Justices' Courts Nos. 1 and 2: Number of prosecutions for misdemeanors, 78; number of prosecutions for felonies, 16; number of persons convicted of felony, 4; of misdemeanor, 38; average punishment of felonies, exclusive of Crowley's life sentence, 2⅓ years; of misdemeanors, $21 fine or 10½ days in the county jail. Character of offenses: Assault and battery, 15; assault and threatening with a deadly weapon, 4; assault with intent to kill, 5; burglary, 2; common vagrant, 1; disturbing the peace, 11; drawing and exhibiting a deadly weapon, 4; dismissals, 1; embezzlement, 5; felonious assault, 1; forgery, 2; grand larceny, 3; horsestealing, 1; malicious assault, 5; malicious mischief, 8; murder, 1; peddling without license, 7; petit larceny, 3; selling liquor to Indians, 2; selling liquor without license, 1; unlawfully administering some medicinal substance or fluid to procure miscarriage of person when pregnant, 1; vagrancy, 14; number of persons acquitted, 11; abated or dismissed, 7; cases that will never be tried owing to failure of officers to arrest, 22; number found guilty but not sentenced, 12; costs of prosecutions, exclusive of salary of officers, $3,700; fines collected, $205.

The foregoing does not include the large number of persons tried, acquitted or convicted under the ordinances of Virginia or Gold Hill.

REPORT FOR 1892.

Summary of cases prosecuted in District Court and Justices' Courts, Nos. 1 and 2: For misdemeanors, 66; for felonies, 21. Number of persons convicted: Of felony, 4; of misdemeanors, 33. Average punishment: Of felonies (except the case of Barry, which was for 30 years), 3⅜ years in State Prison; of misdemeanor, fined $19 or 9½ days in jail. Character of offenses: Assault, 2;

assault and battery, 25; assault with deadly weapon, 1; assault with intent to commit robbery, 1; assault with intent to kill, 1; attempt to kill, 3; burglary, 5; contempt of Court, 1; cruelty to animals, 2. Dismissals: Disturbing the peace, 5; drawing and exhibiting deadly weapon, 5; drunk and disorderly, 1; embezzlement, 2; felony, 1; forgery, 2; grand larceny, 1; housebreaking, 2; malicious mischief, 8; mayhem, 2; murder, 2; obtaining money under false pretenses, 1; peddling without a license, 1; petit larceny, 7; rape, 1; selling liquor to a minor, 1; stolen goods, 1; threats against life, 3; threats to kill, bonds to keep peace, 1; vagrancy, 7. Number of persons acquitted, 6; abated or dismissed, 22; cases that will never be tried, owing to inability of officers to make arrests, 9; number found guilty, but not sentenced, 2; costs of prosecutions, exclusive of salaries of officers (estimated), $2,500; fines collected, $474. The foregoing does not include the large number of persons tried, acquitted or convicted under the ordinances of Virginia or Gold Hill.

Washoe County—T. V. Julien, District Attorney.

REPORT FOR 1891.

In the District Court: Number of prosecutions, 14; convictions, 10; acquittals, 2; dismissals, 2. Character of offense: Selling whisky to Indians, 4; burglary, 3; grand larceny, 1; assault, 1; robbery, 1; forgery 1. Average punishment: State Prison, 28 months, county jail, 100 days.

In the Justice Court: Number of prosecutions, 367. The offenses were: Disturbing the peace, 184; assault and battery, 14; vagrancy, 134; petit larceny, 10; false pretenses, 3; other minor offenses, 22. Average punishment, 14 days county jail. Cost of prosecutions in the District Court and Justice Court, feeding prisoners, jurors' fees, etc., $7,211; amount of fines paid in, $316.

It is a difficult matter, if not impossible, to determine the exact cost of prosecutions in the District Court, for the reason that all county officers are working upon salary. Juries are seldom called for criminal business alone. I have included in this report, approximately, the amount paid jurors while engaged in criminal cases, which makes the report as near correct as it is possible to make it.

REPORT FOR 1892.

In the District Court: Number of prosecutions, 4; convictions, 3; dismissals, 1; character of offense: Assault to kill, 2; false pretenses, 1; murder, 1; average penalty, 187½ days in county jail and 9 years in State Prison. As all officers work upon salaries and juries are called for other purposes, I can only approximate the cost, which is about $850. No fines paid.

This report does not contain business in Justices' Courts. There is no law requiring Justices to furnish this information, and it

would require a month's steady work to go to each Justice in the county, some living over a hundred miles distant, to get the figures, and in most cases it would have to be guessed at, at least. If that information is desired the law should be changed so as to require Justices to report to District Attorneys.

White Pine County—A. B. Treece, District Attorney.

REPORT FOR 1891.

Whole number of prosecutions, 2; convicted, 1, one year's imprisonment; dismissed, 1. Character of offenses: Assult with a deadly weapon with intent to inflict bodily injury, 1; selling liquor to Indians, 1. Cost of prosecutions, $275. In addition to above, State vs. Hank Parish, change of venue from Lincoln county to this county, continued from last report. Parish executed December 12, 1890. Each, all and every expense connected therewith, $1,447, of which Lincoln county promptly and fully paid her part.

REPORT FOR 1892.

Whole number of prosecutions, 3; convictions, 2; acquittals, 1. Character of offenses: Selling liquor to Indians, 2; stealing cattle, 1. Average punishment, 10½ months; cost of prosecutions, $3,500.

No report received from Lincoln county for the year 1891 and 1892.

OFFICIAL OPINIONS.

I deem it expedient that I report to you the various official opinions rendered by me during the past two years.

While I have answered a great number of inquiries involving the construction of the laws now in force, I believe the following opinions to be of the most interest to this State:

Office of Attorney General,
Carson City, Nevada, January 27, 1891.

Hon. R. L. Horton, State Controller:

Sir: You have submitted to me the following question and asked my advice upon the same, to-wit: Can I refuse legally to draw a warrant for the mileage of a member of the Assembly when the amount is properly certified to me by the proper officers of the Assembly and when the Legislature of the State has made an appropriation for the payment of the same? Have I the right to say that the number of miles certified to me by the proper officers of this body is not the correct number of miles?

I understand from conversation with you and from examining the records of your office that you now have on file in your office a certified copy of the Committee on Mileage of the Assembly, which shows that the report of the committee was adopted. You have also the certificate or check of the Sergeant-at-Arms of the Assembly, countersigned by the Speaker, certifying that the amount of mileage specified in the certificate is correct.

The Legislature of this State has passed an Act appropriating the sum of $55,000 for the purpose of paying the *mileage* and per diem of the members, the salaries of the attaches and the incidental expenses of the respective houses. By this Act the Controller is authorized and required to draw his warrant on the Legislative Fund in favor of the members for per diem, *mileage, etc., when properly certified to him in accordance to law.*

The law provides, among other things, that the Sergeant-at-Arms shall keep an accurate account for paying mileage of members, and prepare checks for the same. [General Statutes Nevada, Section 1776.]

The standing rules of the Assembly provide that "It shall be the duty of the Committee on Mileage to ascertain and report the distance for which each member was entitled to receive pay. This report was adopted and you have a certified copy of it. The Sergeant-at Arms has drawn his check for the various amounts, said checks being countersigned by the Speaker of the Assembly.

In my judgment you are obliged to draw your warrant for the amounts so certified, and should you decline to do so, mandamus would compel you.

The Act appropriating $55,000 for the payment of the per diem and mileage of the members of the Legislature is a constitutional Act, and it imposes certain duties upon the Controller, and I can find no reason for disobeying them.

The statutes of this State (General Laws, Section 1181) gives to the Controller a veto power upon any claim acted upon by the Board of Examiners, and the Controller has the power to call witnesses and ascertain the fact, and if in his judgment the claim allowed is for too large an amount, he has the right to cut it down, but this power is confined to claims acted upon by the Board of Examiners or claims which they have in their hands a certain time and refuse to act upon.

From the foregoing reasons I should say you were obliged to draw your warrant for the different amounts certified for mileage.

I remain yours, very respectfully,
JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, February 24, 1891.

Hon. A. B. Treece, Elko, Nevada:

DEAR SIR: Your favor of the 14th duly received, and I would have answered it before, except that I have been kept very busy upon some legislative matters. The Constitution provides that the Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year. With this constitutional provisions in force, the Legislature in 1869 passed an Act providing that no school district should be entitled to receive any portion of the public school moneys unless a school had been taught within such district for at least three months.

The Constitution further provides, "and any school district neglecting to establish and maintain such a school * * * *may be* deprived of its proportion of the interest of the public school fund during such neglect."

Neither the Constitution nor the law specifies how such school district *may be* deprived of its proportion of the public school fund. Both are silent upon this question. Although the law is in apparent

conflict with the constitutional provision, still no one is given authority to deprive any school district of its just proportion, and until such a law shall be enacted, I should hold that such a school as is provided by the law of 1869 would be entitled to receive its proportion of school moneys.

Yours truly,

JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, March 13, 1891.

J. A. McComb, Grantsville, Nevada:

DEAR SIR: I received your letter and have delayed answering it for the reason that I have been too busy with legislative matters to give proper attention to my correspondence.

By reading sections 1503, 1505 and 1510 of the General Statutes of Nevada, you will see that no person is entitled to register unless he has or will have resided in the State six months and in the county or precinct thirty days prior to the day of election. No one is entitled to register in any election precinct without having or who will have resided *in such precinct* thirty days prior to the day of election.

Furthermore, no person is entitled to take a transfer and register in another precinct and have his name put on the register unless he will have resided *in such precinct* thirty days prior to the day of election.

No person is entitled to vote at an election unless his name *appears on the "check list"* furnished by the Registry Agent to the Inspectors of Election, and his name must appear on the register the day prior to the day of election. It cannot be put on on the day of election.

The Inspectors of Election had no right to receive the names of the four persons or allow them to vote, and if these voters took a false oath or made a false affidavit they are guilty of perjury. The law also provides that "all qualified electors residing in any election precinct *in which there are less than ten* qualified electors permanently residing at the time notice of holding elections are given, shall be entitled to register and vote in the election precinct having a polling place nearest their residence, by the usual traveled route." Thus it will be seen that if there were less than ten electors residing in such precinct at the time notice of holding an election was given, an elector would have the right to register in the precinct nearest his residence. I gather from your letter that this state of facts does not exist.

No person can have an affidavit made and compel his vote to be taken, and if the voter, without his name being on the check list, votes, it is illegal.

From your statement it seems to me the whole proceedings were illegal, and a contest should have been instituted within the statutory time of forty days. As the matter now stands the correct thing to do would be to have the District Attorney of Nye county file an information in the nature of a *quo warranto*, and set up a statement of all the facts in the matter and have the Court decide it. Something should certainly be done to punish such illegal practices.

Yours truly,
JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, March 17, 1891.

To His Excellency, R. K. Colcord:

SIR: You have submitted to me substitute for Senate Bill No. 70, and requested my opinion on the same as to its constitutionality. The Act is entitled "An Act to amend Section one of an Act entitled "An Act fixing the time for opening and closing of saloons and gaming houses," approved March 6, 1889, and reads as follows after the enacting clause:

SECTION 1. Section one of an Act entitled "An Act fixing the time for opening and closing of saloons and gaming houses," approved March 6, 1889, is hereby amended so as to read as follows:

Section One: It shall be unlawful for any person or persons, firm or corporation engaged in the business of selling any kind or kinds of spiritous or malt liquors by the glass or drink, or engaged in carrying on or conducting any kind or character of gambling or game of chance in any county of this State containing a population of 4,850 or upwards, to be determined by *the last general census of the United States preceding the application* of this provision, to open such place of business for the sale, etc.

The law makes it a misdemeanor for any person to violate its provisions.

Section 20 of Article IV. of the Constitution of this State, among other things provides "The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say * * * * 'For the punishment of crimes and misdemeanors.'"

Section 21 provides that "In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State."

It will be seen from the reading of the statute under discussion that it applies to any county in the State containing a population of 4,850 or upwards, *to be determined by the last general census of the*

United States preceding the application of this provision. In other words, all counties in this State having a population of over 4,850, as shown by the census of 1890, are affected by this law, and no other counties can ever be affected by it. As near as I can ascertain there are only three counties in this State shown by the last census to have over 4,850 population, to-wit: Ormsby county 4,883, Storey county 8,695 and Washoe county 6,206. This law can only affect these three counties because they are the only ones having the population at the time designated and fixed by the statute, and all other counties in the State are not affected by it and can never be, for the reason that they did not have the required population as shown by the last census.

This provision of our Constitution has been frequently interpreted by our Supreme Court, and I do not think that it is necessary for me to enter upon an elaborate discussion of it, but simply call the attention of your Excellency to some of the decisions.

In the case of the State of Nevada *ex rel.* Patterson vs. Donovan, 20 Nevada, page 78, in construing this very provision of our Constitution, to wit, "for the punishment of crimes and misdemeanors," uses this language: "All Acts or parts of Acts attempting to create a classification of counties or cities by a *voting population, which are confined in their operation to the existing state of facts at the time of their passage or to any fixed date prior thereto,* or which, by any device or subterfuge, excludes the other counties or cities from ever coming within their provisions, or based upon any classification which, in relation to the subject embraced in the Act, are purely illusory, or founded upon unreasonable, odious or absurd distinctions, have always been held *unconstitutional and void.* The Legislature has no power or authority to pass such Acts." [See also State vs. Boyd, 19 Nevada, 43, and authorities there cited.]

Let us, in view of this decision, criticise the Act in question:

1. It creates a classification of counties by population.

2. It is confined in its operation to the existing state of facts at the time of its passage, viz: the population as shown by the last census of 1890.

3. It excludes all counties of the State from ever coming within its provisions.

In the case of the State of Nevada vs. Woodbury, 17 Nevada, page 358, our Supreme Court, speaking upon this question of classification, says: "A classification based upon population, to be constitutional, must give to other counties the rights and privileges of such classification by increase of population."

This is just what the Act in question does not do.

From the foregoing reasons, I believe said Act to be in conflict with the Constitution of this State.

I remain your obedient servant,

JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, March 21, 1891.

Hon. T. V. Julien, Reno, Nevada:

MY DEAR FRIEND: Your favor of 18th received, but this is the first opportunity I have had to answer it. I have looked at the cases you cited to me, and will give you a synopsis of some of them. In 59 Georgia, p. 648, Jackson, Judge, says: The authorities of Macon levied a tax upon the business of the First National Bank, operating therein under the Acts of Congress; the bank applied for an injunction, the Chancellor granted it and the city excepted. We think that the Chancellor was right. Whilst the property owned by the bank may be taxed by State authorities, and the shares owned by the stockholders may be also taxed, the business of the bank * * * its right to operate and do banking business * * * cannot be taxed by the States; and if not, of course it cannot be by any municipality which derives its taxing power from the State. The distinction between the right to tax property and that to tax business in cases of agencies working under Federal authority, is well settled, we think, by the Supreme Court of the United States. [4 Wheat. 430; 9 Wallace, 18.] There is nothing decided in any subsequent case which controverts this distinction. As this is clearly an effort to tax *the business* of this bank, it is illegal, and the Chancellor did right to grant the injunction. See Rev. Stat. U. S., Secs. 5,214, 5,219. Judgment affirmed.

In 71 Mo., 508, the syllabus reads as follows: "A State has no power to authorize any taxation of National Banks, except such as is permitted by the National Banking Act of Congress, *i. e.* a tax on the shares of the bank. It cannot authorize its municipalities to exact license taxes from such corporations doing business within their limits."

In 8 Heisk., p. 814, the syllabus reads as follows: "The National Banks chartered by the United States are not liable to a privilege tax imposed by a city ordinance."

I will further state that the text fully supports the syllabus.

I do not think there is anything in the 4th Nevada to conflict with these authorities, Judge Beatty holding that the State may impose a tax upon the property of these banks, real estate, etc.

Trusting that this will be satisfactory, I remain

Yours truly,

JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, April 6, 1891.

Hon. J. M. Gooding, Belmont, Nevada:

DEAR SIR: Your favor of the 29th ult. at hand, and will state

that on the 14th of February I wrote Mr. A. B. Treece of White Pine county a letter with reference to the same subject matter you ask about, and quote to you my letter to him: "The Constitution provides that the Legislature shall provide for a uniform system of common schools by which a school shall be established and maintained in each school district at least six months in each year. With this constitutional provision in force, the Legislature in 1869 passed an Act providing that no school district should be entitled to receive any portion of the public moneys unless a school has been taught within such school district for at least three months. The Constitution further provides: 'And any school district neglecting to establish and maintain such school may be deprived of its proportion of the interest of the public school fund during such neglect.' Neither the Constitution nor the law specifies how such school district *may be* deprived of its proportion of the interest of the public school fund. Both are silent upon this question. Although the law is in apparent conflict with the constitututional provision, still no one is given any authority to deprive any school district of its just proportion, and until such a law shall be enacted I should hold that such a school as is provided by the law of 1869 would be entitled to receive its proportion of school moneys.

Yours truly,

JAMES D. TORREYSON,

Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, May 4, 1891.

L. A. Dunkle, Eureka, Nevada:

DEAR SIR: Your favor of the 27th inst. was duly received, and in reply will state that the Act of March 23, 1891, commonly called the Revenue Act, allows the Sheriff on the gross amount on each business license sold 6 per cent. [See section 133.] The law of 1865 allowed the Sheriff, in addition to the 6 per cent. on the gross amount, $1 from the party obtaining such license, 50 cents of which had to be paid to the Auditor, but this latter provision of the law of 1865 has been repealed by the law of 1891, and the Sheriff is not authorized to collect the additional dollar—only the 6 per cent.

Yours truly,

JAMES D. TORREYSON,

Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, May 19, 1891.

W. H. Bottsford, Carson City, Nevada:

DEAR SIR: In reply to your inquiry in your letter of the 19th inst. I will state that the Act of March 23, 1891, commonly called

the Revenue Act, allows the Sheriff on the gross amount on each business license sold 6 per cent. [See section 133.] The law of 1865 [General Statutes, section 1,101,] allowed the Sheriff, in addition to the 6 per cent. on the gross amount, $1 from the party obtaining such license, 50 cents of which had to be paid to the Auditor, but this latter provision of the law of 1865 has been repealed by the law of 1891, and the Sheriff is not authorized to collect the additional dollar—only the 6 per cent. after the date of the approval of the Act, to wit: March 23, 1891.

Your inquiry as to what fees collected by the Sheriff are to be paid into the county treasury, I will state that the law of 1887, page 129, section 7, requires you to pay in to the County Treasurer all fees and percentages collected by you in your official capacity.

Yours truly,

JAMES D. TORREYSON,

Attorney General

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, May 27, 1891.

George H. Meiggs, Elko, Nevada:

DEAR SIR; Your favor of the 15th inst. came duly to hand, but on account of press of business and absence from town I have been unable to give the matter the attention it deserves.

Section 23, page 144 of the Revenue Act, provides that "The Clerk of the Board shall *note* all changes made and report the same to the *Auditor, who shall make* the changes required on the original assessment roll."

Section 29 provides that "the Auditor shall as soon as he receives * * * make the corresponding changes in the assessment roll by entering the same in a column," etc.

You ask which officer makes the corrections on the roll.

It seems to me from reading these two sections together that the Clerk "*notes*" all changes made by the Board, and that the Auditor *makes* the changes on the assessment roll.

The Assessor is required to complete his assessment roll by the second Monday in August in each year and turn it over to the Clerk. [Sections 19 and 20.] It then remains with the Clerk one week before the Board of Equalization meets. [Section 23.]

What is to prevent the Auditor from proceeding to make a copy of the roll this week, except to carry out the figures?

The Board of Equalization meets on the third Monday in August and shall not sit after the first Monday in September, except in certain specified cases. Now every change will be made on the roll by the first Monday in September, except in certain cases, and then on the second Monday in September the excepted cases are taken up (usually not many) and the Clerk notes these changes, but in the

meantime, from the second Monday in August to the second Monday in September, could not the Auditor have made a copy of all the roll and made all changes except what are made on the second Monday in September, and by the third Monday in September the Auditor certainly could make the additional changes in the excepted cases.

Section 26 reads: "*During the session*" (or within two days after the adjournment). Now it is not necessary for the Clerk to wait until after the adjournment to enter up the changes and corrections. He can do it "during the session."

Trusting that I have made myself clear, I remain, yours truly,

JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, January 23, 1892.

W. Brougher, Belmont, Nevada:

DEAR SIR: The law does not allow County Auditors anything for extending the assessment roll. If you will examine the Revenue Act passed at the last session of the Legislature you will notice that Section 153 limits the compensation of county officers for services to their salaries. If you will look at Section 154, the repealing clause, and on page 188 you will see that the Legislature has repealed the law which heretofore allowed compensation for extending the assessment roll, in this language: "An Act entitled 'An Act to limit the compensation of County Auditors for extending taxes on the assessment roll,'" approved February 20, 1873.

Yours truly,
JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, March 28, 1892.

Hon. Chas. Kaiser, Stillwater, Nevada:

DEAR SIR: The Surveyor General of this State has called my attention to the fact that in 1882 you, through other persons, made application to purchase from the State of Nevada large amounts of land; that about the same time or simultaneous with your application, Mr. W. S. Bailey made application to purchase the same land. In 1883 all of this land was approved to the State of Nevada, and the State now holds the legal title to the same.

In 1885, under the law then in existence, the State Land Register certified to the District Court of your county those cases in which a contest existed. The Surveyor General informs me that since the certification of these lands to the District Court you have acquired

from Mr. Bailey, or from those applying to purchase in Mr. Bailey's name, all the right, title and interest of Mr. Bailey; that you have been notified to enter into a contract with the State for the purchase of these lands, but that so far you have failed and refused to do so. I am also informed that you have had the use, occupation and possession of these lands for over eight years, but the State has derived no benefit in interest upon these lands. Now some action must be taken by you to enter into a contract with the State for the purchase of these lands, designating to the Surveyor General the name of the party you wish the contract to run. You can very easily have the contests dismissed in the court by appearing in court and showing that the matter has been settled and that you are entitled to make the contract. The court will, without doubt, make such an order. If some step is not taken by you to adjudicate this matter I shall be compelled, as the law officer of this State, to take such proceedings as in my judgment may be proper to compel these contracts to be entered into.

Yours truly,

JAMES D. TORREYSON.
Attorney General.

J. E. JONES, Surveyor General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, April 18, 1892.

Hon. O. H. Grey:

SIR: You have addressed a communication to me asking for my opinion upon Section 23, of what is known as and called "The Australian Ballot Law." You desire to know if a person who cannot read or write comes within said section, and is he allowed an assistant?

Section 23 (Statutes 1891, p. 45) reads as follows:

SEC. 23. "A voter who declares under oath that by reason of physical disability he is unable to mark his ballot, shall at his request be permitted to receive the assistance in such marking of an elector, other than an election officer, but no person shall be permitted to go inside the guard rail as an assistant to more than one voter."

The Legislature of this State has enacted, that if "by reason of *physical* disability" a voter is unable to mark his ballot, he shall be permitted to receive assistance. If the Legislature had intended *any* disability, it certainly would not have specified "*physical.*"

Webster defines "*physical*" as "relating to natural or material things, or to the bodily structure, as opposed to things mental, moral, spiritual or imaginary."

"Physical" education is defined as "training of the bodily organs and powers, with a view to the promotion of health."

"Physical" examination, is "an examination of the bodily concondition of a person."

"Physical" signs, "the objective signs of the bodily state afforded by a physical examination."

The term physical has a well known and defined meaning, and physical disability means bodily disability as contradistinguished from mental disability.

Being unable to read or write is rather a mental or intellectual disability, unless such inability is the result of loss of sight.

It is my opinion, therefore, that a person who cannot read or write does not come within the provisions of said section 23.

Yours truly,

JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, October 7, 1892.

Henry Wood, County Clerk of Lyon County, Nevada:

Sir: You have submitted to me for official opinion the following question:

"When a convention has passed certain officers and made no nominations for the same, but delegated the power of certifying the nominees of filling the "vacancy" to the Central Committee, can the Clerk receive the certificates certifying nominees for such passed offices and place them on the ticket in the original certificate of such convention filed with him. In other words, has the committee power to fill an office which has been passed by a convention. ?"

In my opinion, where a convention refuses to nominate a person for any particular office, or passes that office, this is not such a vacancy as is contemplated by the Act entitled an Act to amend an Act entitled, "An Act relating to elections and to more fully secure the secrecy of the ballot," approved March 13, 1891, approved March 19, 1891.

Said Act provides "should a vacancy occur from any cause *in the list of nominees for any office* such vacancy may be filled at any time before the day of election by the convention, or by a committee to which the convention has delegated the power to fill such vacancies, or by petitioners, as provided in section four of this Act. The Chairman and Secretary of the convention, or of such committee, or such petitioners, shall make and file with the proper officer a certificate setting forth the name of the person nominated to fill such vacancy, the office for which he is nominated, *the name of the person for whom the new nominee is to be substituted.*

The law contemplates that some one should have been nominated for the office by the convention, and for some reason after the convention has adjourned and before the day of election a vacancy has occurred in that particular office, and then and in that case the committee would have the power to fill that vacancy, but where

the convention refuses to nominate or pass the office it is my opinion that the office can only be filled by a three per cent. vote.

Yours truly,
JAMES D. TORREYSON,
Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, October 20, 1892.

Hon. J. E. Jones, Surveyor General of the State of Nevada:

SIR: You have asked me for my construction of an Act of the Legislature of the State of Nevada entitled "An Act to prevent trespass upon real estate by live stock, and other matters relating thereto," approved March 15, 1889 (Statutes 1889, p. 129).

You desire to know if Section 4 of said Act nullifies the force and effect of the whole Act. The Legislature of this State evidently intended by passing the first three sections of said Act to pass a law that would be of benefit to the people of this State, and after having enacted three sections they would not stultify themselves by passing another section nullifying the whole Act.

Rights of common are very rare in the United States. "Common" is defined as "a profit which a man hath in the land of another, as to feed his beasts, to catch fish, to dig turf, to cut wood or the like." [Blk., Vol. 2, Sec. 32.]

There is no such thing in this State as the right of a person to pasture, feed or graze cattle upon the lands of another, for the statute of 1889, heretofore referred to, forbids it, and in direct terms says: "It shall be unlawful for any person to herd or knowingly graze any live stock upon the lands of another * * * and in the same section the term "lands of another" is defined as "lands to which the person claiming the same has the legal title thereto or has made an application to the State to purchase the same with first payment made thereon and the boundaries are marked." Therefore, if a person holds the legal title to the land or has made application to the State to purchase the land and made his first payment thereon, and the boundaries are marked so that they can be seen or easily traced, then and in that case such "lands" are not in the law "ranges or commons," and any one grazing or herding stock upon this character of land would be guilty of a misdemeanor and come within the provisions of the law of 1889.

Ranges or commons in the sense used in this law mean lands for which no person has the legal title of; for which no one has made application to the State to purchase and made first payment thereon. In conclusion, I will state that it is my opinion that any live stock, range or otherwise, knowingly herded or grazed upon the character

of lands specified in this statute would come within the provisions of this law.

Yours truly,
JAMES D. TORREYSON,
Attorney General.

OFFICE ATTORNEY GENERAL,
CARSON CITY, Nevada, October 31, 1892.

Hon. F. L. Wildes, County Clerk of Storey County, Virginia City:

SIR: Since writing you this morning, or rather Mr. Tulley, I have again carefully considered the question submitted to me with respect to the "sample ballots" provided by section 25 of the Act of the Legislature of the State of Nevada entitled, "An Act relating to elections and to more fully secure the secrecy of the ballot," approved March 13, 1891, and the form in which such sample ballot should be printed.

It is no part of my official duty to advise the County Clerks respecting the matter submitted, but in view of the doubts which have arisen and the great importance of the question, I have concluded to give formal and public expressions to my views.

By the section under consideration, it is intended that the County Clerks of the several counties of this State shall furnish to each elector a copy of the ballot provided for use upon election day. The purpose of this copy is to inform the elector of the various offices to be filled, the names of the various candidates, the party to which such candidate belongs and the principles which such candidate is supposed to represent. This, in my opinion, is the whole spirit and purpose of the law. It was certainly not intended as a means of perpetrating a fraud upon the ballot box, or of enabling candidates or their friends to corrupt electors mentally disqualified, or laboring under a mental as contradistinguished from a physical disability, to vote at any election.

By "copy" the statute does not, in my opinion, mean a *fac simile.* A ballot printed on plain white paper, without water mark or indorsements, except the words "sample ballot," containing the names of the candidates for each office arranged under the designation of the office in alphabetical order according to surname, with the names of the candidates for Presidential electors arranged in groups, as presented in the several certificates of nomination, and the names of the candidates for President and Vice-President preceding the proper groups of Presidential Electors, and the political designation of each candidate and any other matters contained in the original ballot provided for use at the polls, is all that the law requires.

To be more specific, it is not essential to compliance with the statute that the printed matter contained upon the "sample ballot"

should occupy precisely the same place upon the paper as the identical matter in the original ballot.

The word "copies," as used in the statute, is fully satisfied by a ballot which contains all the matter found upon the official ballot, though such matter may occupy a different position upon the paper. It is plainly the spirit and purpose of the law in question to secure purity, independence and freedom of the ballot, and to prevent, as far as possible, fraud and the corruption of electors, and no construction should be put upon the law which defeats, or tends to defeat, these high purposes.

It is currently reported that candidates and their supporters have conspired together to defeat this purpose by sample ballots which are in all respects a *fac simile* of the official ballot, pasting such *fac simile* ballots upon pasteboard, piercing holes in the sample ballot and board opposite the names of favored candidates, instructing voters to place the sample ballot over the official ballot received in the voting booth, insert the pencil into the hole thus made and make a cross, and in this way enable persons, otherwise disqualified, to vote.

It is plain, if this can be done, that the spirit of the law will be defeated and the sample ballot, in place of being a means of informing the voter concerning the candidates and the principles represented by them, will become a gross instrument of corruption and fraud, and persons mentally disqualified and open to corruption may be enabled or bribed to vote without the exercise of any choice, and without knowing or seeing or in any manner comprehending the names of the candidates for whom the ballots when cast will be counted.

I respectfully submit that no County Clerk should intentionally lend himself to the consummation of this result, and that every official, State and county, and every good citizen should by every honest endeavor help the work.

Very truly,

JAMES D. TORREYSON,

Attorney General.

OFFICE OF ATTORNEY GENERAL,
CARSON CITY, Nevada, Dec. 6, 1891.

To the Honorable State Board of Examiners, Carson City, Nevada:

SIRS: You have submitted to me for my official opinion the following questions:

1. Is there any law, constitutional or statutory, which provides for the publication of proposed amendments to the Constitution at any time before acted upon by the Legislature and submitted to the people for their adoption?

2. If such law exists, is it the duty of the Secretary of State or of any officer or of any board of officers to make such publication?

The questions submitted are of public and paramount importance to the people of this State, and I have given the subject careful study and research. I answer both of the foregoing interrogations in the negative. There is no law, constitutional or statutory, which makes provision for the publication of amendments to the Constitution until such amendments have been proposed by one Legislature and agreed to by another Legislature and submitted to the people for ratification.

It is not the duty of the Secretary of State, or of any officer or any board of officers, under the Constitution or statutes of the State, to publish proposed amendments to the Constitution.

The Constitution of the State, Section 1, Article XVI, provides that "any amendment * * * to this Constitution may be proposed in the Senate or Assembly, and if agreed to * * * such proposed amendments * * * shall be * * * referred to the Legislature next to be chosen, and shall be published for three months next preceding the time of making such choice." * * *

It cannot be doubted that this provision contemplates the publication of amendments to the Constitution, prior to the election of the Legislature which is to finally submit such amendments to the people. It is equally certain that this provision of the Constitution is not self-executing—in other words, it is necessary that the Legislature should provide means to carry this constitutional provision into effect. The organic law simply directs that the publication shall be made, without directing the mode or manner. The mode and manner must be provided by the Legislature.

The Constitution does not direct what board or officer shall perform the duty; in what manner it shall be performed; whether by posting or by circulars in the public prints, nor is the number of posting circulars or public prints specified, nor is there any appropriation or fund provided for payment of the expenses. All these things are essential; without them the constitutional provision could not be executed.

"A constitutional provision is self-executing if it supplies a sufficient rule by means of which * * * the duty imposed may be enforced, and it is not self-executing when it merely indicates principles without laying down rules by means of which these principles may be given the force of law."

Cooley's Constitutional Lim., pp. 99–100.

As the Constitution does not lay down the rules by means of which proposed amendments can be published, it follows that force and effect can only be given to this provision of the Constitution by the Legislature in a statute law.

It remains to consider whether the Legislature has enacted such a law or made any provision for the publication of constitutional

amendments at any time before their final submission to the people for adoption.

There are two statutes which bear upon this subject and no more, namely, the Act of March 5, 1887, entitled "An Act providing for the manner of *submitting* constitutional amendments to the voters of the State of Nevada," and the Act of January 19, 1889, entitled "An Act providing for holding a special election in the State of Nevada, and at such election to submit to the people of the State proposed amendments to the Constitution thereof, and other matters pertaining thereto." [See Statutes 1887, p. 122; also Statutes 1889, p. 14.]

The first of these Acts declares that "whenever the conditions prescribed by the Constitution of the State of Nevada for amending the same *have been complied with by the Legislature*, the State Board of Examiners shall order such proposed amendments to the Constitution published in one daily newspaper * * * for a period of ninety days next preceding any general election held in this State '*when any proposed amendments are pending.*'"

That this statute has no application to the first publication contemplated by the Constitution is apparent to the most casual observer. The title of the Act, which the Constitution declares shall express the substance of the law, shows that the law relates solely to the submitting of amendments to the voters of the State. If anything were needed to make the position clearer it would be found in the language of the statute itself. The duty enjoined upon the State Board of Examiners is to publish the proposed amendments, not before, but after, the Legislature has acted. It is to be done "when the conditions prescribed by the Constitution *have been complied with by the Legislature*," and as we have seen, and as the Constitution plainly declares the conditions are: The proposal of amendments by one Legislature, the adoption of these amendments by a succeeding Legislature and the submission of them by that Legislature to the people.

The second of these Acts of the Legislature, namely, the Act of 1889, both in the title and body of the law, contemplates and provides for the submission to the people of specific constitutional amendments proposed and pending at the time of holding such election, at a special election then provided for.

This Act is not prospective or continuing in its operation, but relates to the special case, and not to the law of any other case; but however this may be it is perfectly clear that it makes no provision for the publication of proposed amendments prior to the time of final submission. Every section, every paragraph of the statute makes it manifest that the publication contemplated and provided for was the publication which the Constitution contemplated shall be made after the Legislature has complied with the conditions of the Constitution

As to the second interrogatory, namely, "Is it the duty of the Secretary of State, or of any officer or of any board of officers, to publish proposed amendments to the Constitution?" It is hardly necessary to add that both statutes in terms impose whatever duty in the matter of publication is to be performed upon the State Board of Examiners, and not upon any other person or officer. It may not be improper to add that proposed amendments to the Constitution cannot be published without the payment of money, at least not without incurring the obligation to pay.

"No money shall be drawn from the treasury but in consequence of appropriation made by law." [Constitution Nevada, Article IV, Section 19.]

No appropriation was made for this purpose, and for this reason, if for no other, publication could not be made.

Yours truly,
JAMES D. TORREYSON,
Attorney General.

With this and the other suggestions herein made I herewith submit to your Excellency the report of this office.

Yours truly,
JAMES D. TORREYSON,
Attorney General.

REPORT.

Office of Attorney-General,
Carson City, Nevada, January 3, 1895.

To His Excellency R. K. Colcord, *Governor of the State of Nevada:*

Sir: I have the honor to submit for your consideration a report of the business transacted by this office for the years 1893 and 1894.

JAMES D. TORREYSON,
Attorney-General.

REPORT.

Office of Attorney-General,
Carson City, Nevada, January 3, 1895.

To His Excellency R. K. Colcord, *Governor of the State of Nevada*:

Sir: I herewith submit to you a synopsis of the various cases decided by the Supreme Court of this State since my last report and in which the State was a party and also in which the public have an interest.

The State of Nevada *ex rel.* James D. Torreyson, Attorney-General, relator, vs. O. H. Grey, Secretary of State, respondent, was an application for a writ of mandate compelling the respondent to return to each of the respective houses of the Legislature the proposed amendments to the Constitution acted upon at the Fifteenth Session of the Nevada Legislature for such further action as might seem just and proper, as provided in Section 1 of Article XVI. of the Constitution.

The Secretary of State refused to return said proposed amendments upon the ground that they were not in a condition to be referred to the Legislature, for the reason that the same had not been published "for three months next preceding the last general election."

The relator in this proceeding took the ground that a publication in the Statutes and Journals for three months next preceding the general election at which said proposed amendments were to be voted for was a sufficient publication and a compliance with Section 1 of Article XVI. of the Constitution.

The Court held that such a publication was sufficient and directed the Secretary of State to return to the respective houses said proposed amendments, which he did.

The next case was that of George S. Sawyer, appellant, vs. W. J. Dooley, respondent. This was an action brought to restrain the defendant as Tax Collector of Lincoln county from selling certain property of the plaintiff for taxes delinquent for the year 1891. The agreed facts show that plaintiff was the owner of certain property which was duly assessed by the County Assessor for the year 1891; that the County Board of Equalization made no change

in the valuation, but the State Board of Assessors and Equalization raised it, in common with all other property in the county, 10 per cent. The appellant took the ground that the State Board of Assessors and Equalization had no authority or power to make the much-talked-of "horizontal raise"; that the Act creating the State Board of Assessors and Equalization was unconstitutional.

The Supreme Court held the law to be constitutional and that the Board had the power to make the raise and say, "Boards of Equalization are created to correct injustice and inequalities in the assessment of property and where they have jurisdiction of property, and in some cases may lower the valuation thereon. It should require very clear language to lead us to the conclusion that it was not intended, no matter what mistake had been made, that they should also increase it."

The State of Nevada vs. John Trolson was an appeal from the District Court of Storey county. The defendant was indicted for embezzlement and upon appeal the judgment of the District Court was affirmed.

The State of Nevada *ex rel.* Trenmor Coffin was an original application for a writ of mandate to compel R. L. Horton, State Controller, to draw his warrant on the State Treasurer in favor of relator for the sum of $250, alleged to be due and owing from the State of Nevada to relator. The action grew out of the case of Sawyer vs. Dooley, in which relator, Coffin, appeared in the Supreme Court and assisted the Attorney-General. He filed a claim with the Board of Examiners, which was duly allowed by them. The claim was presented to the Controller and he refused to to draw his warrant upon the ground that the Controller was the only officer authorized by law to employ counsel to assist in enforcing the collection of revenue and prosecute delinquents.

The Court held that the Controller alone had authority to institute and prosecute such actions and to direct and superintend the collection of all moneys due the State. The writ was accordingly dismissed.

The State of Nevada *ex rel.* C. C. Powning, relator, vs. J. E. Jones, State Land Register, and J. F. Egan, State Treasurer, respondents. This was an original application for a writ of mandate compelling the respondents to accept from relator interest due upon certain 40 acres of land which the State had, along with other lands, contracted to sell to relator.

I believe this to be the most important case decided by the Supreme Court affecting our School Fund. The facts of the case show that relator entered into a contract with the State of Nevada for the purchase of 160 acres of land; that he paid into the State Treasury the legal fees and 25 cents per acre, and entered into a

contract to pay the balance of his purchase price, $160, at 6 per cent. per year interest; that he paid the first year's interest of $9 60; that when the second installment of interest became due he offered to pay upon only 40 acres, which 40-acre tract was included in his original contract for 160 acres.

The Land Register refused to accept payment on 40 acres and insisted upon payment being made upon the entire 160 acres, claiming that the contract was an entirety. The Supreme Court held the contract to be an entirety. If relator's contention in this case were correct, our School Fund would have been injured to a very great extent.

The case of State of Nevada *ex rel.* Charles E. Mack, relator, vs. James D. Torreyson, Attorney-General, respondent, was a proceeding begun in the District Court in the nature of a *quo warranto* to try the validity of respondent's claim or right to act as a member of the Board of Regents of the State University.

The facts are that the Board of Regents of the State University consisted of three electors of the State; that at the session of the Legislature of 1891, said body passed an Act making the Governor of the State and the Attorney-General *ex officio* members of said Board of Regents, thus making said Board consist of five members. The question involved was as to the constitutionality of the Act of 1891, creating two new members of the Board of Regents and the Legislature in that Act naming the persons who should hold the office.

The Supreme Court decided that the Act of the Legislature making the Governor and Attorney-General *ex officio* members of the Board of Regents was unconstitutional and ousted the respondent from the position of Regent.

The case of the State of Nevada *ex rel.* J. D. Torreyson vs. The Board of County Commissioners of Storey county, respondent, was an application for a writ of mandate to compel the county of Storey to pay the costs on appeal of the Clerk of the Supreme Court, in the case of the State of Nevada vs. John Trolson.

The defendant was convicted of embezzlement in the county of Storey and appealed from the verdict and judgment of the District Court of Storey county to the Supreme Court of this State, and the question submitted to the Court was as to whether or not, when a criminal case is appealed by the defendant to the Supreme Court, the State of Nevada should pay the costs of such appeal or the county from which such appeal is taken or the defendant should pay such costs.

The Supreme Court decided that it had no jurisdiction of the subject matter, and the question now is an open one as to who should pay the costs on appeal in cases of like character, and I respectfully suggest that the coming Legislature take some action in the matter.

Reports of District Attorneys.

The Legislature of 1889 passed an Act entitled "An Act to to require District Attorneys to make certain reports to the Attorney-General," approved March 1, 1889.

In my last report I submitted to your Excellency the reports of the various District Attorneys of the State, but they were so meager and so unsatisfactory that they were of but little value to the Legislature, and I therefore do not make any report of them this year.

The portion of that Act, however, which provides that the District Attorneys who prosecute persons for crimes shall make certain reports to the Attorney-General, giving a written statement of the facts and circumstances connected with the commission of the crime for which the person stands convicted, as shown by the evidence upon the trial thereof, which reports are to be kept on file in the Attorney-General's office for use by the Board of Pardons, I deem a most excellent law.

OFFICIAL OPINIONS.

The following are the official opinions rendered by me since my last report and while I have answered a great number of inquiries involving the construction of numerous statutes, I believe the following to be of the most interest:

OFFICE OF ATTORNEY-GENERAL,
CARSON CITY, Nevada, January 28, 1893.

Hon. R. L. HORTON, *State Controller, and Hon.* J. F. EGAN, *State Treasurer:*

SIRS: You have submitted to me for decision the following question: Should the Controller draw his warrant upon the Legislative Fund created by this Legislature for the payment of the per diem and mileage of the respective members of the Legislature, and should the Treasurer pay all warrants drawn upon said fund?

The answer to this question naturally involves the right and powers of the present Legislature to pass such an Act.

There has been much discussion as to the legal status of the present legislative body; as to whether it is a constitutional body; as to whether the Reapportionment Act of 1891 is in compliance with the constitutional provisions of this State.

I do not deem it necessary in answering your questions to give an opinion upon the constitutionality of said Reapportionment Act, nor upon the question as to whether the Legislature is a usurping body.

Every law passed by a legislative body is presumed to be constitutional until declared unconstitutional by a court of last resort. Even conceding the Reapportionment Act of 1891 to be unconstitutional, still the Legislature has organized, taken the oath of office and is actively engaged in the making of laws.

For this reason the present Legislature is without doubt a *de facto* body and, until the Supreme Court declares the Reapportionment Act unconstitutional and the present Legislature a usurping body, all acts performed and all laws enacted by it and approved by the Executive, if otherwise constitutional, will be valid.

In support of this view I quote to you from a late case decided by the Supreme Court of Indiana: "A person elected to an office

under an unconstitutional statute before it is adjudged to be so is an officer *de facto*, and his official acts performed before ouster are as to the public as valid as the acts of an officer *de jure*."

The Court in State vs. Cunningham, 51 N. W. Rep. 729, among other things, says: "On grounds of public policy the acts done and the laws passed by such a Legislature would be *de facto* as binding and obligatory as those of any other Legislature."

In the same case upon the same point (p. 740) the Court says: "Apprehensions have been entertained as to the effect which a decision adverse to the validity of the Act will have upon past legislation, and upon the competency of the present Legislature to pass a valid apportionment, as it is said that the Apportionment Act of 1887 is obnoxious to the same objections as this one. Upon the assumption that the Act of 1887 is void for any reason, Senators and members of the Assembly who have been elected and have qualified under it are such *de facto*, and their acts are valid as to the public and third persons."

For these reasons I believe the Controller should draw his warrant upon the Legislative Fund created by this Legislature for the payment of the per diem and mileage of the members thereof, and the Treasurer would be justified in paying the same.

The question whether or not the Reapportionment Act of 1891 is unconstitutional is an after consideration.

I remain yours truly,

JAMES D. TORREYSON,
Attorney-General.

OFFICE OF ATTORNEY-GENERAL,
CARSON CITY, Nevada, February 17, 1893.

Hon. W. C. GALLAGHER, *Duck Creek, White Pine County, Nevada:*

DEAR SIR: At the request of Senator Comins I answer your inquiry. Section 17 of what is commonly known in this State as the Australian Ballot Law (Stats. 1891, p. 44) provides that there "shall be appointed two clerks of election who shall have charge of the ballots on election day, and shall furnish them to the voters in the manner hereinafter provided for."

You will thus see that these two clerks are ballot clerks and they are the only persons from whom a voter can receive a ballot on the day of election. They are not tally clerks.

The Australian Ballot Law does not repeal the provisions of the General Election Law of 1873 and in that law in Section 1530 (Gen. Stats. Nev.) you will find that the inspectors of election shall chose two persons having similar qualifications with themselves to act as clerks of election. These two clerks are appointed by the inspectors of election and act as tally clerks.

The ballot clerks are appointed by the County Commissioners

the same as the inspectors or judges of election are appointed. Thus it will be seen that each voting precinct is entitled to four clerks—two ballot and two tally clerks.

Yours truly,

JAMES D. TORREYSON,
Attorney-General.

OFFICE OF ATTORNEY-GENERAL,
CARSON CITY, Nevada, May 24, 1893.

Hon. R. L. HORTON, *State Controller, Carson City, Nevada:*

SIR: The Legislature of 1893 passed an Act entitled "An Act making appropriations for the support of the Civil Government of the State of Nevada for the fiscal years 1893 and 1894."

Section 1 of said Act reads as follows:

"Section 1. The following sums of money are hereby appropriated for the purposes hereinafter expressed, and for the support of the Government of the State of Nevada for the years 1893 and 1894."

Section 23 of said Act reads as follows:

"Section 23. For pay of attorney at Washington, D. C., to attend and represent the land interests of the State before the Departments, one thousand ($1,000) dollars, payable out of the State School Fund."

By an Act of the Legislature of 1873 (Stats. 1873, p. 114) the Board of Regents was authorized and required to appoint an agent to represent the State of Nevada before the General Land Office and Department of the Interior at Washington, D. C., to attend to the certification of lands selected in satisfaction of the grants made by Congress to this State, and to represent the State in all matters growing out of the adjustment and settlement of said grants.

The salary of said agent was fixed at a sum not exceeding $1,500 per annum, and the Board of Regents given the power to fix the amount of salary; and it was provided that the amount so fixed should be paid annually upon bills to be certified and approved by the Board of Examiners.

In 1875 the sum of $3,000 was appropriated for the payment of the salary of an attorney at Washington for the years 1875-76.

In 1877 the sum of $1,500 was appropriated for the years 1877-78, but I find, from an examination of the Controller's books, that this sum of $1,500 was all paid out in the year 1877, and no money was paid out in the year 1878.

In 1879 the sum of $2,000 was appropriated for the years 1879-80, and the Governor given the power to appoint the agent.

From 1879 down to and including the years 1891-92 the sum of $2,000 has been appropriated every two years for the payment of an attorney at Washington.

In 1893 the Legislature appropriated the sum of $1,000 for the fiscal years 1893-94. (Stats. 1893, pp. 81-82.)

On April 11, 1893, the Governor of the State appointed and commissioned C. D. Van Duzer as the attorney at Washington, D. C., to represent the interests of the State, his appointment being for the term of two years, and dating from January 1, 1893.

The history of this matter shows that wherever an attorney has been appointed it has been for two years, and he has given his services for two years and received the full amount appropriated for the two years, and in no case has it been drawn out for one year, except for the year 1877, and this seems to have been unwarranted.

In making the appropriation of $1,000 for the years 1893-94 the Legislature undoubtedly contemplated the employment of an attorney for two years, and that he should receive as a compensation the sum of $1,000, not for one year, but for two years, and that the State should have the benefit of the attorney's services for two years, and pay him $1,000 for his services for such time.

The appointment was made after the Act appropriating $1,000 was passed. The attorney accepted the employment for two years, and impliedly, at least, agreed to accept as compensation the sum of $1,000 for his services for two years, and it is my judgment you would not be warranted, nor would it be legal, to pay all of the said sum of $1,000 to said attorney for the year 1893, but that he should be paid at the rate of $1,000 for two years' services.

Yours truly,

JAMES D. TORREYSON.

Attorney-General.

OFFICE OF ATTORNEY-GENERAL,
CARSON CITY, Nevada, June 3, 1893.

Hon. J. E. JONES, *Surveyor-General, Carson City, Nevada:*

SIR: You have asked me for an official opinion upon the following facts:

One Martin Brazzanovich, a citizen of the United States and of the State of Nevada, on June 17, 1882, made an application to purchase from the State of Nevada, among other lands, the following, to wit: The southwest quarter of the southwest quarter of Sec. 28, Tp. 6 N., R. 35 E., M. D. B. and M., containing 40 acres.

Simultaneous with the making of said application said Brazzanovich filed an affidavit of preferred right, and based his claim of preferred right upon actual and continued possession from November 1, 1880, claiming that he had placed improvements upon said land "of the value of $500, consisting of a dwelling house containing two rooms, fencing, ditching, said dwelling house being 24 feet long and 14 feet wide, with two doors and three windows "

That on said 17th day of June, 1882, said Brazzanovich deposited with the State Treasurer the amount due on the first payment on

said land and the legal fees for selection of the land in the United States Land Office.

That on June 30, 1882, A. J. Hatch, Land Register of the State of Nevada, offered to select in the United States Land Office at Carson City, Nevada, said land, and said selection was made and the fees paid thereon, and said selection was duly certified "that the selections were correct, and that no valid conflicting rights were known to exist and that the legal fees had been paid by the State."

That on March 3, 1883, said land was approved to the State of Nevada, as appears of record in List No. 2, under the provisions of an Act of Congress approved June 16, 1880.

That on October 15, 1882, said Brazzanovich entered into a contract with the State of Nevada to purchase from said State all of said land in accordance with law.

That said Brazzanovich has paid to the State of Nevada both the principal and interest due upon said lands and now demands that a patent issue to him for all of said lands.

From the records of your office and also of the United States Land Office at Carson City, Nevada, the following facts also appear: On July 21, 1887, an affidavit was filed in the State Land Office by H. M. Yerington, President of the Carson and Colorado Railroad Company, protesting against the sale of certain land to said Brazzanovich and the issuance of a patent therefor, to wit: "To that portion of the southwest quarter of the southwest quarter of Sec. 28, Tp. 6 N., R. 35 E., occupied by the Carson and Colorado Railroad Company as a right of way, and a 20-acre tract used for station purposes, upon which is constructed side tracks, depots, water tanks, station houses, etc., at Sodaville, in Esmeralda county, Nevada, as allowed by Act of Congress of March 3, 1875.

That said Carson and Colorado Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Nevada and has been such corporation since about May 10, 1880.

That it was organized for the purpose of constructing a line of railroad from a point on the Virginia and Truckee Railroad, known as Mound House station, in Lyon county, Nevada, through the counties of Lyon and Esmeralda, State of Nevada, and the counties of Mono and Inyo, State of California.

That immediately upon its organization it began the construction of its road.

That during the fall of 1881 said Carson and Colorado Railroad Company constructed its road over Townships 5 and 6, R. 35, E.; that in the fall of 1881 said Carson and Colorado Railroad Company made a selection of a 20-acre tract of land in said southwest quarter of southwest quarter of Sec. 28, Tp. 6 N., R. 35 E., under and in accordance with the Act of Congress, approved March 3, 1875, entitled "An Act granting to railroads the right of way through the public lands of the United States," upon which said 20-acre

tract said company made improvements of the value of $10,500, consisting of freight and passenger depot buildings, telegraph and ticket office, eating station, woodshed, side track, turn outs and "Y" switches.

That at the time the selection of said 20-acre tract was made, and the construction of said buildings and improvements, said southwest quarter of southwest quarter, Sec. 28, Tp. 6 N., R. 35 E., was occupied and unappropriated Government land.

That under and by virtue of the Act of Congress of March 3, 1875, James Oliver, C. E., made a survey of the proposed line of railroad, and in accordance with law the same was certified and sworn to by James Oliver and H. M. Yerington, President of the said railroad company, on April 17, 1882, and filed with the Register of the United States Land Office at Carson City, Nevada.

That the 20-acre tract was made out, certified and sworn to in the same manner and same date (April 17, 1882) by Oliver and Yerington.

The survey as made by Oliver was not approved by the Secretary of the Interior, it being claimed that the same was incorrect, and that the survey made by the United States Government of Township 6 N., Range 35 E., was the correct survey.

On the 14th day of February, 1889, the Commissioner of the General Land Office ordered that all applications to purchase land in Township 6 N., Range 35 E., be suspended until further orders from the Commissioner, and said Commissioner ordered a resurvey of Townships 5 and 6 N., Range 35 E.

That said surveys were made under the direction of the United States Surveyor-General, and the plats of said survey were approved by the Commissioner of the General Land Office at Washington, D. C., and the United States Surveyor-General for Nevada, and filed in the United States Land Office at Carson City, Nevada, on September 1, 1891, and copies thereof filed in the State Land Office at Carson City on said date, from which surveys it appears that the United States survey made by the United States Government in the months of January and February, 1881, was erroneous, and that the original maps and surveys made by James Oliver in September, 1881, defining the line of route of the Carson and Colorado Railroad Company, were correct, and that the 20-acre tract so located in the month of September, 1881, were correctly surveyed, platted and marked in their proper places on the legal subdivisions of the corrected survey.

That the Secretary of the Interior on the 13th day of March, 1883, approved the map of the line of the survey of the Carson and Colorado Railroad Company through said Townships 5 and 6 N., R. 35 E., and also has since approved the selection made by said company of the 20-acre tract for station purposes in the southwest quarter of southwest quarter of Sec. 28, Tp. 6 N., R. 35 E.

That at the time said Brazzanovich made his application to pur-

chase said southwest quarter of southwest quarter of Sec. 28, Tp. 6 N., R. 35 E., he well knew said Carson and Colorado Railroad Company was in possession of said right of way and the said 20-acre tract for station purposes.

That at the time he made said application to purchase said railroad had been constructed and in full operation for a period of ten months, and that said company had erected and constructed side tracks, turn outs, "Ys" and buildings on said 20-acre tract.

That in the fall of the year 1881, and after the said railroad company had made its survey and selected its line of route and constructed its road and selected its 20-acre tract, said Brazzanovich asked and obtained permission from H. M. Yerington, President of the said railroad company, to erect a building within about 12 feet of the railroad track of the Carson and Colorado Railroad and within the boundaries of said 20-acre tract, with the understanding and agreement between said Brazzanovich and said railroad company that said buildings should be removed by said Brazzanovich whenever he was requested so to do.

Upon this state of facts you have submitted to me the question: Whether or not the State of Nevada shall issue to said Brazzanovich a patent for all of the land described in his said application, including the said southwest quarter of southwest quarter of Sec. 28, Tp. 6 N., R. 35 E.?

By virtue of an Act of Congress approved March 3, 1875, entitled "An Act granting to railroads the right of way through the public lands of the United States," the right of way through the public lands of the United States is granted to any railroad company which shall have filed with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization under the same, to the extent of 100 feet on each side of the central line of said road; also, ground adjacent to such right of way for station buildings, depots, machine shops, side tracks, turn out and water stations, not to exceed in amount 20 acres for each station, to the extent of one station for each ten miles of its road.

That the company desiring to secure the benefits of said Act shall within twelve months after the location of any section of twenty miles of its road, if upon surveyed lands, file with the Register of the local Land Office a profile of its road, and upon the approval thereof the same shall be noted upon the plats in said office and *thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way.*

It is a fact that the Carson and Colorado Railroad Company was organized on the 10th day of May, 1880; that immediately upon its organization it began the construction of its road under and by virtue of said Act of Congress.

That in September, 1881, its road was surveyed and constructed and station built over, through and upon said southwest quarter of southwest quarter and the 20 acres selected, and upon the 17th day

of April, 1882, a plat and profile of said line of road and right of way and said 20-acre tract was filed in the United States Land Office at Carson, Nevada, in accordance with said Act of Congress.

This original plat and profile showing the line of route and the 20-acre tract was not, at the time, approved by the Secretary of the Interior, for the reason it was claimed that it was erroneous, and did not conform to the survey made by the United States Government of Townships 5 and 6 through which said road ran, and therefore said survey made by Oliver was not approved, but held in abeyance, and, after a great deal of correspondence on the part of the railroad company and the Department officers of the Government, on February 14, 1889, the Commissioner of the General Land Office ordered that all applications to purchase land in said Township 6 N., R. 35 E., be suspended until further order, and said Commissioner also ordered a resurvey of Townships 5 and 6 N., R. 35 E.

In accordance with said order a resurvey was made and approved by the Commissioner of the General Land Office, and from which survey it appears that the survey as made by the United States Government in the months of January and February, 1881, was erroneous, and that the maps and surveys made by Oliver for the railroad company in 1881, defining the line and route of the railroad, were correct, and that said 20-acre tract so located in September, 1881, were correctly surveyed, platted and marked, and said Oliver survey was approved.

By this act of the Commissioner, in approving the Oliver survey of 1881, the title to the 20-acre tract and the right of way of the road took effect by relation to the time of the filing of the original plat and profile in the local United States Land Office. The subsequent act of the Commissioner is held to relate back to that time.

On the other hand it is shown that Brazzanovich made his application to purchase certain lands on June 17, 1882, among others the southwest quarter of southwest quarter of Sec. 28, Tp. 6 N., R. 35 E., which said quarter section included said 20-acre tract.

That on October 17, 1882, he contracted with the State of Nevada to purchase said land in accordance with law.

That on March 3, 1883, said land was duly approved to the State of Nevada, as appears of record in Clear List No. 2, Carson City District, and said lands were "*approved subject to any valid interfering rights which may have existed at the date of selection.*"

On June 16, 1880, Congress passed an Act of which the following are the first two sections:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:* That there be, and are hereby, granted to the State of Nevada two million acres of land in said State in lieu of the sixteenth and thirty-sixth sections of land heretofore granted to the State of Nevada by the United States;

provided, that the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said State prior to the passage of this Act shall not be changed or vitiated in consequence of, or by virtue of, this Act.

"SEC. 2. The lands herein granted shall be selected by the State authorities of said State from any unappropriated non-mineral public land in said State in quantities not less than the smallest legal subdivision; and when selected in conformity with the terms of this Act, the same shall be duly certified to said State by the Commissioner of the General Land Office, and approved by the Secretary of the Interior."

It is true said lands were certified to the State of Nevada on May 3, 1883, but "subject to any valid interfering rights which may have existed at the date of selection." The date of selection by the State was June 30, 1882.

The certificate endorsed upon the clear list passing the title to the State is qualified, not absolute, and evidently designed to reserve the rights of any parties interested.

The right of the State was to select "from any *unappropriated* non-mineral public land."

If at the time of the application of the State to select said land it was not "unappropriated public lands," then the State could acquire no title to it. This has been repeatedly decided by both National and State Courts.

Atherton vs. Fowler, 96 U. S. 513.
Hosmer vs. Wallace, 97 U. S. 575.
Trenmouth vs. San Francisco, 100 U. S. 251.
Nickals vs. Will, 17 Nev. 189.
McBrown vs. Morris, 59 Cal. 64.
U. S. vs. Williams, 30 Fed. Rep. 309, approved in 138 U. S. 514.

If the selection by the Carson and Colorado Railroad Company of said 20-acre tract in 1881 was a valid selection, then said 20-acre tract which is included in the southwest quarter of the southwest quarter of Sec. 28, Tp. 6 N., R. 35 E., was not in the law and under the decisions *supra* "unappropriated public lands," and not subject to selection by the State of Nevada.

That said 20-acre tract had been selected and improvements placed thereon before the State made any application to select the same, is beyond question, and the title to the same became absolute upon the final approval of the original survey made by Oliver in 1881, and although approved to the State in 1883, still it was approved conditionally "subject to any valid interfering rights which may have existed at the date of selection," and the right of the Carson and Colorado Railroad Company was a valid interfering right, and this right was finally confirmed by the Commissioner of the General Land Office at Washington, D. C., and the Secretary of the Interior. My views are best expressed by Judge Sabin in the

case of United States vs. Williams, 30 Fed. Rep. 314, as follows:

"If then the lands in controversy were not 'unappropriated public lands' and within the term of the grant at the date of selection and listing to the State, such listing was without authority of law and was and is void and no valid title passed thereby. Under the grant in this case the officers of the General Land Office were authorized to pass the State the title only of 'unappropriated public land.' It conferred upon them no authority to transfer the title to lands appropriated and lawfully in the possession of others who had expended large sums thereon and who were then seeking to obtain the United States title thereto."

The railroad company was seeking to obtain title to this 20-acre tract of land when Brazzanovich made his application, and when the State made its application for the same.

In my judgment the State has no title to said 20-acre tract of land, and can convey none to Brazzanovich, and in issuing a patent to Brazzanovich for the southwest quarter of the southwest quarter of Sec. 28, Tp. 6 N., R. 35 E., the patent should expressly reserve from said southwest quarter of southwest quarter of Sec. 28, Tp. 6 N., R. 35 E., said 20-acre tract of land occupied by the Carson and Colorado Railroad Company for railroad and station purposes.

I think you would be justified in issuing a patent for all of the land described in the application of Brazzanovich, reserving from said patent any valid and subsisting interfering rights of the Carson and Colorado Railroad Company.

Yours truly,

JAMES D. TORREYSON,
Attorney-General.

Office of Attorney-General,
Carson City, Nevada, June 22, 1893.

To the Hon. Board of State Capitol Commissioners, Carson City, Nev.:

Sirs: You have submitted to me a question, and ask for my opinion upon the same. The facts, as I understand them, are as follows:

Your Honorable Board Advertised for bids for laying a concrete walk around the State Capitol grounds, under the provisions of an Act of the Legislature of this State of 1893.

Bids were received by you, and the contract awarded to one Reavley Unsworth, upon condition that he give a good and sufficient bond for the faithful performance of the work in accordance with the terms of his contract.

The contract was made and entered into, signed, sealed and delivered, and Unsworth, the contractor, tendered a bond for the faithful performance of his contract, with sureties approved by your Honorable Board. After the signing of said contract a bond was

given with two sureties, and said bond was approved by you. A day or two after the signing of the contract and bond and the delivery thereof the bondsmen served upon your Board a notice withdrawing from said bond.

You desire to know if the sureties upon said bond can legally withdraw from said bond, and thus relieve themselves from any liability upon the bond.

If there was any fraud practiced or misrepresentation made to the sureties by the principal to the contract or by your Honorable Board, then the sureties would be released from any liability upon said bond, but on the other hand the presumption of law is that the sureties signed the bond with full knowledge of the contents of the contract of the principal and the obligation which they assumed, since the bond refers to the contract and is made a part thereof.

My judgment is that the sureties can be held to their contract, and I know of no way by which they can be released from their obligation except by the joint concurrence of your Honorable Board and the principal of the contract, Mr. Reavley Unsworth.

Yours truly,

JAMES D. TORREYSON,
Attorney-General.

OFFICE OF ATTORNEY-GENERAL,
CARSON CITY, Nevada, March 5, 1894.

W. A. MASSEY, *Elko, Nevada:*

DEAR SIR: Your favor of the 28th at hand.

My judgment would be that under the provisions of Section 1918, Gen. Stats. Nev., that any person or persons making the arrest as provided in said section, and after the conviction of the party arrested, would be entitled to the reward, except a sheriff, constable, marshal or police officer who should arrest such person *in the county* where such sheriff, constable, marshal or police officer *resided* or *in the county* in which his official duties were required to be performed.

In other words, if a robbery was committed in Humboldt county, and the party should flee to Elko, and should be arrested by a sheriff, constable, marshal or police officer in Elko county, I do not think he would be entitled to the reward, for the reason that he would be making the arrest in the performance of the duties of his office as sheriff, etc., and he would be making the arrest in the county in which he is required to perform his official duties.

On the other hand, if the officers of Humboldt county should pursue the criminal from Humboldt into Elko, and arrest him in Elko county, then, in my judgment, the Humboldt county officer would be entitled to the reward.

Yours truly,

JAMES D. TORREYSON,
Attorney-General.

Office of Attorney-General,
Carson City, Nevada, November 20, 1894.

Hon. Orvis Ring, *Secretary of Board of Orphans' Home Directors, Carson City, Nevada:*

Sir: Your letter requesting me to give you an official opinion upon the question as to whether or not one Sarah N. Vucovich is entitled to admission to the Orphans' Home in this State was duly received.

From the petition which accompanied your letter I gather the facts to be as follows:

The mother of the child is Alice Vucovich, and is now an inmate of the Insane Asylum of this State; that she has been an inmate of the same for years past; that she is hopelessly and incurably insane; that the father of the child is alive, and residing in Virginia City, Nevada.

The question you submit to me is: Can this child be legally admitted to the Orphans' Home of this State?

Section 1470 of the General Statutes of Nevada provides how whole orphans can be admitted to the Home.

A full orphan is one whose parents are both dead; a half orphan is one who has *a living resident parent* in this State.

Section 1475 provides that nothing shall prevent the Board of Directors, *at their discretion*, from receiving any half orphan from its living resident parent into said Home upon such terms and under such contract as said Board may determine.

The applicant in this case is neither a whole orphan nor a half orphan. She is not a half orphan because her parents are both alive, although, unfortunately one of her parents is hopelessly insane.

If the law should be construed strictly the applicant would not be entitled to admission, but this case seems to be an exceptional one and a subject for the Board of Directors to use its discretion, and while, if they should admit the applicant to the Home, it would not be strictly in accordance with the statute, but in the exercise of that discretion which exists in the Board, it would be an act of humanity.

The Board, under the law, exercises its discretion in admitting half orphans, and it is not every half orphan that is entitled to be admitted, but only such as the Board in its discretion deems worthy.

Very respectfully,

JAMES D. TORREYSON,
Attorney-General.