STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

1897--8

J. R. JUDGE, Attorney-General

CARSON CITY, NEVADA:
STATE PRINTING OFFICE, : : : ANDREW MAUTE, SUPERINTENDENT
1899

STATE OF NEVADA

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

LETTER OF TRANSMITTAL.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 31, 1898.

To His Excellency REINHOLD SADLER, *Lieutenant and Acting Governor:*

SIR: In accordance with law I have the honor to submit herewith my biennial report of the business transacted in the office of the Attorney-General covering the period from January 1, 1897, to December 31, 1898, together with a tabulated statement of the criminal business transacted in the several counties of this State during the same period.

JAMES R. JUDGE,
Attorney-General.

REPORT OF THE ATTORNEY-GENERAL.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 31, 1898.

To His Excellency REINHOLD SADLER, *Lieutenant and Acting Governor:*

SIR: I herewith submit a synopsis of the various cases considered and decided by the Supreme Court of the State since my last report to which the State was a party and in which the people of the State generally have an interest:

THE STATE OF NEVADA, EX REL. C. H. E. HARDIN, *Relator*, vs. REINHOLD SADLER, GOVERNOR OF THE STATE OF NEVADA, *Respondent.*

Application by the State, upon the relation of C. H. E. Hardin, for writ of mandamus requiring respondent to commission relator as Lieutenant-Governor of the State of Nevada.

Writ denied. The Court decides:

A. Constitutional Law—Upon Death of Governor Lieutenant-Governor Becomes Acting Governor—No Vacancy.—Under the provisions of Article V, Sections 17 and 18, of the Constitution, if a vacancy occurs in the office of Governor, the powers and duties of the office devolve upon the Lieutenant-Governor, but there is no vacancy created in the office of Lieutenant-Governor thereby. The officer remains Lieutenant-Governor, but vested with the powers and duties of Governor.

B. Vacancies in Offices of both Governor and Lieutenant-Governor.—If a vacancy in both the offices of Governor and Lieutenant-Governor occurs, the President *pro tempore* of the Senate becomes Acting Governor until the vacancy be filled or the disability removed.

THE STATE OF NEVADA, EX REL. CHARLES A. JONES, *Petitioner*, vs. CHARLES E. MACK, JUDGE OF THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR ORMSBY COUNTY, *Respondent.*

Application for writ of certiorari by the State, on the relation of Charles A. Jones, against Charles E. Mack, as Judge of the First Judicial District Court, in and for Ormsby county.

In the petition for the writ it was, among other matters, alleged that the petitioner was indicted on the 11th day of December, 1896, for the crime of assault with a deadly instrument with the intent to inflict upon the person of another bodily injury; that petitioner was duly arrested for said offense and taken before said District Court; that upon being required to plead to said indictment, he interposed a special plea to the jurisdiction of the Court wherein he alleged that the offense

charged in the indictment was commited upon certain land in Carson City, Ormsby county, State of Nevada, purchased by the United States, by and with the consent of the Legislature of the State of Nevada, for the erection thereon by the United States of a building to be used as a Courthouse, Postoffice and for such other purposes as the United States should determine, and that such building had been erected and was then occupied and used by the United States for the purposes aforesaid.

A demurrer by the District Attorney to this plea was sustained by respondent as Judge of said District Court and on motion of the District Attorney the Court proceeded to set the cause for trial.

Writ allowed and proceedings in District Court annulled. The Court deciding:

A. Constitution of the United States—Land Ceded by State to United States—Jurisdiction.—Under the Constitution of the United States, Article I, Section 8, providing that Congress shall have power to exercise exclusive legislation over the seat of government "and to exercise a like authority over all places purchased by consent of the Legislature of the State in which the same shall be, for the erection of forts, and other needful buildings," land so purchased *ipso facto* falls within the exclusive jurisdiction of the United States.

B. Postoffice—Federal Courthouses—Needful Buildings.—Postoffices and Federal Courthouses are "needful buildings" under the provisions of Article. I, Section 8, of the Constitution of the United States.

C. Jurisdiction—Land Ceded by State to Federal Government—Right to Execute Criminal Process Upon.—Where a State cedes to the United States exclusive jurisdiction over land purchased as a site for a public building "for all purposes except the administration of the criminal laws of this State," the State has no jurisdiction for the punishment of crimes committed on the purchased land, but only the right to execute criminal process thereon for the violation of the laws of the State committed elsewhere within the State.

THE STATE OF NEVADA, *Respondent*, vs. CHARLES MURPHY, JOHN CHIATOVICH AND WILLIAM A. INGALLS, *Appellants*.

Appeal from the District Court of the First Judicial District of the State of Nevada, in and for Esmeralda county, from a judgment in favor of the State in an action by the State against Charles Murphy, John Chiatovich and William A. Ingalls on recognizance of bail forfeited by Murphy theretofore indicted and upon trial convicted of the crime of selling whisky to an Indian. Judgment reversed. The following are the principal points decided by the Court:

A. Criminal Law—Courts Judicially Known—Whisky to be a Spirituous Liquor—Statute Complied With.—The designation of an offense in a complaint and recognizance as "selling whisky to an Indian" sufficiently complies with the statute which makes an offense to "sell, barter, give or in any way dispose of any spirituous or malt liquors, wine or cider of any description to an Indian within this State" (Stats. 1887, p. 37), it being within the judicial knowledge of courts that whisky is a spirituous liquor.

B. Statute of Limitation—Bail Bond—An Instrument in Writing—Action on Barred in Six Years.—An action upon a bail bond is an action founded upon an instrument in writing and is not an action upon a

statute for a forfeiture or penalty to the State, which must be commenced within two years after the right of action has accrued. The right of action is, therefore, barred by the six-year clause of our statute.

C. Recognizance—Bail Bond—Place and Court Fixed by Law.—A contention that a recognizance is void for the reason that no time, place or Court is named therein, is not tenable, as the law designates the time, place and Court in which the defendant must appear and surrender himself in execution of the judgment.

D. Filing of Recognizance—Record of Court.—Where the transcript on appeal shows that the recognizance was made a record by order of Court, and the complaint avers that it was filed, a contention that the recognizance is void, for the reason that it was never filed or because a record in the cause or Court, is not tenable.

E. Criminal Law—Practice—Recognizance on Bail Bond—How and When Forfeited.—Section 523 of the Criminal Practice Act (Gen. Stats. 4403) provides when and in what manner a forfeiture of a recognizance shall be taken. It provides that "if without sufficient excuse, the defendant neglect to appear for arraignment, or for trial or judgment, or upon any other occasion when his presence in Court may be lawfully required, or to surrender himself in execution of the judgment, the Court shall direct the fact to be entered upon its minutes and the recognizance shall thereupon be declared forfeited." This provision of the Statute is mandatory. It does not require that the record must show that the defendant was called. Neither is it necessary thereunder that the defendant should be called.

F. Defective Record—Forfeiture of Bail Bond.—A record reading as follows: "Now on motion of the District Attorney, it is ordered that the bonds of Charles Murphy be and they are hereby declared forfeited," is fatally defective in not showing the fact that the defendant neglected to appear upon some one of the occasions designated in said Section 523 of the Criminal Practice Act.

G. Practice—Stay of Execution—Recognizance Given Before Appeal Taken.—The trial Court had no authority to release or order the release of a defendant, under recognizance or otherwise, after judgment of imprisonment has been rendered against him except after an appeal therefrom has been taken, and any recognizance given for that purpose at such a time is void.

H. Appeal—Stay of Execution.—An appeal from a judgment of imprisonment does not operate as a stay of execution thereof, and the defendant, if in custody, must so continue unless admitted to bail.

THE STATE OF NEVADA, *Respondent*, vs. THE VIRGINIA AND TRUCKEE RAILROAD, A CORPORATION, ET AL., *Appellants*.

Appeal from the District Court of the First Judicial District of the State of Nevada, in and for Storey County.

Action by the State against the Virginia and Truckee Railroad Company to recover the taxes assessed on its property situated in Storey county for the year 1895. From a judgment in favor of the State defendant appealed. Judgment reversed. The following are the principl points decided by the Court:

A. Taxation—Assessment of Railroad Property—Net Income to Govern.—The value of this railroad for the purpose of taxation for the year

1895 must be determined mainly by its net earnings capitalized at current rates of interest, taking into consideration any immediate prospect for an increase or decrease in the earning capacity of the road. (Affirming State vs. V. & T. R. R. Co., 23 Nev. 283.)

B. Evidence—No Substantial Conflict of—Not Sufficient to Support Verdict.—Where the only evidence in support of a verdict is that of Deputy Assessor and it is shown that he has no knowledge of the business of the road, had not examined the reports of the company filed in accordance with law, and that, if he had known of the decrease in the earnings of the road, it would not have influenced his valuation upon it, such evidence is insufficient to create a substantial conflict in the evidence, where the undisputed facts were that, according to the correct valuation, the assessment was too high.

C. Tax Suit—Defense of Overvaluation—Competent and Incompetent Evidence—Verdict, When Will be Set Aside.—Under the Act of 1895 (Stats. 1895, p. 39) amending the Revenue Act, allowing defendants to plead as a defense "that the assessment is out of proportion to and above the actual cash value of the property assessed," where the defendant introduces competent evidence showing an overvaluation and the jury by their verdict find the value as fixed by the officers, without evidence to support it other than the delinquent list or equalized assessment roll, or the testimony of a witness or witnesses not qualified to testify, under the well-established rules of evidence, as to the value, this Court must set aside such verdict. (Per Bonnifield, J., concurring.)

THE STATE OF NEVADA, EX. REL. EUGENE HOWELL, *Petitioner*, vs. C. A. LAGRAVE, CONTROLLER, *Respondent*.

Application by the State on the relation of Eugene Howell for writ of mandate to compel C. A. LaGrave as State Controller to draw a warrant in favor of the petitioner for his salary as Reporter of the Supreme Court Decisions. Writ issued. The following are the principal points decided by the Court:

A. Statutory Construction—Laws Upheld if Possible.—Courts are bound to uphold the prior law, if it and a subsequent one may subsist together, or if it be possible to reconcile the two together, and unless the latter statute is manifestly inconsistent with and repugnant to the former, both remain in force.

B. General Statute—Negative Language—Repeal by Implication.—The repeal of a statute by implication is not favored. A general statute without negative words will not repeal the particular provisions of a former law unless the two Acts are irreconcilably inconsistent.

C. Repeal—Clerk of Supreme Court—Compensation.—Sections 2 and 5 of Stats. 1883, p. 78, providing that the Clerk of the Supreme Court shall prepare the decisions of the Court for publication and shall receive for his compensation as reporter of such decisions $600 a year, was not repealed in so far as it provides compensation for the Clerk's services as reporter, by Stats. 1891, p. 104, fixing the salary of the Secretary of State at $2,400 a year, and Stats. 1893, p. 22, providing that the Secretary of State shall be Clerk of the Supreme Court.

D. Constitutional Law—Increase of Salary of State Officer During Term of Office—Clerk of Supreme Court.—Petitioner's term of office as Secretary of State and ex officio Clerk of the Supreme Court began

January, 1895, hence the Act of 1891 (Stats. 1891, p. 104) fixing the salary of the Secretary of State, the Act of 1883 (Stats. 1883, p. 78) fixing the compensation allowed the Clerk of the Supreme Court as reporter of decisions, and the Act of 1893 (Stats. 1893, p. 32) making the Secretary of State ex officio Clerk of the Supreme Court, were all passed prior to the term for which he was elected. Therefore Section 9 of Article XV of the Constitution, which provides that "The Legislature may at any time provide by law for increasing or diminishing the salary or compensation of any of the officers whose salary or compensation is fixed in this Constitution; *provided*, no such change of salary or compensation shall apply to any officer during the term for which he may be elected," is not applicable to such state of facts.

E. Secretary of State—Clerk of Supreme Court—Reporter of Decisions—Separate Offices.—The office of Secretary of State, of ex officio Clerk of the Supreme Court and the office of reporter of the decisions of the Supreme Court are separate and distinct offices and their being vested in the same person does not change their nature in this respect.

F. Compensation as Reporter of Decisions—Constitutional Law.—Petitioner's several offices being distinct, the annual compensation of $600 allowed him as reporter of the Supreme Court decisions, is not a fee or perquisite within the provisions of Article XVII, Section 5 of the Constitution, which provides that no State officer "shall receive any fee or perquisite to his own use" for the performance of any duty connected with his office.

G. Constitutional Law—Clerk of Supreme Court—Constitutional Office. Article IV, Section 32, of the State Constitution, prior to the amendment of 1889, provided that the Legislature should provide for the election of a Clerk of the Supreme Court and certain county officers. Provision for the election of such Clerk was made by the General Statutes, 1636. The above-mentioned section, as amended in 1889, requires that the Legislature shall provide for the election of certain county officers, omitting mention of the Clerk. Sections 8 and 12 of Article XV of the Constitution provide that the Clerk shall have his office at the seat of government and that opinions of the Supreme Court must be filed therein before its judgments become operative. *Held:* That the office of Clerk of the Supreme Court was not abolished by its omission from the amendment of 1889 and the failure of the Legislature to re-establish it, but continued as a constitutional office under the provisions made pursuant to the original constitution; and hence Statutes 1893, page 32, providing that the Secretary of State shall be ex officio Clerk of the Supreme Court, was effective.

THE STATE OF NEVADA, EX REL. H. C. CUTTING, EX OFFICIO CURATOR OF THE STATE MUSEUM. *Relator*, vs. C. A. LAGRAVE, STATE CONTROLLER, *Respondent*.

Original proceeding.

Application by the State, on the relation of H. C. Cutting, ex officio Curator of the State Museum, for writ of mandamus to compel C. A. LaGrave, State Controller, to draw a warrant in favor of relator for the sum of $2,800 in accordance with the provisions of an Act entitled "An Act to provide for the relief of H. C. Cutting," approved February

18, 1897 (Stats. 1897, p. 21). Writ issued. In its opinion the Court decides:

A. Constitutional Law—Claims Against State—When Should be Presented to Board of Examiners—Compensation for Officer Fixed by Law.—"An Act to provide for the relief of H. C. Cutting" (Stats. 1897, p. 21), appropriated a sum of money to the State as ex officio Curator of the State Museum. It was contended that as the claim for services was not presented to the Board of Examiners prior to the passage of the enactment by the Legislature, it was in violation of Article V, Section 21, of the Constitution, which provides that the Governor, Secretary of the State and Attorney-General * * * constitute a Board of Examiners with power to examine all claims against the State (except salaries or compensation of officers fixed by law) * * * and no claim against the State (except salaries or compensation of officers fixed by law) shall be passed upon by the Legislature without having been considered and acted upon by the said Board of Examiners. *Held:* That the Act appropriates the sum of money for services rendered as ex officio Curator of the State Museum and is therefore compensation of an officer fixed by law and is expressly exempted by the terms of the Constitution.

THE STATE OF NEVADA, *Respondent*, vs. THE VIRGINIA AND TRUCKEE RAILROAD COMPANY, ET AL., *Appellants*.

Appeal from the District Court of the Second Judicial District of the State of Nevada, in and for Washoe county. Action by the State against the Virginia and Truckee Railroad Company to recover the taxes assessed on its property situated in Washoe county for the year 1895. From a judgment in favor of the State the railroad company appeals. In its opinion affirming the judgment appealed from the Court decides the following points:

A. The fiscal year for the purpose of taxation of railroads commences January 1st.

B. The rule being that the value of a railroad for the purpose of taxation is its net earnings capitalized at the current rate of interest, a jury is justified in finding that the rate to be used in the computation is the current rate of interest on investments and not on temporary loans.

C. The net earnings of a railroad forming the basis of valuation for taxation, are determined by deducting the necessary expenses, under reasonably economical and prudent management, from the gross earnings under similar management.

D. A reduction of $13,839 was made in the payroll of a railroad [illegible] shown that no more officers or employees were [illegible] than in 1896. *Held*, That it was permis[illegible]ing reasonable operating expenses for 1895, [illegible]pense could reasonably have been reduced

[illegible]sed by Stats. 1891, p. 150, providing that [illegible]he collection of delinquent taxes, the judg[illegible]25 per centum in addition to the tax of 10 [illegible]sts," are enforceable, although the assessment [illegible]1895, p. 39, declaring that "where the defense

CORRECTION

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

CORRECTION

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THE STATE OF NEVADA, *Respondent*, vs. THE VIRGINIA AND TRUCKEE RAILROAD COMPANY, ET AL., *Appellants*.

Appeal from the District Court of the Second Judicial District of the State of Nevada, in and for Washoe county. Action by the State against the Virginia and Truckee Railroad Company to recover the taxes assessed on its property situated in Washoe county for the year 1895. From a judgment in favor of the State the railroad company appeals. In its opinion affirming the judgment appealed from the Court decides the following points:

A. The fiscal year for the purpose of taxation of railroads commences January 1st.

B. The rule being that the value of a railroad for the purpose of taxation is its net earnings capitalized at the current rate of interest, a jury is justified in finding that the rate to be used in the computation is the current rate of interest on investments and not on temporary loans.

C. The net earnings of a railroad forming the basis of valuation for taxation, are determined by deducting the necessary expenses, under reasonably economical and prudent management, from the gross earnings under similar management.

D. A reduction of $13,839 was made in the payroll of a railroad in May, 1896. It was shown that no more officers or employees were necessarily required in 1895 than in 1896. *Held*, That it was permissible for a jury, in determining reasonable operating expenses for 1895, to find that the actual expense could reasonably have been reduced $13,839.

E. The penalties imposed by Stats. 1891, p. 150, providing that "in all suits brought for the collection of delinquent taxes, the judgment shall be entered for 25 per centum in addition to the tax of 10 per centum thereon and costs," are enforceable, although the assessment was excessive under Stats. 1895, p. 39, declaring that "where the defense

is based upon the ground that the assessment is above the value of the property, the defense shall only be effectual as to the proportion of the tax based upon such excess, but in no case shall an entire assessment be declared void."

THE STATE OF NEVADA, ON THE RELATION OF H. C. CUTTING, SUPERINTENDENT OF PUBLIC INSTRUCTION, *Relator*, VS. W. J. WESTERFIELD, STATE TREASURER.

Application by the State, on the relation of H. C. Cutting, Superintendent of Public Instruction, for writ of mandamus to compel W. J. Westerfield, as State Treasurer, to pay a certain warrant for the sum of $88 33, drawn by the State Controller on the General School Fund in the State Treasury, in favor of H. C. Cutting as salary of Superintendent of Public Instruction for the month of January, 1897. Writ issued. The principal point decided by the Court is:

A. Stats. 1897, p. 82, making the salary of the Superintendent of Public Instruction payable out of the General School Fund, is not in violation of the Constitution, Article XI, Section 3, which provides that the interest received from the investment of the State School Fund shall be distributed among the several counties for the benefit of the common schools; there being no such restriction imposed upon the Legislature as to the disposition which it is authorized to make of that portion of the fund derived from taxation, as provided by Section 6 of said Article XI, and the Superintendent being directly connected with the common schools.

THE STATE OF NEVADA, EX REL. FLORENCE M. KEITH, *Relator*, VS. W. J. WESTERFIELD, STATE TREASURER, *Respondent.*

Original proceeding.

Application of the State, on the relation of Florence M. Keith, for a writ of mandamus to compel W. J. Westerfield, as State Treasurer, to pay a certain warrant for the sum of $45, drawn by the State Controller, on the General School Fund in the State Treasury, in favor of said Florence M. Keith, for her salary as a teacher at the State Orphans' Home, for the month of April, 1897. Writ issued, directing that the respondent pay the warrant out of the General Fund in the State Treasury. The Court, in its opinion rendered, decides the following points:

A. Const., Art. XI, Sec. 2, 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 six months in each year; that the proceeds derived from designated sources are "pledged for educational purposes and shall not be transferred to any other fund for other uses, and shall be from time to time apportioned among the counties"; that the Legislature shall provide for the investment of all proceeds derived from said sources in certain kinds of bonds; that the interest only "shall be used for educational purposes and any surplus shall be added to the principal sum, provided that such portion of said interest as may be necessary may be appropriated for the support of the State University"; that the Legislature shall establish such University and may establish Normal Schools and such different grades of schools, from the primary department to the State University, as it

deems necessary and that it shall provide a special tax not exceeding two mills, in addition to the other means provided for the support of the said University and common schools. *Held:* That no part of the General School Fund can be appropriated to pay teachers at the State Orphans' Home and Stats. 1897, p. 82, in so far as it attempts such appropriation, is void.

B. Stats. 1897, p. 82, provides that the following sums are appropriated "*for* the purposes hereinafter named and for the" support of the State Government for the fiscal years 1897 and 1898: "For the salary of the Governor $8,000." Forty other sums are named for as many purposes without designating any fund. Section 34 is: "For the salary of one teacher and one assistant teacher at the State Orphans' Home $2,400, payable out of the General School Fund." *Held:* That although the last clause of Section 34 is in conflict with the Constitution and void, the remainder of the section is not affected by the fact, and makes a valid appropriation for the payment of said salary out of what is known as the "General Fund" in the State Treasury.

THE STATE OF NEVADA, EX REL. LYON COUNTY, *Relator*, vs. C. A. LAGRAVE, STATE CONTROLLER, *Respondent*.

Original proceeding.

Application by the State, on the relation of Lyon county, for a writ of mandamus to compel C. A. LaGrave, as State Controller, to correct and adjust his semi-annual settlements theretofore made by him as such Controller, between the State and said Lyon county, by giving credit in said settlements to said county, for services rendered the State under the Revenue Act by ex officio County Treasurer, ex officio County Auditor and ex officio County Assessor, and that such settlement be be made upon the basis of an annual salary of $1,500 paid to each of said officers by the county, instead of upon the basis of salaries allowed each by the Controller in making his said settlements, wherein he allowed a salary for ex officio Treasurer of $1,200 for the ex officio Auditor $900, and for the ex officio Assessor $1,500. Writ denied. In the opinion rendered by the Court it is decided:

A. Stats. 1885, p. 85, sec. 21, provides that "the State shall allow the several counties, for services rendered under the Revenue Act by the Auditor, Assessor and Treasurer of each county, a sum which shall be the proportion of the State tax to the whole tax levied by the county on the basis of the salaries allowed." *Held:* That when the County Clerk was ex officio County Treasurer and was allowed one salary for both offices, the State could not be compelled to make the county an allowance on the basis of his entire salary, since that would make the State pay part of the salary of the County Clerk.

THE STATE OF NEVADA, ON THE RELATION OF J. B. WILLIAMS, *Relator*, vs. H. H. BECK, *Respondent*.

Original proceeding in quo warranto by the State, on the relation of J. B. Williams, to oust respondent from the office of County Commissioner of Washoe county. Dismissed. In the opinion rendered the following points are discussed and decided:

A. A contingent resignation by a State official is subject to withdrawal by him at any time before the contingency happens, and the

action of the Governor in refusing to return the resignation when requested to do so before such time, is of no effect.

B. A County Commissioner sent his resignation to the Governor, to to take effect if he were not held blameless as to certain charges by an investigating committee, or if such investigation should not be held within sixty days. *Held:* That the resignation was not absolute, but contingent upon the happening of one of the two events therein named.

C. Before the investigation was held and before the sixty days had expired, the Commissioner wrote to the Governor requesting that his resignation be returned to him. *Held:* That this constituted an absolute withdrawal of the resignation while still contingent. (Mr. Justice Bonnifield dissenting.)

THE STATE OF NEVADA, *Respondent*, vs. THE ALTA SILVER MINING COMPANY, ET AL., *Appellants.*

Appeal from the District Court of the First Judicial District of the State of Nevada, in and for Storey County:

Action by the State of Nevada against the Alta Silver Mining Company to recover taxes upon its property situated in Storey county for the year 1896. From a judgment in favor of the State the defendant appeals. Reversed. The following are the chief points decided by the Court:

A. An undertaking on appeal is not executed until it is delivered to the Clerk for filing.

B. When the record shows that the notice of appeal was filed, and afterwards, on the same day, the undertaking on appeal was filed, in the absence of any showing to the contrary, it will be presumed that it was properly filed after the filing and service of the notice of appeal or contemporary therewith.

C. Under Civ. Prac. Act, sec. 341, it is not necessary that the residence or occupation of sureties be given in an undertaking on appeal.

D. Stat. 1864-65, p. 328, being "An Act to create a Fire Department Fund," providing for a levy upon the assessed value of property within unincorporated towns, for the benefit of the fire department in such towns, applies to towns which were incorporated at the time of the passage of the Act, but which have since became unincorporated, as soon as they became so.

E. If a tender is duly made, of a part of the taxes levied on property, is sufficient to pay what should have been legally assessed against the property, it will save any penalties and costs attaching; but, if not sufficient, it will not prevent penalties and costs attaching to that portion of the taxes tendered.

THE STATE OF NEVADA, *Respondent*, vs. WILLIAM OWSLEY, *Appellant.*

Appeal from the District Court of the Fourth Judicial District of the State of Nevada, in and for Lincoln County.

Appellant was tried and convicted in the District Court of the Fourth Judicial District, in and for Lincoln county, upon an indictment charging him with having committed an assault with intent to kill; upon conviction judgment sentencing him to five years' imprisonment in the State Prison was pronounced against him, from which said judgment defendant appealed. Upon the filing of the record in the

Supreme Court the State made a motion to dismiss said appeal upon the grounds that said record was not properly certified by the Clerk of the District Court, and, further, it was not filed, nor was any attempt made to file said record in the office of the Clerk of the Supreme Court within the time provided for in the Criminal Practice Act after the notice of appeal had been filed in the District Court and served on the District Attorney of said Lincoln county. Motion granted. Appeal dismissed.

EX PARTE WILLIAM M. WEBB.

Application for writ of habeas corpus. Allowed.

The following are the principal points decided by the Court:

A. Forcible entry is a misdemeanor under Gen. Stats., sec. 4696, (Crimes Act, sec. 151) providing that "offenses recognized by the common law and not herein enumerated shall be punished," etc.

B. Under Gen. Stats., sec. 4697, providing that one guilty of a misdemeanor not enumerated by statute shall be punished by imprisonment, a Court cannot require a defendant guilty of forcible entry to give bonds to keep the peace, and in default thereof to adjudge that he be imprisoned.

C. A prisoner held under a judgment such as the Court has no authority to make will be released on habeas corpus.

THE STATE OF NEVADA, *Respondent*, vs. DANIEL MANDICH, *Appellant*.

Appeal from the District Court of the Fourth Judicial District of the State of Nevada, in and for Lincoln County.

Daniel Mandich was tried and convicted in the District Court of grand larceny, and takes this appeal. Affirmed.

In the opinion of affirmance by the Court the following are the principal points discussed and decided:

A. The fact that stolen property was found in the possession of the accused recently after the theft is evidence of larceny.

B. The strength of the presumption of guilt raised by the possession of property recently stolen is for the jury to determine.

C. It is for the jury to determine whether possession of stolen property is sufficiently soon after the theft to raise the presumption of guilt.

D. Whether the explanation of one found with property recently stolen in his possession is reasonable or otherwise, is for the jury.

E. From time to time small quantities of cyanide were stolen from a mining company, and about six months after the first loss was noticed by the company, the accused, a resident of the same place, was found in Salt Lake City, several hundred miles away from his place of residence, with thirty-one pounds of cyanide product in his possession, which he was trying to sell. In his statement as to the manner in which he obtained possession of the cyanides, he said that, shortly before, a man came to his store saying that his name was G., and that he had a mine leased at E., and that he brought the bullion from there and offered to sell it to accused; that they sent some of it to be assayed by M. at Salt Lake City, and upon receipt of returns from the assayer accused purchased the product, not knowing it was cyanide until afterward, when he was having it assayed at S. Accused in one place stated he had $250 of his own, and borrowed the balance he paid G., while at another time, and during the same conversation, he stated that he had $350 of his

own, and then borrowed the balance. He described G. as a man of light complexion, dressed in a red sweater and a broad soft hat, and said he could recognize him if he saw him. But when confronted with G., who fully answered the description, he hesitated, and finally said he was not the man, but accused made no effort to find him. *Held:* That the jury was warranted in finding that the cyanides found in the possession of accused had been recently stolen; that his account of possession of them was not satisfactory, and that his possession was sufficient to connect him with the theft.

F. Where accused took cyanides from a mine from time to time in small quantities to avoid detection and then carried them away after he had abstracted thirty-one pounds, it was a continuous transaction and he was properly convicted for the final asportation. The value of the cyanides being $50 and over, the crime is grand larceny.

G. All the circumstances proved need not be "such that accused could not be innocent in the light of their existence." The law requires proof only of reasonable doubt.

THE STATE OF NEVADA, EX REL. ROBERT SCHULZ AND J. R. SCHULZ, *Relators*, VS. JAMES FURLONG AND EUGENE SWEENEY, *Respondents.*

Original proceedings in the nature of quo warranto on the relation of R. Schulz and J. R. Schulz against James Furlong and Eugene Sweeney, claiming that said respondents Furlong and Sweeney are usurping and intruding into and unlawfully exercising the offices of School Trustees of Clear Creek Union School District, situated in Ormsby and Douglas counties, to the exclusion of the relators, who are the duly appointed and qualified School Trustees of said Union School District. Writ allowed. The Court in its opinion discussed and decided the following principal points:

A. Under General School Laws, 1865, sec. 30, authorizing School Trustees of contiguous school districts in the same or adjoining counties to establish a union school to be supported out of the funds belonging to the respective districts, and Act of February 24, 1879 (Gen. Stats., p. 387) authorizing County Commissioners to form union school districts out of parts of two counties under certain conditions, when the inhabitants of two districts in adjoining counties have for nearly twenty years acted as union school district and carried on a union school supported by the public school funds belonging to the districts, it will be presumed to be a union district regularly organized without proof of its formation by the records of either the Trustees or County Commissioners.

B. It will be presumed, in the absence of evidence to the contrary, that upon the formation of a union school district the Trustees were appointed in accordance with the provisions of Act of February 24, 1879 (Gen. Stats., p. 387) authorizing the County Commissioners to form union school districts out of parts of two counties and to appoint three Trustees therefor, two from the county having the largest number of census children in its part of the district and one from the other county.

C. Under Gen. Stats., p. 380, requiring the Census Marshal, when a school district lies partly in two adjoining counties, to report to each County Superintendent the number of children in each county, and

that, if at any time the County Superintendent has reason to believe that a correct report has not been returned, he may appoint a Census Marshal and have the census retaken, the county is bound by the return of the Marshal as the statute has provided a remedy for an incorrect census.

D. In Act of February 24, 1879 (Gen. Stats., p. 387), providing that in union school districts formed from part of two counties two Trustees shall be appointed from the county having the largest number of census children in its part of the district, and one Trustee from the other county, the term "census children" means the number of children officially registered.

OFFICIAL OPINIONS.

OFFICIAL OPINIONS.

During the period covered by this report I have given many opinions both orally and in writing to the State officials and District Attorneys of the State upon questions arising under the Constitution and Acts of the Legislature pertaining to their official duties, of which the following, among the opinions rendered, are of material interest to the public:

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 3, 1897.

HON. A. C. PRATT, *Surveyor-General:*

DEAR SIR: Answering your inquiry of this date in which you desire to know if, under the judgment of the District Court of the State of Nevada, in and for Storey County, rendered therein November 7, 1890, in the case of Lyon county, plaintiff, vs. Douglas county, defendant, you, as Surveyor-General, have authority to establish upon the maps in the office of the Surveyor-General and ex officio Land Register of the State of Nevada said disputed county boundary line, and if so, where?

The judgment submitted does not mention a boundary line, either settled or disputed, between the counties of Lyon or Douglas. It is nothing more or less, than a money judgment in favor of Lyon county and against Douglas county, for the sum of $257 13½ principal, and $162 55 costs, and cannot be construed as giving any authority to you, or any other person, for the establishment of any county line whatever between said counties. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 23, 1897.

HON. C. A. LAGRAVE, *State Controller:*

DEAR SIR: In your letter of the 16th instant you ask, "Are there any legal objections to the payment of the deficiency claims hereto attached for services performed by Eugene Howell and R. M. Beatty?"

The claim of R. M. Beatty, attached to your letter, is for services rendered as attorney-at-law in assisting the Supreme Court Reporter of the State of Nevada in preparing Supreme Court decisions comprising Volume 22, Nevada Supreme Court Reports, in accordance with the provisions of Section 2560, General Statutes of Nevada, the portion of which relating to the claim in question reads as follows:

"Said Clerk of the Supreme Court * * * * and he may in his discretion employ a competent attorney to assist him in the preparation of said decisions, who shall be allowed a reasonable compensation for

his services, not to exceed the sum of seven hundred dollars for each volume."

This claim is certified by Mr. Howell, as Secretary of State and ex officio Clerk of the Supreme Court, and approved by the State Board of Examiners.

Under the language of Section 2560, General Statutes of Nevada, above quoted, my judgment is that the employment of Mr. Beatty was authorized. The amount demanded as compensation for the services, certified by Mr. Howell as having been performed, being authorized, I can see no legal objection to its payment. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 25, 1897.

PETER BREEN, ESQ., *District Attorney, Eureka, Nevada:*

DEAR SIR: Your favor of the 19th inst. received. The Act of the Legislature approved March 15, 1895, Statutes 1895, p. 67, provides (Section 2) that from and after the first Monday in January, A. D. 1897, "the County Recorder of Eureka county, Nevada, shall be ex officio Auditor in and for said county and shall receive for all such services a salary of ten hundred dollars per annum and in addition thereto such fees, in all cases wherein either the State of Nevada or the county of Eureka is not a party, as are allowed by law to the County Recorder."

The language fixing his salary at ten hundred dollars per annum "for all such services," meaning the services which he may perform as Recorder and ex officio Auditor, except in cases where the State or county is not a party, is clear and unmistakable and limits the amount of the salary to which he is entitled to the sum named, and in my opinion he is not entitled to any other or greater compensation from either Eureka county or the State than the sum of ten hundred dollars per annum.

The case you mention, and on which your Auditor relies, is that of State, ex rel. Westerfield, State Treasurer, vs. Tyrrell, County Treasurer of Ormsby county. In that case Westerfield, State Treasurer, contended that the county detained certain moneys belonging to the State out of taxes collected in Ormsby county. The Court held that under Section 21, Act of the Legislature, 1885, page 85, the county was entitled to retain a certain proportion of the taxes collected, for services of the Auditor, Treasurer and Assessor, and that the money so retained rightfully belonged to the county.

This is perhaps the reason your Auditor claims the additional compensation, although I cannot see wherein the construction placed upon the section of the law of 1885 gives him any right to the money allowed the county for "services of the Auditor," as the county, not the Auditor, is the beneficiary under that section which was considered by the Court. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 4, 1898.

GEORGE S. GREEN, ESQ., *District Attorney, Hawthorne, Nevada:*

DEAR SIR: Your letter of the 25th ult., in which you ask my opinion "as to whether the words" owner and holder of land, at the top of page 54, Statutes 1895, includes lessees of land, is before me.

This question came before the Supreme Court in April, 1896, in the case of State vs. Wheeler, et al., on appeal from the District Court of Elko county, wherein judgment was rendered in favor of defendants.

The Supreme Court, in affirming the judgment of the lower Court held that "a lessee of land for a fixed term is an owner thereof" within the meaning of the law from which you quote. In its decision of the case the Court uses the following language:

"It remains but to apply these doctrines to the case. We have found that one meaning of the word 'owner' is the lessee or tenant of land. The word 'holder' sometimes means the same thing, or as used here, the person in possession, actual or constructive, of real estate, which in the absence of a showing to the contrary a tenant is always presumed to be. There is nothing in the Act to indicate that the Legislature did not intend to use 'owner' in this broad sense instead of the narrow one of him who has title in fee. As giving the statute the broader construction will exempt persons from the penalties denounced by the Act, the rules above stated require us to give it this construction. The appellant contends that the tenant for a fixed term is only the holder of property, and that the use of the term 'owner and holder' shows that the Legislature meant more than that. But a tenant is more than a holder; he is for many purposes an owner. So both words fit him. To our minds the Legislature meant by the use of that term just what it has said, that is, that for a person to be entitled to the exemption, he must be both owner and holder. It was not sufficient to be the owner of land which he had leased to another or from the possession of which he was excluded by the adverse holding of another, nor was the mere holding of land with color of title to be sufficient."

The Supreme Court in its decision holds, in effect, that an owner of sheep in any county in this State and who is the lessee of lands situated in this State is, for the purposes of the "pasture license" provided for in the Act of 1895, Stats. 1895, p. 53, entitled to all the rights, privileges and immunities accorded to an owner in fee of lands under said Act, and as such lessee is exempt from the payment of the pasture license therein provided for.

In view of this decision by the Court, it is clear that no recovery can be had against sheep owners pasturing in your county who are lessees of the statutory number of acres in proportion to the number of sheep being pastured. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 5, 1897.

PETER BREEN, ESQ., *District Attorney, Eureka, Nevada:*

DEAR SIR: Replying to your letter of 22d ultimo, relating to the overpayment of money amounting to about $1,600 on account of salary to the Auditor of Eureka county during the past four years, and to your question "Who shall be sued for the above sum, the bondsmen or the County Treasurer who overpaid the Auditor?" I submit the following:

The Auditor having drawn the warrants (which the Treasurer, so long as there was money in the fund they were drawn on, was, under the law, required to pay) and having received the money, is the person to whom the county should look for repayment of the money so overpaid and failing to repay the same upon demand therefor, having received it in his official capacity, his bondsmen become liable.

The Treasurer, upon receipt of the Auditor's warrant, the same being regular on its face, and having money in the fund upon which it was drawn, was under the law required to pay the same, and no blame could be attached to him for so doing unless it could be shown that he was informed or was aware of the fact that the party in whose favor the warrant was drawn had no legal claim against the county.

Under our statutes the Auditor and County Commissioners, not the County Treasurer, are the officers charged with duty of passing upon the correctness of claims against the counties in which they are acting.

I am of the opinion, therefore, that the Auditor and his bondsmen are the persons to be sued for the recovery of any money overpaid to that officer on account of salary. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 20, 1897.

GEORGE S. GREEN, ESQ., *District Attorney, Hawthorne, Nevada:*

DEAR SIR: I am in receipt of your letter of the 18th inst., in which you ask: (1) "Whether or not oral notice of appeal given in open Court and entered upon the minutes thereof is sufficient to give validity and effect to a bail bond upon appeal?" and (2) "as regards the case of the State vs. Chiatovich and Ingalls, let me know what virtue you think the point has and what further disposition of the case you would advise."

Presumably your first question relates to the case of the State vs. Charles Murphy, in which the defendant was convicted of the crime of "selling whisky to an Indian" and judgment of imprisonment in the State Prison for the term of two years pronounced against him, and wherein, after judgment had been pronounced, defendant, by his attorney, announced orally in open Court his intention of appealing from said judgment and requested that the Court make an order admitting the defendant to bail pending said appeal. Whereupon the Court made an order admitting defendant to bail in the sum of three thousand

dollars pending said appeal and further directed that upon the execution and approval of said bond the defendant be released from custody.

Sections 4354 and 4355, General Statutes of Nevada, relating to notice of appeal in criminal cases, provide as follows: "Section 4354. An appeal must be taken by the service of a notice in writing on the Clerk of the Court in which the action was tried, stating that the appellant appeals from the judgment," and "Section 4355. If the appeal be taken by the defendant, a similar notice must be served upon the District Attorney."

Taking the sections of the statute above quoted relating to appeals as our guide, it is very clear that the oral notice of appeal given in open Court by the attorney for Murphy is not the notice contemplated or required under the Criminal Practice Act of this State, and a bond, though regular in form, releasing the defendant from custody pending an appeal, under such a notice, will not give a cause of action against the sureties thereon, when the defendant takes no further steps within the statutory period to prosecute his appeal. In other words there is no appeal to warrant the execution or approval of a bail bond. Section 4380, General Statutes of Nevada, relating to bail pending appeal provides when the same may be given:

"After conviction of an offense not punishable with death, a defendant who has appealed may be admitted to bail: First, as a matter of right where the appeal is from a judgment imposing a fine only. Second, as a matter of discretion in all other cases."

The language of the section above quoted, providing for bail after conviction, designates the time when a party may be admitted to bail as being after an appeal has been taken, and not otherwise.

The Supreme Court in passing upon this question uses the following language: "The Court had no right, no authority and no power to order a stay of execution of the judgment of imprisonment for any length of time; nor had it any authority to release the defendant from custody under bail until he had appealed. An appeal is taken by the service of the notice required in Section 4354, above cited."

In answer to your second question, I may say in addition to the foregoing the bond in suit in the case of the State vs. Chiatovich and Ingalls having been executed and intended as a bail bond upon appeal, when no appeal was pending, there was no foundation for its execution, and, in my judgment, no recovery can be had thereon. I therefore advise that no further steps be taken against the sureties in said bond. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, June 18, 1897.

J. L. BUTLER, ESQ., *District Attorney, Belmont, Nevada:*

DEAR SIR: I am in receipt of your letter of the 7th inst., in which you ask my opinion upon the question:

1. "The Sheriff sent to a man deputized by him residing about ninety miles from this place to subpena a grand and trial jury; has he, the Sheriff, a right to collect full mileage on the intervening distance of ninety miles which were not actually traveled?"

By Act of the Legislature, approved March 11, 1895, Stats. 1895, p. 41, it is provided that "on and after the first day in January, 1897, the Sheriff of Nye county shall receive such fees as are allowed under the provisions of 'An Act to regulate fees and compensation for official and other services in the State of Nevada,' approved March 6, 1875, Stats. 1875, p. 147, section one of which Act provides that 'the fees allowed to Sheriffs in the various counties of this State shall be as follows: * * * "For serving subpena for each witness summoned, fifty cents.

"For traveling, per mile, in serving such subpena or venire, in going only, fifty cents for the first ten miles, and for each and every additional mile, forty cents; but when two or more witnesses live in the same direction, traveling fees shall be charged only for the most distant."

It is evident from the language of the statute above quoted that the Sheriff, in charging mileage in summoning jurors, is limited to the number of miles which he is required to travel in going, and where, as in the case stated, he has a deputy residing at a distance from the county seat (in the direction where the jurors named in the venire reside), to whom he forwards the venire, and the same is served by the deputy, the Sheriff is not entitled to mileage for the intervening distance between the county seat and the place where the deputy resides, neither the Sheriff nor his deputy having actually traveled any portion of this intervening distance in the performance of their official duties.

2. "Where a Sheriff goes in one course or direction and subpenas both trial and grand jurors at the same time, has he, the Sheriff, a right to mileage on both cases?"

In reply to this last question I will state that my opinion the Sheriff is entitled to mileage for each service in the same manner as though he had made two separate and distinct trips, one for the purpose of summoning grand jurors, the other for the purpose of summoning trial jurors. Very truly yours,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, June 24, 1897.

HON. C. A. LAGRAVE, *State Controller:*

DEAR SIR: I am in receipt of your letter of the 22d instant containing the inquiry: Am I authorized by the decision of the Supreme Court, in the case of Keith vs. Westerfield, State Treasurer, for salary in the Orphans' Home, to draw warrants on the General Fund for the "education of the deaf, dumb and the blind, and their transportation to and from the Institution;" also, does it include transportation for the State Superintendent of Public Instruction, when traveling with them?

Section 38 of the General Appropriation Act for the support of the civil government of the State of Nevada for the fiscal years 1897 and 1898, Stats. 1897, p. 82, reads as follows: "For the education of the deaf, dumb and the blind, and their transportation to and from the Institution, to be expended under the direction of the State Board of Education, four thousand dollars ($4,000), payable out of the General School Fund."

In the case of Keith vs. Westerfield, State Treasurer, decided by the Supreme Court at the present term, the question before the Court was identical with the one here, in so far as it relates to the payment of any money out of the General School Fund, except for educational purposes as provided by Article XI, Constitution of Nevada. The Court in deciding the case, after citing with approval the cases of Nevada vs. Rhodes, 4 Nev. 312, and State vs. Dovey, 19 Nev. 396, uses the following language:

"We are of opinion, upon reason and the aboveau thorities, that the appropriation made by the Legislature for the payment of the salaries of teachers at the State Orphans' Home out of the General School Fund is unconstitutional, null and void, and it follows that the warrant in question, in so far as it is made payable out of said fund, by the terms thereof is null and void. But it does not follow that said appropriation or said warrant, or either of them, is otherwise null and void. We hold that the Legislature has made a valid appropriation for the payment of the salary in question, and that the same is payable out of the General Fund in the State Treasury the same as the salary of the Governor and most of the other State officers, and the same as other appropriations in which no specific fund is named. Section 19, of Article IV, of the Constitution provides: 'No money shall be drawn from the treasury but in consequence of appropriations made by law.' It will be observed that it is not required that the fund out of which the appropriations are made shall be named in the appropriation Act. Usually, if not always, other Acts or the Constitution show what fund the money appropriated shall be drawn from.

"Section 1 of said Act of 1897 appropriated various sums for different purposes. It reads: 'The following sums of money are hereby appropriated for the purposes hereinafter named, and for the support of the government of the State of Nevada, for the fiscal years 1897 and 1898,' and then follows: 'For the salary of the Governor eight thousand dollars.' * * *

"'Section 34. For salary of one teacher and one assistant teacher at the State Orphans' Home, twenty-four hundred dollars ($2,400), payable out of the General School Fund.'

"The last clause of this section is null and void for the reasons hereinbefore given, but it does not invalidate said Section 1 nor the balance of said section. * * *

"It seems to us that it cannot be reasonably inferred that the appropriation of said salaries and the designation of the fund out of which the same should be paid, are so dependent on each other that the Legislature would not have made the appropriation without making the salary payable out of said fund. The main object of the Legislature was to provide for the payment of said salary, and for some reason they thought it advisable to have the payment made out of that fund. It is evident to our minds that the Legislature would have as readily made the appropriation out of the proper fund if it had occurred to the members that it could not properly be made out of the General School Fund.

"We therefore conclude that there is a valid appropriation made for the payment of said salary, out of what is known as the General Fund, in the State Treasury, and that it is the duty of the said Treasurer, the respondent, to pay said salary and said warrant."

The Legislature having made the appropriation for the education of the deaf, dumb and the blind and their transportation to and from the Institution in the same general appropriation Act and payable out of the same General School Fund as the appropriation for payment of teachers' salaries at the State Orphans' Home, the reasoning of the Court as to the constitutionality of that portion of the Act providing for the payment of said salaries out of the General School Fund, as well as the conclusion which it reached in deciding that said salaries were payable out of the General Fund in the State Treasury, is in my opinion conclusive authority to justify you to draw all warrants for the payment of the expenses of the education of the deaf, dumb and the blind and their transportation to and from the Institution out of the General Fund in the State Treasury.

There being no provision made for the payment of the transportation of the Superintendent of Public Instruction when traveling with them to and from the Institution, which under the law, he is, when in his judgment their safe transportation requires it, authorized to do, he is in my judgment entitled to be repaid for the amount by him expended for such transportation out of the General Fund in the State Treasury. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, August 9, 1897.

HON. W. J. WESTERFIELD, *State Treasurer:*

DEAR SIR: I am in receipt of your letter dated August 7, 1897, reading as follows:

"I desire to ask your legal opinion relative to the payment of warrants drawn in favor of Superintendent of Public Instruction H. C. Cutting, on the General School Fund of this State, for his salary from January 1st to August 1st, this year, including amount passed upon by the Supreme Court in the case of Cutting vs. Westerfield. On the 10th day of July, 1897, all moneys in said fund was apportioned among the several counties of this State and warrants drawn by the State Controller in favor of the County Treasurers covering said amounts so apportioned. In view of the fact that no moneys have come into said fund since said apportionment among the several counties was made, except that received from interest on bonds, the sale of lands and the interest on deferred payments on land contracts, shall I pay warrants for said Superintendent of Public Instruction's salary out of said fund under present conditions?"

Since 1883 the salary of the Superintendent of Public Instruction has, in accordance with legislative enactment, been paid out of the General School Fund.

The reports of the State Controller and State Treasurer show that of the moneys paid into the General School Fund in the State Treasury annually more than ten thousand dollars of the amount is derived from taxation.

The salary of the Superintendent of Public Instruction is and has been since January 1, 1895, one thousand dollars per annum.

In the case of the State, ex rel. Cutting, vs. W. J. Westerfield, as

State Treasurer, recently decided by the Supreme Court, the question before the Court being the constitutionality of so much of the General Appropriation Act of 1897, Stats. 1897, p. 82, as provides for the payment of the salary of the Superintendent of Public Instruction out of the General School Fund, the decision of the Court was in favor of the constitutionality of the Act, holding that the salary of the relator, Cutting, as head of the educational department of this State, was properly payable out of the General School Fund, and ordered that the writ therein prayed for, directing the Treasurer to pay the warrants drawn by the Controller in favor of Cutting's January (1897) salary as Superintendent of Public Instruction, issue as prayed for.

The amount of money paid into the General School Fund annually, derived from taxation, is greatly in excess of the amount appropriated and payable out of said fund for the salary of said Superintendent of Public Instruction, and whether said salary shall be paid out of moneys in said fund, the same having been interest on money derived from the sales of lands granted to the State by Congress, or whether it shall be paid only from the particular money coming into said fund derived from taxation, cannot be a question in this case. If any authority of law existed for keeping the identical moneys paid into this fund from the various sources distinct and separate until paid out as directed by law, then it might be said, with some show of reason, that no matter how much money may be in the General School Fund, no part of it not derived from taxation shall be paid out as the salary of the Superintendent of Public Instruction.

This is not and was not intended to be the construction placed upon the law, for the reason that money paid into a fund, no matter from how many sources, loses its identity as soon as it reaches the fund for which it was intended, and thereafter is known, considered and treated only as a part and parcel of the fund, subject to all uses for which the fund was created.

I am therefore of the opinion that you should pay warrants for the salary of the Superintendent of Public Instruction out of any moneys in the General School Fund, such, I believe, being the meaning and intention of the law and as interpreted by the Supreme Court in the case of the State, ex rel. Cutting, vs. Westerfield, State Treasurer. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, August 14, 1897.

A. B. TREECE, ESQ., *District Attorney, Ely, Nevada:*

DEAR SIR: Your letter of the 28th ultimo is before me, in which you ask my opinion "with reference to Section 116, p. 174, Stats. 1891, License, as to whether or not an express company doing a general carrying business for profit, but not transmitting gold dust, gold or silver coin, or bullion, is liable to a license. Section 118 of same Act reads: "Common carriers as defined in Section 116 of this Act shall be liable to an annual license of $150, payable quarterly."

Section 116 of the Act to which you refer provides: "Licenses shall be obtained by any person or persons, private associations or corpora-

tions, doing business in this State, and engaged in transmitting gold dust, gold or silver coin or bullion from any place in this State to any place without this State, or from one place to another place within this State, for profit, and the same shall be taken to be a common carrier within the meaning of this Act."

That portion of Section 118 of this Act to which your inquiry refers reads as follows: "Common carriers as defined in Section 116 of this Act shall be liable to an annual license of $150, payable quarterly."

It is clear from the language of the two sections above quoted that it was the intention of the Legislature in framing the Revenue Act to include under the designation "common carriers," subject to the annual license imposed upon common carriers by said Act, only such persons, associations or corporations as should engage "in transmitting gold dust, gold or silver coin or bullion from any place within this State to any place without this State, or from one place to another place within this State for profit."

I am therefore of the opinion that unless an express company be engaged in the business above quoted, it is not a common carrier within the meaning of Section 116 of the Revenue Act of 1891, and that it is not subject to the license required to be paid by common carriers under Section 118 of said Act. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, September 17, 1897.

JAMES L. BUTLER, ESQ., *District Attorney, Nye County, Nevada:*

DEAR SIR: I am in receipt of your letter of the 17th instant relating to the increased tax levy for the year commencing January 1, 1897, of two cents for each one hundred dollars of taxable property in the State for University purposes, under the Act of the Legislature approved March 23, 1897, and the tax levy of thirty cents on each one hundred dollars of taxable property in Nye county, to be applied to the bonded indebtedness of Nye county, under the Act of the Legislature approved March 16, 1897, the Acts of the Legislature having been approved after the date fixed by law for the levy of State and county taxes by the Board of County Commissioners of Nye county.

The two-cent levy for University purposes being a State tax immediately upon the approval of the Act of the Legislature authorizing it, it became a lien upon the taxable property in the State for the fiscal year commencing January 1, 1897, without action by the Board of County Commissioners.

The Supreme Court discussed this question in its opinion rendered in the case of State vs. Manhattan S. M. Co., 4 Nev. 318, in which it says: "In the first place as it regards State taxes, it appears to us that the levy of them by the County Commissioners is a perfectly idle ceremony. It is true the Legislature requires it to be done, but affixes no penalty to a failure to perform the duty. The levy is made by the Legislature and what good can it do for the County Commissioners to remake the levy, or what harm would it do to omit to make it, we are at a loss to understand. The Constitution has required the Legislature

to provide for a uniform rate of taxation throughout the State. When the Legislature has done its duty we feel very certain that the tax could not be defeated either in any particular county or throughout the State by the delinquency of any Board of County Commissioners."

Taking the foregoing language of the Supreme Court as the controlling guide, I am of the opinion that the tax provided by the Act of the Legislature approved March 23, 1897, became a lien upon the taxable property of the State for the amount thereof for the year 1897, and it is the duty of the Board of Commissioners to see that the same is properly spread upon the tax roll for the year 1897, and collected at the same time and in the same manner as the taxes levied by order of the Board for the fiscal year of 1897, prior to the approval of said Acts of the Legislature.

With regard to the thirty cents authorized by the Act of the Legislature, approved March 16, 1897, I think the case is different. There the duty of making the levy, being for county purposes solely, devolved upon the Board of Commissioners. At the time the Act authorizing this levy was approved, the Board of County Commissioners had, as required by law, already made the levy for county purposes for the fiscal year 1897, and the Act in question containing no directions and conferring no authority upon them to meet specially and increase the levy already made by them for 1897, I am of the opinion that any action by the Board looking to the levy or collection of this thirty-cent tax for the year 1897 would be illegal and void. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 27, 1897.

HON. C. A. LAGRAVE, *State Controller:*

DEAR SIR: Replying to that portion of your inquiry, letter of the 16th instant, relating to claim of Eugene Howell, I beg leave to say:

The claim in question is for services by Mr. Howell, Secretary of State, as ex officio Clerk of the Supreme Court, under the provisions of Section 2560, General Statutes of Nevada, which provides for the payment of a compensation of six hundred dollars per year to the Clerk of the Supreme Court as Reporter of the Supreme Court Decisions.

In 1891, Stats. 1891, p. 104, the Legislature, by enactment relating to the salary of State officials to be in force and effect from and after the first Monday in January, A. D. 1895, fixed the salary of Secretary of Secretary of State at twenty-four hundred dollars per annum. By an Act of the Legislature approved February 20, 1893, and which was to take effect and be in force on and after the first Monday in January, 1895, Stats. 1893, p. 32, it is provided that "The Secretary of State shall be ex officio Clerk of the Supreme Court and ex officio State Librarian."

This last Act makes no provision for any other or different salary to be paid to the Secretary of State on account of, or for the performance of, the ex officio duties imposed upon that officer than the salary fixed by the statute of 1891 before noted.

The claim in question, for $1,200, is for services the performance of which were by law imposed upon the Clerk of the Supreme Court.

This law was in force at the time the Acts hereinbefore cited, relating to the salary and ex officio duties of the Secretary of State, were approved as well as when they went into effect. If the Legislature intended, at the time these measures were under consideration, that the Secretary of State should receive additional compensation for the performance of these ex officio duties, it would have made provision therefor either by special enactment at that time or in the General Appropriation Act passed after Mr. Howell had entered upon the performance of the duties of the office of Secretary of State. The Legislature having failed to provide additional compensation for the ex officio services required to be performed by the Secretary of State on and after the first Monday in January, 1895, the conclusion naturally follows that the salary of $2,400 per annum fixed by the Legislature in 1891 as salary of that officer after January 1, 1895, was intended to be in full compensation for all services and ex officio services to be performed by him.

I am of the opinion therefore that the Act providing for payment of the claim of Mr. Howell is in plain violation of Section 9, Article XV, Constitution of the State of Nevada, which prohibits the Legislature from making any provision of law "changing the salary or compensation of any officer (whose salary or compensation is fixed in the Constitution, and of whom the Secretary of State is one) during the time for which he may have been elected."

For the foregoing reasons I advise that you refuse, as Controller, to draw your warrant upon the State Treasurer in favor of Mr. Howell for amount of said claim, unless required so to do by a Court of competent jurisdiction. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, March 9, 1897.

HON. GEORGE ERNST, *Senate Chamber:*

DEAR SIR: I have made a hurried examination of Assembly Bill No. 116 amending certain sections of "An Act to regulate proceedings in criminal cases in the Courts of Justice in the Territory of Nevada," approved November 26, 1861.

My judgment is that the amendments giving the District Court of the county in which the State Prison is situated jurisdiction over the defendant, although the crime of which defendant was convicted was committed in an entirely different county and the trial and conviction had therein, is clearly unconstitutional, and especially does this apply to so much of Section 461 as gives the District Judge of the county in which the State Prison is situated power to issue warrants directing the execution of the judgment.

A further objection to the bill is the costs incident to the provision relating to inquisitions for the purpose of determining the sanity or insanity of the defendant. The inquisition is to be held in the county in which the State Prison is situated (Ormsby), while the defendant may have been convicted in Lincoln county, and the material witnesses as to the sanity or insanity of defendant residents of that county, yet their attendance at the inquisition can be enforced at the expense

of the State, since only costs of transportation of defendant is provided for and paid by the county. From the examination I have been able to make I can see no advantage to be obtained over the law now in force if the proposed amendments are enacted into a law. Very truly.

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, September 30, 1897.

GEORGE S. GREEN, ESQ., *District Attorney, Hawthorne, Nevada:*

DEAR SIR: Your letter of the 21st instant received, which reads as follows:

"On the 20th of September, 1897, the Board of County Commissioners met in Hawthorne and created a new school district at Silver Star, Esmeralda county, Nevada. Section 2 of Article V of the School Law says 'that when a new school district is organized, school shall be commenced within 120 days from the action of the Board of County Commissioners creating such new school district, and if school shall not be commenced within 120 days in said district, then such action shall become void and no district shall exist.' Section 2 of Article III says in substance school money shall be apportioned in obedience to the next preceding school census return. Section 4 of Article VI and Section 1 of Article VII says that the census shall be taken between the 1st and 31st days of May, inclusive. No census was taken in Silver Star, as no district had been created on the 1st of May.

"I find no authority for the Superintendent to order a census, except as provided in the fifth subdivision of the last named section, viz., 'when he has reason to believe that a correct report has not been returned.' Now, I am of the opinion that no census can be taken until May, 1898, and that Silver Star District can receive no school money until the September apportionment in 1898, and that the action of the Board of County Commissioners in creating such district will in the meantime become void."

While you do not so state in terms, I shall assume that Silver Star School District was created by the division of an old school district formerly created in the county, and the fact that no census of the school children residing within the new district was taken in May, 1897, cannot in my judgment defeat the purpose of the law.

Section 5, Article IV, p. 12, School Law of Nevada, 1897, as compiled by the Superintendent of Public Instruction, reads as follows: "No school district, except when newly organized, shall be entitled to receive any portion of the public school moneys in which there shall not have been taught a public school at least three months within the year ending the last day of August previous; and no public school shall receive any moneys, benefits or immunities under the provisions of this Act, unless such school shall have been instructed by a teacher or teachers duly examined, approved and employed by legal authority, as herein provided. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district after the payment of all outstanding debts at the time when a new school was actually commenced in such new district, and

the County Superintendent shall divide and apportion such remaining money according to the number of census children resident in such district, for which purpose he may order a census to be taken, the expense of which shall be met as provided in Section 32."

In my judgment the Legislature in the sections of the School Laws above quoted has made ample provision for the maintenance of public schools in districts created under the conditions stated in your letter, and, in order that the action of the Board in creating the new district may be carried into effect as contemplated by the law, you should at once have the census of the school children residing in the new and remaining portion of the old district taken, and when the number is ascertained apportion the money to the credit of the old district in the School Fund between the old and new districts, in proportion to the number of school children residents of each district, and thereby make provision for the maintenance and support of the school in the new district within said period of 120 days from the creation of said district.

Very truly yours,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, November 8, 1897.

HON. H. C. CUTTING, *Superintendent of Public Instruction:*

DEAR SIR: Your letter of the 2d instant is before me, in which you request my opinion upon the questions following:

1. "Can the Trustees of a School District transfer the funds a child draws in their district to another district where a child attends school?

2. "If a child attends school in a district other than the district in which her parents reside and in which she draws school money, can the Trustees of the district where she attends school require her to pay tuition?

3. "If she does not pay tuition or have the money transferred, can she be barred from attending school in the non-resident district when she does not draw school money?"

The legislation bearing upon the foregoing questions is contained in Section 30 of the Act of the Legislature entitled "An Act to provide for the maintenance and supervision of public schools," approved March 20, 1865, Stats. 1865, p. 413, as amended Stats. 1891, p. 97, and reads as follows:

"The School Trustees shall also have power:

"Second. To make arrangements with the Trustees of any adjoining district for the attendance of such children in either district as may be best accommodated therein, and to transfer the moneys due by apportionment to such children to the district in which they may attend school. The School Trustees of any district shall transfer to an adjoining district any child, together with the moneys due by apportionment to such child, whenever the parent or guardian shall present a written permit from the Board of School Trustees of the adjoining district. The provisions of this Act shall only apply to counties polling not less than twenty-five hundred votes at the last preceding general election."

It will be observed that the Act last above quoted, giving a child the

right to attend school in a district adjoining the one in which it resides, together with the right to have the moneys due by apportionment to such child transferred to the district in which the child attends school, is restricted in its application to counties "polling not less than twenty-five hundred votes" at the general election next preceding the time at which the transfer on behalf of such child is requested, and as to this class of counties I answer your questions:

1. Yes, when written request is made by the guardian or parent of such child, accompanied by a written permit from the Board of School Trustees of the adjoining district.

2. No, since by complying with the provisions of the Act they can compel the Trustees of the district in which the child resides to transfer the money due by apportionment to the child to the adjoining district.

3. There is no authority for a child to attend school in an adjoining district without first obtaining permission from the Board of School Trustees of such district, and, being in attendance under such permission, the Trustees can compel the transfer of the portion of the school moneys due such child in the district where the child resides to the adjoining district. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 5, 1898.

F. R. MCNAMEE, ESQ., *District Attorney, DeLamar, Nevada:*

DEAR SIR: I am in receipt of your letter of recent date in which you say: "We are having some difficulty in Lincoln county, and especially in DeLamar, in regard to gaming licenses. It is contended by some that the dealing of round-table stud-horse poker, where each party deals and the sole percentage is the sale of drinks, cards and cigars, does not come under the Act of 1895, p. 12. Others, who have been taking out license previous to this time, refuse to take out the same unless those who are dealing round-table, stud and draw poker for percentage such, as cards, drinks, etc., are compelled to take out license also."

Section 1257, General Statutes of Nevada, designates all games subject to gaming license and reads as follows: "Each and every person who shall deal, play, carry on, or cause to be opened, or who shall conduct either as owner or employee, whether for hire or not, except under a license as hereinafter provided, any game of faro, monte, roulette, lansquenet, rouge-et-noir, rondo, keno, fantan, twenty-one, red-white-and-blue, red-and-black, or diana, percentage or stud-horse poker, or any banking or percentage game played with cards or dice, or any device, whether the same be played for money, checks or credit, or any valuable thing or representative of value, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand nor more than three thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both such fine and imprisonment."

As I understand your letter, the refusal of certain persons engaged in conducting and carrying on percentage or stud-horse poker games in

your county to pay the gaming license required by Section 1260, General Statutes of Nevada, is based solely on the ground that the only percentage they derive from the conduct of the games is in the sale or furnishing of drinks, cigars and cards to the persons playing or taking part in the games.

This being the case, it is, in my judgment, clearly within the language and provision of the statute above quoted requiring the payment of the license when the game is played for "money, checks or credit, or other valuable thing or representative of value," and the person or persons conducting or carrying on such game without having first procured the license required under the Act approved January 22, 1885, Stats. 1885, p. 12, should be prosecuted as in said Act directed. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, January 29, 1898.

HON. A. C. PRATT, *Surveyor-General and ex officio Register of State Land Office:*

DEAR SIR: I am in receipt of your letter of the 25th instant, reading as follows: "A, who is a married woman residing in Nevada, enters into a contract with the State of Nevada for the purchase of 160 acres of land. Thereafter, and before receiving a patent, she conveys all her right, title and interest in said land, as described in said contract, to B. The husband of A does not join in the execution of said deed. Has B a good and sufficient conveyance of the rights possessed by A in the contract in question? If not, whom shall I recognize as the lawful owner of said contract?"

The right of a married woman to acquire, own, hold and deal in all kinds and character of property, including real estate, is recognized and amply provided for by the statutes of this State.

Section 499, General Statutes of Nevada, provides:

"All property of the wife owned by her before marriage, and that acquired by her afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, is her separate property."

By Section 507 it is provided: "The wife may without the consent of her husband convey, charge, incumber or otherwise in any manner dispose of her separate property."

The sections of the statute above quoted give to a married woman the absolute control of her separate property, as well as the right to acquire, hold and dispose of real property situated in this State, whether the title to such property be acquired by her from an individual or from the State.

I am of the opinion, therefore, that if the conveyance of A to B be in due and proper form, that B has by the delivery of such conveyance acquired all the right, title and interest of A under her contract with the State, and you should hold B as the lawful owner of whatever rights A acquired under her contract. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 4, 1898.

JAMES L. BUTLER, ESQ., *District Attorney, Belmont, Nevada:*

DEAR SIR: Your favor of the 31st ultimo just received, in which you say that no meeting of the Board of County Commissioners of Nye county was held on the first Monday in January, 1898, the regular quarterly meeting day designated by statute, on account of the sickness of two of the members of the Board.

It is provided by Section 1944, General Statutes of Nevada: "The meetings of the Board of County Commissioners shall be held at the county seats of their respective counties on the first Mondays of January, April, July and October of each year, and shall continue from time to time until all the business before them is disposed of."

No meeting of the Board having been held upon the regularly appointed day in January, any meeting held during the present quarter will be a special meeting, and must be ordered as directed in Section 1873, General Statutes of Nevada.

The order for the meeting must be entered on the records of the Board, and should specify all business of the county required to be transacted at such meeting. The statute provides that the order for this meeting may be given by any member of the Board, and requires that the Clerk "shall give notice of such special meeting and the time thereof to any member of the Board not joining in the order."

Such called or special meeting may be continued from time to time until all business of the Board is disposed of, in like manner as though it were a regular meeting. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 8, 1898.

HON. REINHOLD SADLER, *Lieutenant and Acting Governor:*

DEAR SIR: I am in receipt of your official inquiry: "Am I authorized under the law to grant a rehearing in the matter of the recent trial of certain commissioned and non-commissioned officers of Battery A, First Regiment, N. N. G., had before a court-martial in Virginia, Nevada, upon charges preferred by F. C. Lord, Colonel commanding said regiment, of which said charges they were found guilty by the court-martial and sentenced—the said commissioned officer to be dismissed from the military service of the State of Nevada, and said non-commissioned officers to pay certain fines and be publicly reprimanded by the Commander-in-Chief—which proceedings and sentences of the court-martial were reviewed and approved by me as Commander-in-Chief, on December 27, 1897, and said sentences were thereafter, on December 31, 1897, carried into effect by General Orders No. 10, issued under my direction by the Adjutant-General."

An examination of the authorities bearing upon this question leads me to the conclusion that, having reviewed the action and approved the sentences of the court-martial and directed that the said sentences

be carried into effect, the judgments of the court-martial in those proceedings have become final and have passed beyond your control to either review or revise.

Discussing the conclusive effect of an executed sentence of a court-martial, Lieutenant-Colonel Winthrop, in his work on Military Law, Vol. I, p. 658, uses the following language:

"It is a further general principle that a sentence once duly approved or confirmed, and carried into execution, is beyond the reach, i. e., no longer subject to the action of the reviewing officer in the exercise of his authority under the Articles of War. In the first place a sentence thus duly executed is wholly beyond the control of the revisory function—is no longer subject to review by the commander who has approved, or the President who has confirmed it. * * * Thus, as to a sentence of court-martial, when duly and fully executed, the reviewing officer is *functus officio*, his authority is exhausted."

The case of Lieutenant Devlin, found in Vol. VI, p. 369, Opinions of Attorneys-General, is on all fours with the case under consideration. In his opinion rendered in that case Mr. Attorney-General Cushing says: "This, then, is the question: Whether the proceedings of that court-martial can lawfully, at this time, be reopened, reviewed and set aside for any of the causes alleged. This question has been repeatedly considered by my predecessors and decided by them. Mr. Attorney-General Legare holds that a sentence once confirmed by competent authority cannot be reopened. 'It is a vain conceit,' he says, 'that because the proceedings (of a court-martial) are irregular, and fatally irregular, if the exception be taken at the proper time, therefore, the judgment once suffered to be entered up is void.'"

In another case, where the proceedings of the Court were confessedly irregular, and the sentence was not accounted a just one, Mr. Attorney-General Nelson says: "I know of no revisory power by which that sentence can be now rescinded, annulled or modified. It has been passed upon by the competent authority, from whose decision the law has provided no appeal. It must, therefore, forever stand as the judgment of the Court. * * * No case has been brought to my notice in which an officer, once dismissed, has ever been restored to the service otherwise than by nomination of the Chief Magistrate and confirmation by the Senate; * * * and if such a case has occurred, I should not hesitate to declare it to be in direct repugnance to the Constitution and laws. It is impossible, it seems to me, to deny the soundness of these conclusions of my predecessors. I refer to them as precedents, and they have the approbation of my judgment. The decision of the President of the United States, in cases of this sort, is that of the ultimate judge provided by the Constitution and laws. Like that of any other court of last resort in law, it is final as to the subject matter."

While the judgments above discussed relate to the proceedings of of courts-martial of persons belonging to the United States Army, still they apply to, and are conclusive of the judgments of courts-martial appointed under the laws of this State. Section 670, General Statutes of Nevada, reads as follows: "Courts-martial appointed under the provisions of this Act shall be organized in like manner and be subject to the rules and regulations governing courts-martial in the United States Army."

In reply, therefore, to your inquiry I feel constrained to say that, in my opinion, you have no rightful cause or authority at this time to grant a rehearing or review of the judgment of said court-martial. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, February 28, 1898.

HONORABLE BOARD OF DIRECTORS OF STATE ORPHANS' HOME, *Carson City:*

GENTLEMEN: Your communication of the 23d instant is before me, requesting my opinion as to your legal duty relating to one Harry Keating, now an inmate of the State Orphans' Home, which communication reads as follows:

"In May, 1897, Harry Keating, a boy so badly crippled from birth that he cannot stand alone, and mentally weak, was admitted to the Orphans' Home from Esmeralda county. He has been maintained by private parties at an expense of $30 per month, paid out of the appropriation for the maintenance of the Home. He is now over 18 years of age, and thus beyond the age of majority for inmates of the Home. He is wholly unable to care for himself, being both a physical and mental cripple."

Under the provisions of Section 9 of the Act of the Legislature entitled "An Act for the government of the State Orphans' Home," approved March 1, 1873, and as amended February 23, 1893, Stats. 1893, p. 36, "the age of majority of all orphans that are or may be wards of the State shall be 18 years." So that on attaining the age of 18 years, he ceased to be a ward of the State and is no longer entitled, under the law, to remain an inmate or to be supported or maintained in the State Orphans' Home.

The boy was, it appears, admitted to the Home from Esmeralda county in 1887, and under the law is presumed to have been at date of his admission a resident of said county, and having since his admission in 1887 been kept at public expense he is now entitled to claim Esmeralda county as his place of residence.

While there is not, so far as I have been able to ascertain, any provision in the law authorizing or requiring the Board of Directors of the State Orphans' Home to make provision for the transportation of inmates of the Orphans' Home to the county from whence the person came, still, on account of the unfortunate condition of the boy Harry Keating, both mentally and physically, I am of opinion that the Board should make provision for his transportation back to Esmeralda county, where he should be delivered to the proper officers of that county, to be cared for as the law directs in such cases. Very respectfully.

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 6, 1898.

E. C. NAGEL, ESQ., *District Attorney, Genoa, Nevada:*

DEAR SIR: I am in receipt of your letter of the 2d instant, requesting my opinion as to the right of the Board of County Commissioners of Douglas county to deduct from your salary of nine hundred dollars per annum as District Attorney and ex officio Superintendent of Schools of said county the amount, to wit: seven hundred dollars, allowed by the District Court of the First Judicial District of the State of Nevada, in and for Douglas county, to D. W. Virgin as compensation for services rendered by him under appointment by said District Court, to appear for and represent the county in certain matters coming before said Court during your absence from the county. In your letter you say Mr. Virgin was engaged in these matters under said appointment about fifty days.

The authority for making this appointment and fixing the compensation for the services performed under such appointment is contained in Section 6 of an Act entitled "An Act concerning District Attorneys," approved March 11, 1865, as amended Stats. 1889, p. 73, which reads as follows:

"Section 6. If he fails to attend any session of the District Court, or from any reason is disqualified from acting in any manner before said Court, the Court may appoint some other person to perform the duties of District Attorney who shall receive a reasonable compensation to be certified by the Court and paid out of the county treasury. The amount so paid shall be deducted by the County Commissioners from the salary allowed the District Attorney."

In the present case the Court allowed Mr. Virgin for fifty days services the sum of seven hundred dollars, while the salary allowed by law to the District Attorney for the same period amounts to one hundred and twenty-five dollars.

Suppose the District Attorney had resigned his office on the day following that on which Mr. Virgin had completed the duties for the performance of which he was appointed by the Court, and the Board of County Commissioners should thereupon appoint another person to fill the office. It would not be seriously contended for or insisted, I think, that the Board of County Commissioners would have the right to deduct from the salary of the person so appointed any portion of the amount paid out of the county treasury to Mr. Virgin.

The language of the statute that "the amount so paid shall be deducted from the salary allowed to said District Attorney," should be taken to mean the salary allowed to said District Attorney for the period during which the person appointed by the Court was engaged in attending to the matters specified in the order appointing him, and this, in my opinion, is the proper construction to be placed upon the statute above quoted.

I am of opinion, therefore, that the Board of County Commissioners of Douglas county have the right to deduct from your salary as District Attorney only so much of said salary as you were entitled to receive during the fifty days Mr. Virgin was engaged in attending to the matters enumerated in the order of Court appointing him.

The fact that Mr. Virgin was associated with you in the prosecution of another case, either by order of the Court or by and with the advice and consent of the Board of County Commissioners, is not sufficient to authorize or warrant the Board in deducting from your salary as District Attorney any sum or amount paid out of the county treasury of Douglas county to Mr. Virgin for such services. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, May 27, 1897.

S. C. GIBSON, M D., *Vice-President State Board of Health:*

DEAR SIR: I am in receipt of your letter of the 20th instant, containing the inquiry: "Can a doctor qualify as a member of the State Board of Health, who has not complied with the law approved January 28, 1875, entitled 'An Act to prevent the practice of medicine and surgery by unqualified persons?'"

So much of the Act above quoted as bears directly upon the question submitted, reads as follows:

"Section 1. No person shall practice medicine or surgery in this State who has not received a medical education and diploma from some regularly chartered medical school; said school to have a bona fide existence at the time when said diploma was granted.

"Sec. 2. Every physician and surgeon, when about to take up his residence in this State, or who now resides here, shall file for record with the County Recorder of the county in which he is about to practice his profession, or where he now practices it, a copy of his diploma, at the same time exhibiting the original or a certificate from the dean of the medical school of which he is a graduate certifying his graduation.

"Sec. 4. Any person practicing medicine or surgery without complying with Sections 1, 2 and 3 of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty ($50) dollars nor more than five hundred dollars ($500), or by imprisonment in the county jail for a period of not less than thirty (30) days nor more than six months, or by both such fine and imprisonment for each and every offense. * * * No portion of this Act shall apply to those who have practiced medicine or surgery in this State for a period of ten years next preceding the passage of this Act."

In employing the language above quoted the Legislature has seen fit to define the qualifications of persons who shall be licensed or privileged to practice medicine or surgery in this State, and to restrict the practice under certain penalties to the class of persons possessing these qualifications, as well as to provide the manner in which the public or community among whom they are about to commence the practice may obtain the knowledge that they are possessed of the necessary qualifications to pursue such practice intelligently and in accordance with law, and this our Supreme Court has said is within the power granted to the Legislature by the Constitution. (Ex parte Spinney, 10 Nev. 323; State vs. Ching Gang, 16 Nev. 62.)

The State Board of Health was established by Act of the Legislature approved March 6, 1893, p. 117. Section 1 of said Act reads as follows:

Section 1. The Governor is hereby authorized, empowered and required, within thirty days after the passage of this Act, to appoint three reputable practicing physicians, residents of this State, as members of and composing the State Board of Health."

Here the Governor is authorized and required to appoint three practicing physicians, residents of this State, as members of and composing the Board of Health, which, as I understand it, means that the physicians so appointed shall be both residents and practitioners in this State, and in order to be practitioners in this State they and each of them must show a compliance with the Act of 1875 first above quoted:

First—That they have received a medical education and diploma from a regularly chartered medical school; said school having a bona fide existence at the time when the diploma was granted.

Second—That each of them has filed in the office of the County Recorder of the county wherein he resides and practices a copy of his diploma or a certificate from the dean of the medical school of which he is a graduate, certifying his graduation; or

Third—That the person failing to file a copy of diploma as required by Sections 1 and 2 of said Act, approved January 28, 1875, practiced medicine and surgery in this State for a period of ten years prior to January 28, 1875.

I am, therefore, of the opinion that any member of the State Board of Health who had not, at the date of his appointment, fully complied with the provisions of the Act of January 28, 1875, as required by Sections 1, 2 and 3 of said Act, is not a legally qualified member of said Board. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, June 28, 1898.

J. L. BUTLER, ESQ., *District Attorney, Belmont, Nevada:*

DEAR SIR: I am in receipt of your letter of the 8th instant containing the inquiry whether the present long-term County Commissioner of Nye county is entitled to mileage from his place of residence to the county seat for the purpose of attending regular meetings of the Board of County Commissioners, the inquiry being prompted by reason of the fact that he was appointed to fill the vacancy caused by the death of the person elected and who qualified as County Commissioner for the long term beginning on the first Monday in January, 1895, and ending on the first Monday in January, 1899.

In the Act of the Legislature of the State of Nevada, regulating the compensation of the several county officers in this State, approved as amended February 25, 1889, Stats. 1889, p. 49, which said Act remained in force and effect until March 11, 1895, in that portion of said Act relating to Nye county it was, among other things, provided "that after the expiration of the terms of office of the present incumbents, the County Commisstoners shall each receive, * * * and such mileage as is now allowed by law." On March 11, 1895, Stats. 1895, p. 41, that portion of said Act of February 25, 1889, relating to the County Commis-

sioners of Nye county, was amended and approved so as to read as follows:

"The County Commissioners shall each receive three hundred ($300) dollars per annum in full compensation for all services as such Commissioners; *provided*, that the compensation for the long-term County Commissioner, elected November 6, 1894, shall not be affected by this Act, but shall be in full force and effect until his present term of office expires."

The amendment last above quoted clearly indicates that the compensation of the long-term Commissioner fixed by the Act of 1889, including mileage and salary, shall not be affected during said term by a change in the individual authorized to perform the duties of the office.

I am therefore of the opinion that the present long-term Commissioner is entitled to the mileage authorized by the Act of 1889. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, August 19, 1898.

A. J. MCGOWAN, ESQ., *District Attorney, Carson City, Nevada:*

DEAR SIR: I am in receipt of your letter of the 18th instant, reading as follows: "Will you please give me a written opinion concerning the right of soldiers to vote at primary elections? The officers of election are in doubt as to the right of said soldiers to vote, and I have advised the officers that persons who came here for the purpose of enlisting in the army have not gained a residence in this county unless such persons were in the State of Nevada six months and in Ormsby county thirty days before they enlisted."

Your advice to the officers of election as above quoted is correct, and they should be guided by it in the primary election.

Upon this question our State Constitution is very plain. Section 2, Article III, Constitution of Nevada, reads as follows: "For the purposes of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States, or of the high seas, nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense."

Language identical with that above quoted is found in the constitutions of a number of States of the Union, and the universal construction placed thereon by the Courts of last resort in those States is that no change of residence entitling the person to vote in any place other than the place in which he was entitled to vote at the time of entering the service of the United States, or becoming an inmate of any almshouse or asylum where he is kept at public expense, can or does take place; that his place of residence for the purpose of voting remains unchanged, and that on his return thereto he resumes all his rights as a voter as though his residence there had been continuous.

I am therefore of the opinion that your advice to the officers selected to conduct the primary election is correct, and that any soldier in the

service of the United States, now stationed in Ormsby county, who was not, at the date of his enlistment into the service of the United States, a resident of the State of Nevada for six months and of Ormsby county thirty days, is not entitled to vote at the primary election to be held in Ormsby county on Saturday, August 20, 1898. Respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, August 12, 1898.

A. J. MCGOWAN, ESQ., *District Attorney and County Superintendent of Schools, Carson, Nevada:*

DEAR SIR: I am in receipt of your letter of recent date, in which you say: "There is a joint school district embracing a portion of Ormsby and Douglas counties, known as Clear Creek District No. 3. When said district was formed the majority of children entitled to enrollment in said district resided in the Ormsby county portion, and two School Trustees were appointed from said county according to law, and one from Douglas. This year no election was held in said district for School Trustees, and it became necessary for the County Superintendent of Schools in the two counties to appoint said officers.

"According to the census returns I find that the largest number of school children now reside in Douglas county, but if the children actually residing in said district in the Ormsby portion were returned upon the census roll, as they should be, the county of Ormsby would have the majority. Through a mistake one family has been left off the Clear Creek roll and placed upon the roll of Carson District, while in fact they live in Clear Creek District.

"Now, under the circumstances, who should appoint the two Trustees, Douglas or Ormsby?"

It is provided in Section 2 of the Act of the Legislature authorizing school districts to be formed of the parts of two or more counties, Stats. 1879, p. 47, "when the petition for such school shall be granted and the district established, the County Commissioners of each county in which parts of such district is located shall appoint three Trustees, two from the county having at the time of the application the largest number of census children in its part of said district, their successors to be chosen at the next general election on the same basis."

It will be seen from the language above quoted that it was clearly the intention of the Legislature in making provision for the formation of school districts from the parts of two adjoining counties that the portion thereof belonging to any one county, and having the greatest number of children subject to enumeration in the school census residing therein at the time of its formation, should be entitled to two of the Trustees, their successors to be chosen by election, or if appointed, on the same basis, and the fact that the Census Marshal appointed for the district fails to make a correct return in any year of the children of school age resident in each portion of said district cannot defeat the intention of the Legislature.

I am of opinion, therefore, if it be a fact that at the time the school census was taken for the year 1898 in said Clear Creek School District No. 3, the greater number of school age children residing in said

district were residents of that portion belonging to Ormsby county, then Ormsby county was entitled to appoint two of the three Trustees for the district. Respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, August 18, 1898.

WEBSTER PATTERSON, ESQ., *District Attorney, Elko, Nevada:*

DEAR SIR: I am in receipt of your favor of the 4th instant, reading as follows: "I wish to have your opinion in regard to Constable's fees, namely, if a Constable travels a certain number of miles in search of a person charged with a crime, having in his possession a warrant of arrest, are the Commissioners authorized by law to allow the Constable's claim for mileage in this case?"

Section 2348, General Statutes of Nevada, relating to fees and compensation of Constables, provides that they shall be entitled to charge and receive "for services and travel in criminal cases, the same fees as are allowed Sheriffs for similar services." Section 2324 provides that Sheriffs shall receive "for service of any process in criminal cases the same mileage as in civil cases."

It will be observed that mileage for which pay or compensation is provided by this section is limited to mileage traveled in making actual service of process upon the person against whom such process has been issued, and I know of no case in this State where such a claim has been allowed or paid without service of the process having been shown by the officer making such claim.

In the case you state the Constable, having failed to serve the warrant or take the person against whom the same was issued into custody, he has no legal claim on account thereof against the county. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, September 24, 1898.

W. N. GRANGER, ESQ., *Acting District Attorney, Belmont, Nevada:*

DEAR SIR: I am in receipt of your lettter of the 10th instant, relating to the matter of consolidating Hot Creek and Tybo School Districts, in Nye county.

The consolidation of the districts at this time, and under the circumstances which exist therein as represented by your letter, would appear to be advisable, if it can be consistently carried out, as provided for in the Act of the Legislature approved March 11, 1895, Stats. 1895, p. 43, relating to the "maintenance and supervision of public schools."

This Act points out the only manner in which school districts in this State can be consolidated, and hence I suggest that you call the attention of the School Trustees in these districts to the requirements of the Act, so that they may take advantage of its provisions for the benefit of the school children residing therein. Very truly,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, September 24, 1898.

W. N. GRANGER, ESQ., *Acting District Attorney, Belmont, Nevada:*

DEAR SIR: I am in receipt of your letter of the 14th instant containing the inquiry: "Can the County Commissioners allow the County Clerk mileage, per diem or other expenses for a tour through the county to swear in Registry Agents?"

In Section 11, of the Act relating to registration as amended in 1881, Stats. 1881, p. 55, it is provided, "Before entering upon the duties prescribed in this Act the Registry Agents (except Justices of the Peace) shall severally take and subscribe before an officer duly authorized to administer oaths the following oath or affirmation which shall be filed in the office of the County Clerk."

There is nothing in the section above quoted, nor is there any provision in the law of which I am aware, requiring or making it the duty of County Clerks to administer the official oath to Registry Agents. It may be done by any officer authorized to administer oaths, and if the Registry Agent accept the appointment, he, and not the county, must stand the expense of administering the oath which he is required to take and subscribe before entering upon the discharge of his duties.

It is not the duty of the County Clerk to make such a tour, nor have the County Commissioners the right or authority to direct him to do so, and if the Clerk makes such a tour he is not entitled to demand and receive compensation therefor from the county, nor are the expenses in connection therewith, of which you speak, a legal demand against the county which the Commissioners have the right or authority to allow or order paid out of the county treasury. Very respectfully,

JAMES R. JUDGE, Attorney-General.

STATE OF NEVADA,
OFFICE OF THE ATTORNEY-GENERAL,
CARSON CITY, December 23, 1898.

WEBSTER PATTERSON, ESQ., *District Attorney, Elko, Nevada:*

DEAR SIR: I am in receipt of your letter of the 15th instant, enclosing letter of inquiry addressed to you by Mr. McBride, County Clerk of Elko county, relating to the failure of Mr. Gedney, member-elect of that county to the Legislature, to file his statement of election expenses, and asking whether he (Mr. McBride), as Clerk, should issue a certificate of election to Mr. Gedney.

While it is true that the Purity of Elections Law requires candidates to file statements of election expenditures within a certain number of days after election, and in case of failure or neglect to do so imposes a forfeiture of the office to which the candidate may be elected as a part of the penalty, I doubt very much if the Courts of this State would uphold the law to that extent where the failure to file such statement was not intentional on the part of the candidate, as the chief aim of the Act appears to be detection of the unlawful use of money for the purpose of promoting the election of candidates, not for the purpose of excluding from office those fairly and honestly elected.

Again, the Constitution has in terms prescribed the qualifications necessary to be possessed by candidates for the Legislature, and in my judgment the Legislature is not vested with power or authority to impose other or additional qualifications to those prescribed by the Constitution, as has been attempted in the Purity of Elections Act.

I advise, therefore, that a certificate of election be issued to Mr. Gedney as directed by law when he demands the same. Very respectfully,

JAMES R. JUDGE, Attorney-General.

DISTRICT ATTORNEYS' REPORTS.

ANNUAL REPORTS OF DISTRICT ATTORNEYS.

The following is a statement of the criminal business transacted in the several counties of this State during the years 1897 and 1898, as shown by the reports of the District Attorneys of the respective counties furnished this office in accordance with the provisions of the Act of the Legislature, approved March 1, 1889:

DOUGLAS COUNTY—E. C. NAGEL, ESQ., *District Attorney.*

No. arrests.	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1897.					
1	Murder	----	----	----	1	Cost of prosecutions...$230 35
1	Assault with intent to kill	----	----	1	----	Fines collected ..... None
2	Assault and battery	1	1	----	----	
1	Malicious mischief	1	----	----	----	
1	Petit larceny	1	----	----	----	
2	Selling whisky to Indians	2	----	----	----	
1	Keeping opium resort	1	----	----	----	
1	Smoking opium	1	----	----	----	
	1898.					
1	Burglary	1	----	----	----	*Cost of prosecutions..$3,664 00
5	Assault and battery	5	----	----	----	Fines collected..... 75 00
1	Drawing and exhibiting deadly weapon	----	1	----	----	*Of the cost of prosecutions above given a large portion was incurred by the Grand Jury called to investigate the hanging of one Adam Uber by a number of persons on the — day of December, 1897, at Genoa, Nev. Said Uber had been theretofore arrested and was then in the custody of the Sheriff on a charge of murder, committed Nov. 26, 1897.
1	Selling whisky to Indians	1	----	----	----	
2	Selling liquor to minors	----	----	2	----	
1	Smoking opium	1	----	----	----	
1	Practicing medicine without diploma	----	----	1	----	
1	Criminal negligence of Sheriff in office	----	1	----	----	

ELKO COUNTY—WEBSTER PATTERSON, ESQ., *District Attorney.*

No. arrests.	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1897.					
57	Misdemeanors	32	4	21	----	Cost of prosecutions...$2,040 20
13	Felonies	4	3	2	4	Fines collected..... 42 50
	1898.					
62	Misdemeanors	61	1	----	----	Cost of prosecutions...$2,180 75
16	Felonies	4	4	3	5	Fines collected..... 155 05

ESMERALDA COUNTY—G. S. GREEN, ESQ., *District Attorney.*

No. arrests.	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1897.					
1	Assault and battery	----	1	----	----	Cost of prosecutions....$57 70
3	Housebreaking	----	----	3	----	Fines collected ..... None
1	Assault with deadly weapon	----	----	1	----	
1	Threats to do bodily harm	----	----	1	----	
1	Attempt to do bodily injury	----	----	1	----	
	1898.					
1	Assault with intent to murder	----	----	----	1	Cost of prosecutions....$47 85
1	Threats to do bodily injury	----	1	----	----	Fines collected ..... None

EUREKA COUNTY—PETER BREEN, ESQ., *District Attorney.*

No. arrests.	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1897.					
1	Assault with intent to kill	----	----	----	1	Cost of prosecution....$300 00
1	Burglary	1	----	----	----	Fines collected..... 25 00
3	Housebreaking	3	----	----	----	
1	Drawing and exhibiting deadly weapon	----	1	----	----	
3	Assault and battery	3	----	----	----	
4	Disturbing the peace	4	----	----	----	
	1898.					
1	Assault with intent to kill	----	----	----	1	Cost of prosecutions...$175 00
1	Grand larceny	----	----	----	1	Fines collected 6 75
1	Peddling without license	----	----	1	----	
1	Assault and battery	1	----	----	----	
2	Petit larceny	2	----	----	----	
3	Disturbing the peace	2	----	1	----	
1	Malicious mischief	----	----	1	----	

HUMBOLDT COUNTY—L. A. BUCKNER, ESQ., *District Attorney.*

No. arrests.	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1897.					
1	Assault with deadly weapon to inflict bodily harm	----	1	----	----	Cost of prosecution....$840 00
1	Attempt to commit rape	----	----	----	1	Fines collected..... None
1	Burglary	1	----	----	----	

No report furnished for year 1898.

LANDER COUNTY—W. D. JONES, ESQ., *District Attorney.*

No. arrests.	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1897.					
1	Assault with deadly weapon	----	1	----	----	Cost of prosecutions $996 00
1	Contempt of court	1	----	----	----	Fines collected 294 70
1	Defacing public buildings	1	----	----	----	
8	Assault and battery	5	3	----	----	
1	Removing mortgaged property	----	----	1	----	
2	Selling whisky to Indians	1	1	----	----	
3	Burglary	----	----	----	3	
1	Vagrancy	----	----	1	----	
1	Practicing medicine without license	----	----	1	----	
17	Disturbing the peace	16	----	1	----	
	1898.					
3	Burglary	3	----	----	----	Cost of prosecutions $471 00
4	Assault and battery	4	----	----	----	Fines collected 50 00
1	Grand larceny	----	----	1	----	
2	Petit larceny	1	----	1	----	
1	Threatening to kill	1	----	----	----	
2	Selling whisky to Indians	1	----	1	----	
1	Killing horses	----	----	1	----	
15	Disturbing the peace	15	----	----	----	

LINCOLN COUNTY—FRANK R. MCNAMEE, ESQ., *District Attorney.*

No. arrests.	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1897.					
2	Assault with intent to kill	1	----	1	----	Cost of prosecutions $550 00
1	Burglary	----	----	1	----	Fines collected 68 00
7	Forgery	3	----	1	3	
1	Illicit carnal knowledge of female	----	----	1	----	
3	Grand larceny	----	----	3	----	
1	Attempt to break jail	----	----	----	1	
1	Selling real property twice	----	----	1	----	
4	Petit larceny	2	2	----	----	
1	Murder	----	----	1	----	
4	Assault and battery	3	1	----	----	
8	Disturbing the peace	7	1	----	----	
1	Fraudulent conversion of property	1	----	----	----	
	1898.					
1	Assault with intent to kill	1	----	----	----	Cost of prosecutions $650 00
4	Assault and battery	2	----	2	----	Fines collected 50 00
2	Disturbing peace	1	1	----	----	
1	Forgery	1	----	----	----	
1	Grand larceny	1	----	----	----	
1	Rape	----	1	----	----	
2	Selling liquor without license	1	1	----	----	
1	Murder	----	----	1	----	
1	Petit larceny	1	----	----	----	

LYON COUNTY—JOHN LOTHROP, ESQ., *District Attorney.*

No. arrests	Offense Charged.	Convicted	Acquitted	Dismissed	Pending	Remarks.
	1897.					
1	Murder	1	----	----	----	Cost of prosecutions $240 00
1	Grand larceny	1	----	----	----	Fines collected None
3	Housebreaking	3	----	----	----	
	1898.					
1	Murder	----	----	----	1	Cost of prosecutions $864 40
1	Felony	----	----	----	1	Fines collected 182 00
4	Assault and battery	4	----	----	----	
3	Disturbing the peace	3	----	----	----	

NYE COUNTY—J. L. BUTLER, ESQ., *District Attorney.*

No. arrests	Offense Charged.	Convicted	Acquitted	Dismissed	Pending	Remarks.
	1897.					
1	Murder	----	----	----	1	Cost of prosecutions $557 00
1	Assault with deadly weapon	1	----	----	----	Fines collected 134 20
2	Assault to do bodily harm	2	----	----	----	
1	Assault and battery	----	----	1	----	
1	Misdemeanor	1	----	----	----	
	1898.					
1	Murder	----	----	1	----	Cost of prosecutions $407 10
2	Housebreaking	----	----	1	----	Fines collected None
1	Assault to do great bodily harm	----	----	1	----	
1	Robbery	----	----	1	----	
1	Grand larceny	----	----	----	1	
1	Changing marks and brands	----	----	----	1	

ORMSBY COUNTY—A. J. MCGOWAN, ESQ., *District Attorney.*

No. arrests	Offense Charged.	Convicted	Acquitted	Dismissed	Pending	Remarks.
	1897.					
2	Assault with deadly weapon	----	----	2	----	Cost of prosecutions $450 00
1	Arson	----	----	1	----	Fines collected None
2	Burglary	----	1	----	1	
1	Embezzlement	----	----	----	1	
1	Murder	----	----	1	----	
2	Grand larceny	----	1	1	----	
2	Threats against life	1	----	----	----	
6	Vending liquor to Indians	6	----	----	----	
12	Assault and battery	8	----	4	----	
8	Disturbing peace	5	----	3	----	
1	Vending goods without license	1	----	----	----	
1	Smoking opium	1	----	----	----	
2	Vagrancy	2	----	----	----	
2	Malicious mischief	2	----	----	----	
1	Petit larceny	1	----	----	----	
1	Receiving stolen goods	----	1	----	----	

ORMSBY COUNTY—Continued.

No. arrests	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1898.					
1	Assault with deadly weapon	----	----	1	----	Cost of prosecutions...$507 15
1	Assault	----	----	1	----	Fines collected 7 25
6	Assault and battery	4	----	2	----	
1	Cheat	1	----	----	----	
2	Grand larceny	----	----	2	----	
1	Petit larceny	1	----	----	----	
1	Murder	----	----	1	----	
3	Malicious mischief	----	----	3	----	
1	Threats against life	1	----	----	----	
8	Selling liquor to Indians	3	4	1	----	
2	Drawing deadly weapon	----	----	2	----	
2	Robbery	----	----	----	2	
4	Disturbing peace	3	----	1	----	
1	Housebreaking	----	----	1	----	
1	Arson	----	----	----	1	

STOREY COUNTY—GEO. N. NOEL, ESQ., *District Attorney.*

No. arrests	Offense Charged.	Convicted.	Acquitted.	Dismissed.	Pending.	Remarks.
	1897.					
10	Assault and battery	6	4	----	----	Cost of prosecutions
1	Receiving stolen goods	----	----	----	1	Fines collected $50 00
4	Grand larceny	2	1	----	1	
1	Assault with deadly weapon	----	----	----	1	
2	Threats to kill	----	----	2	----	
11	Vagrancy	11	----	----	----	
4	Petit larceny	2	----	----	----	
1	Disturbing the peace	1	----	----	----	
5	Malicious mischief	3	----	2	----	
19	Drunk	15	----	4	----	
29	Disorderly and drunk	16	7	6	----	
1	Noisy and disorderly conduct	1	----	----	----	
2	Nuisance	----	----	----	2	
1	Interfering with sewers	1	----	----	----	
2	Obstructing highway	2	----	----	----	
3	Lewd and profane language	2	----	----	1	
1	Disorderly conduct	1	----	----	----	
	1898.					
4	Embezzlement	3	----	1	----	Cost of prosecutions ..$1,550 00
4	Assault and battery	3	----	1	----	Fines collected 550 00
1	Housebreaking	1	----	----	----	
2	Assault with intent to kill	1	1	----	----	
3	Threats to take life	2	----	1	----	
1	Exhibiting deadly weapon	1	----	----	----	
4	Petit larceny	4	----	----	----	
11	Vagrancy	11	----	----	----	
1	Indecent exposure	1	----	----	----	
1	Discharging firearms	1	----	----	----	
1	Selling liquor without license	1	----	----	----	
1	Indecent language	1	----	----	----	
28	Drunk and disorderly conduct	22	----	6	----	
4	Drunk in public places	3	----	1	----	

WASHOE COUNTY—T. V. JULIEN, ESQ., *District Attorney.*

No. arrests	Offense Charged.	Convicted	Acquitted	Dismissed	Pending	Remarks.
	1897.					
4	Assault with intent to kill	1	----	1	2	Cost of prosecutions $8,000 00
1	Burglary	----	----	1	----	Fines collected 133 05
38	Assault and battery	38	----	----	----	
93	Disturbing the peace	93	----	----	----	
23	Petit larceny	23	----	----	----	
314	Vagrancy	314	----	----	----	
4	Malicious mischief	4	----	----	----	
62	Nuisance	62	----	----	----	
20	Unclassified	20	----	----	----	
	1898.					
4	Assault to kill	2	1	----	1	Cost of prosecutions $9,000 00
1	Burglary	1	----	----	----	Fines collected 175 00
36	Assault and battery	36	----	----	----	
103	Disturbing peace	103	----	----	----	
37	Petit larceny	37	----	----	----	
327	Vagrancy	327	----	----	----	

WHITE PINE COUNTY—A. B. TREECE, ESQ., *District Attorney.*

No. arrests	Offense Charged.	Convicted	Acquitted	Dismissed	Pending	Remarks.
	1897.					
1	Murder	1	----	----	----	Cost of prosecutions $1,753 00
1	Manslaughter	----	1	----	----	Fines collected None
	1898.					
1	Murder	----	----	1	----	Cost of prosecutions $200 00
1	Assault and battery	1	----	----	----	Fines collected 15 00

O