

**REPORT OF THE ATTORNEY  
GENERAL OF  
THE STATE OF  
CALIFORNIA. 1895 – 1896**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649529315

Report of the Attorney General of the State of California. 1895 – 1896 by W. F. Fitzgerald

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.  
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

[www.triestepublishing.com](http://www.triestepublishing.com)

**W. F. FITZGERALD**

**REPORT OF THE ATTORNEY  
GENERAL OF  
THE STATE OF  
CALIFORNIA. 1895 – 1896**



REPORT  
OF THE  
ATTORNEY - GENERAL

OF THE  
STATE OF CALIFORNIA.

1895-1896.



SACRAMENTO:  
A. J. JOHNSTON, : : : : SUPERINTENDENT STATE PRINTING,  
1896.

# INDEX.

	PAGE.
Additional duties imposed by the last Legislature .....	3
Appropriations and expenditures .....	18-19
Actions to recover damages for injuries claimed to have been sustained by reason of the alleged negligence of the State Board of Agriculture .....	7
Atlantic and Pacific Railroad Company cases .....	13-14
Cases brought to recover damages occasioned by the alleged negligence of the Board of Harbor Commissioners .....	8
Criminal cases .....	4-5
Civil cases .....	5
Docket of criminal cases in the Supreme Court .....	22-77
Docket of civil cases in the Superior and Supreme Courts .....	80-121
Docket of railroad cases .....	122-141
Docket of leave-to-sue cases .....	144-173
General recapitulation .....	17
Indian War Bond cases .....	8-9
Leave-to-sue cases .....	16
Library .....	18
Miscellaneous cases .....	9
National Bank taxation .....	15
Opinions and general correspondence .....	4
Oakland Waterfront cases .....	14-15
Railroad tax suits .....	13-14
State Bank cases .....	16
State Board of Examiners .....	17-18

# REPORT.

ATTORNEY-GENERAL'S OFFICE,  
SACRAMENTO, CAL., September 15, 1896. }

*To the Honorable JAMES H. BUDD, Governor of the State of California:*

SIR: In compliance with the provisions of Subdivision 4 of Section 470 of the Political Code of this State, and of Section 432 of the same Code, as amended in 1891 (Statutes of 1891, p. 65), I have the honor to submit my Biennial Report for the years 1895 and 1896.

I took office at 12 o'clock M. on the 7th day of January, 1895. At that time the business of the office was very heavy; and it has steadily increased, both in volume and diversity, ever since.

## ADDITIONAL DUTIES IMPOSED BY THE LAST LEGISLATURE.

Under former administrations it was the custom of various State officers and State institutions to employ special counsel to conduct their legal business and to advise them upon routine matters. This, however, entailed an annual expense of many thousand dollars upon the State. Consequently, shortly after I took office, the Legislature, by an Act amending Section 472 of the Political Code, placed in my charge "all legal matters in which the State is in anywise interested, except the business of the Regents of the University of California and of the State Harbor Commissioners," and prohibited any "board, officer or officers, or employé of the State, except said Regents and said Harbor Commissioners," from employing any attorney "other than the Attorney-General, or one of his assistants or deputies, in any matter in which the State is interested," except with the written consent of the Attorney-General. (Statutes of 1895, pp. 66 and 67.)

The duties of my office were thus increased by the addition of all the legal business pertaining to the management of more than forty State institutions and boards, as well as that of all State officers and employés.

It was to meet this that the Legislature allowed me an additional deputy and clerk.

## OPINIONS AND GENERAL CORRESPONDENCE.

It is my duty, under the law, to render opinions in writing to the Governor, the Secretary of State, the Controller, the Treasurer, the Surveyor-General, the Trustees or Commissioners of State Institutions, and District Attorneys, "upon any question of law relating to their respective offices." (Subdivision 6 of Section 470, Political Code.)

Since the 7th day of January, 1895, I have given 799 opinions in writing, and written 1,812 letters—an aggregate of 2,611 opinions and letters.

The work of this department has increased during my incumbency fully fifty per cent.

The scope of this work is very broad. It covers every variety of question arising under the laws of this State pertaining to revenue and taxation, school laws, registration of voters, elections, fees, county government, the management and control of State institutions, the duties of State boards, trustees, officers, and employes, and the allowance or rejection, by the State Board of Examiners, of claims against the State, as well as many general questions of law, and much general advice to District Attorneys and to members of the Legislature.

I may add that, notwithstanding its volume and complexity, the work of this department is well in hand; and there is not, when this report leaves the office, an unanswered official letter upon the files.

In addition to opinions in writing, I have also held daily consultations with, and orally advised, State and other officials upon various matters pertaining to the duties of their respective offices.

## CRIMINAL CASES.

## (a) IN THE SUPREME COURT.

It is my duty to attend the Supreme Court and prosecute or defend "all cases to which the State \* \* \* is a party." (Subdivision 1 of Section 470 of the Political Code.)

This includes every criminal case in which an appeal is taken to the Supreme Court. These criminal appeals are also increasing.

When I took office there were 34 criminal cases on the docket of my predecessor of which no final disposition had been made. Some of these had been argued and submitted to the Court, but many of them were briefed or rebriefed and argued after I came into office.

During my incumbency, appeals to the Supreme Court have been taken in 143 criminal cases. This makes an aggregate of 177 criminal appeals upon my docket.

By referring to the Criminal Docket, which is annexed to this report,



you will see that the work of the office in this department has produced excellent results. The percentage of affirmances is exceptionally good; and this is especially true of cases involving the higher offenses. Out of fifteen first-degree murder cases, where the penalty affixed was death, fourteen have been affirmed.

(b) IN THE SUPERIOR COURT.

At your request, I detailed Deputy Attorney-General C. N. Post to assist in the prosecution of the cases growing out of the lynching of one Littlefield in Trinity County. Two of the lynchers were prosecuted early in the spring of this year, and were convicted of murder in the second degree. The trial of a third has just ended, with a like result.

The office has also participated in the prosecution of, and prepared for prosecution, several cases in Kern County.

(c) IN THE POLICE COURT.

At the request of the Fish Commissioners, I detailed a deputy to prosecute, in the Police Court of San Francisco, two offenders against the Fish and Game law of the State. The first of these cases resulted in an acquittal; but in the second a conviction was secured. This put a wholesome check upon the violators of that law.

### CIVIL CASES.

The civil litigation of the State has grown to be one of the most important branches of the office work; and it is steadily on the increase. Its recent and continued growth is due to various causes--among others, to enabling legislation.

(a) SUITS AGAINST THE STATE UNDER THE ENABLING ACT OF 1893.

On February 28, 1893, the Legislature passed an Act entitled "An Act to authorize suits against the State, and regulating the procedure therein." (Statutes of 1893, p. 57.)

The first section of that Act provides that "all persons who have, or shall hereafter have, claims on contract or for negligence against the State, not allowed by the State Board of Examiners, are hereby authorized, on the terms and conditions herein contained, to bring suit thereon against the State in any of the courts of this State of competent jurisdiction, and prosecute the same to final judgment."

The second section limited the time within which suits on then existing claims might be commenced to two years. This period of limitation expired on February 28, 1895.

By Section 6, it is made your duty "to report to the Legislature, at each session, all judgments rendered against the State and not theretofore reported"; and by Section 7 it is made the duty of the Controller to draw his warrant for the payment of any such judgment "whenever a sufficient appropriation for such payment shall have been made by the Legislature."

When I took office there were nine suits upon the Civil Docket which had been commenced under this Act. Since then, process has been served upon me in nine more.

Of the nine which were commenced prior to my term of office, none had been finally disposed of by my predecessor; and, with one exception, no proceedings, other than of a preliminary character, had been had in any of them.

The eighteen cases brought under this Act fall into four natural groups, in which order I will consider them.

*FIRST—Cases Brought to Recover Damages Occasioned by the Alleged Negligence of the Board of Harbor Commissioners.*

These are four in number:

(1) *Chapman vs. The State.*—This case was brought in the Superior Court of the City and County of San Francisco to recover \$1,266 47, and interest from August 10, 1891, as damages for the loss of certain coal occasioned by the breaking of the Fremont-Street Wharf, of that city, in 1891. A demurrer by the State to the complaint in this action was sustained on January 30, 1894. Judgment on this demurrer was entered in favor of defendant; and an appeal was taken by the plaintiff. On December 4, 1894, the Supreme Court reversed the judgment, holding that the State was legally liable. This, of course, left nothing to be established but the facts upon which the plaintiff relied for recovery. Such was the status of the case when it came into my hands. It was subsequently tried before a jury; and, on August 8, 1895, a verdict in favor of plaintiff was rendered for \$1,265, with legal interest from February 28, 1893, to the date of the verdict.

As the law of the case had already been settled, and as the damages were clearly proven, no appeal from the judgment which was entered upon this verdict has been taken.

(2) *Kelley vs. State.*—This was an action for damages in the sum of \$50,000. Judgment upon demurrer in favor of the State was entered on March 1, 1895; and no appeal has been taken from that judgment.

(3) *Nelson vs. State.*—This was also an action for damages, involving questions of law identical with those decided adversely to the State in the Chapman case. The suit only involved \$545 50, for coal and tanbark lost by the breaking of wharves along the waterfront of San Francisco.

The negligence of the State officers was fully proven, as well as the amount of the loss; and the Court, on May 28, 1896, rendered judgment in favor of the plaintiff for \$545 50, with legal interest on \$445 50 from October 8, 1894, and on \$100 from January 15, 1895.

No appeal has been taken in this case.

(4) *Denning vs. The State*.—This action is for \$20,500 damages for injuries claimed to have been received by the plaintiff through the negligence of the Harbor Commissioners, while plaintiff was an employé of the State. It is now pending upon demurrer in the Superior Court of the City and County of San Francisco; it presents questions of law different from those involved in the Chapman case. It is my opinion that this case can be successfully defended.

SECOND—*Actions to Recover Damages for Injuries Claimed to have been Sustained by Reason of the Alleged Negligence of the State Board of Agriculture.*

These actions are three in number, and all grew out of the falling of a stand of seats at Agricultural Park, in Sacramento, during the progress of the State Fair in 1891.

(1) *Melvin vs. State*.—In this case the plaintiff sued for \$25,554 50 damages, with interest. A few days after I took office I filed an amended answer on behalf of the State; and the case went to trial on January 21, 1895. The trial resulted in a verdict by the jury, in favor of the plaintiff, for \$10,000, without interest.

I subsequently moved for a new trial. After an exhaustive presentation, by counsel for each party, of the questions of law involved, the motion was granted, on the ground that the State was not legally liable.

The plaintiff has appealed from the order granting a new trial, and that appeal is now pending in the Supreme Court.

(2) *DeLong vs. State*.—The damages sought in this case were \$10,100, with interest. The same procedure was had as in the Melvin case. The jury rendered a verdict in favor of plaintiff for \$3,500, without interest.

Upon motion for a new trial, the judgment was reduced by the Court to \$2,000; and the motion was then granted, on the ground that the State was not legally liable.

This case has also been appealed by the plaintiff, and the appeal is now pending.

(3) *Mace vs. The State*.—The plaintiff in this action sued for \$3,000 damages; but from an examination of the records of the court it appeared that he had failed to comply with certain conditions of the Enabling Act. Upon this ground the State moved for a dismissal of the case, and the motion was granted.