

**BIENNIAL REPORT OF THE
ATTORNEY-GENERAL OF
THE STATE OF
CALIFORNIA, 1900-1902**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649412365

Biennial Report of the Attorney-General of the State of California, 1900-1902 by Various

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

VARIOUS

**BIENNIAL REPORT OF THE
ATTORNEY-GENERAL OF
THE STATE OF
CALIFORNIA, 1900-1902**

BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL

OF THE

STATE OF CALIFORNIA,

1900-1902.

STANFORD LIBRARY



SACRAMENTO:

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

1902.

TIREY L. FORD, - - - ATTORNEY-GENERAL.

C. N. POST, - - - - - Assistant Attorney-General.

GEORGE A. STURTEVANT, - - - Deputy Attorney-General.

WILLIAM M. ABBOTT, - - - Deputy Attorney-General.

A. A. MOORE, JR., - - - - - Deputy Attorney-General.

GEORGE FRANCIS, - - - - - Phonographic Reporter.

RANSOM CAREY VAN FLEET, - - - - - Clerk.

KATE V. HANNON, - - - - - Clerk.

SACRAMENTO OFFICE:

State Capitol.

SAN FRANCISCO OFFICE:

Room 1205 Claus Spreckels Building.

REPORT OF THE ATTORNEY-GENERAL.

STATE OF CALIFORNIA, OFFICE OF ATTORNEY-GENERAL,
SACRAMENTO, September 13, 1902.

To His Excellency HENRY T. GAGE, Governor of California:

SIR: Pursuant to the requirements of Section 470 of the Political Code, I herewith transmit my official report, covering the work of this office for the two years ending September 1, 1902.

A comparison of this report with my last biennial report will show that there is a constant increase in the volume of business annually coming before the office, and that such increase is, naturally, in direct proportion to the growth of the State industrially and in population.

While each department has grown apace, the development is more marked in that branch devoted to civil litigation, and, much of the time, the work of that department has taxed the energies of the entire office force.

The following reference is made to a few of the more important matters of this nature which have demanded attention:

RAILROAD COMMISSIONERS vs. SOUTHERN PACIFIC COMPANY.

This was one of the most important cases that has arisen in our State courts since the adoption of the present Constitution in 1879. Under the provision of our State Constitution, which (except under certain prescribed conditions) prohibits the raising of railroad rates when once lowered for purposes of competition, complaint was made to the State Board of Railroad Commissioners that the Southern Pacific Company, after lowering rates for the purpose of competing with the San Francisco & San Joaquin Valley Railway Company, had thereafter raised such rates without first obtaining the consent of the Railroad Commission, as required by law.

The validity of the constitutional provision in question, as tested by the limitations of the Federal Constitution; the power of the Railroad Commissioners to "hear and determine" complaints against railroad and other transportation companies; the legal force and effect of the decisions and orders of the Railroad Commission; in short, the power of the people, through their legally constituted authorities, to deal with the great problem of transportation, was here put to a supreme and final test.

The trial court upheld the Constitution in the particulars referred to, and sustained the Railroad Commission in the exercise of the power thus conferred upon that body. An appeal was taken by the Railroad Company to the Supreme Court, and there the judgment of the lower court was reversed, the appellate court holding that the hearing by the Commission was an *examination*, and not a *judgment* or *determination* not subject to review by the courts, and the cause was therefore remanded for trial *de novo* upon the facts. The case has been tried and is now under submission with the Superior Court.

YOLO COUNTY vs. COLGAN.

This was a test case brought to recover from the State certain commissions claimed to be due for the collection of State taxes by the several counties, and involved, ultimately, about a million and a half dollars. The lower court gave judgment for the State; the plaintiff appealed, and, after the filing of most exhaustive briefs by both parties, the judgment of the lower court was affirmed. Immediately thereafter some twenty-five cases, theretofore commenced in the Superior Courts of the various counties, which were pending the result of this appeal and which presented claims against the State aggregating some \$300,000, were dismissed by stipulation of the parties.

ESTATE OF MAHONY.

This was an appeal to the Supreme Court of the State, from an order directing the payment of collateral inheritance tax by certain nephews and nieces, heirs of the deceased. The appellate court held unconstitutional the so-called "non-resident nephew and niece" clause of the Collateral Inheritance Tax Law, and brought all nephews and nieces, wherever domiciled, within the law of the State and subject to the tax, thus saving to the State School Fund thousands of dollars. The question was a novel one, raising points new to the jurisprudence of this State, and the court, in rendering its decision, followed closely the line of argument presented in the briefs of this office.

ESTATE OF MINER.

This is a proceeding commenced in the Superior Court by petition of certain alleged heirs of the deceased, to recover from the State Treasury some \$3,000, escheated to the State in 1879. There appears to have been a degree of laxity shown by my predecessors toward similar matters, and petitions of this sort seem to have been allowed to be granted as a matter of course. In order to determine the title of the State to these moneys, an appeal was taken by me from the order granting the petition in this case, and the matter is now under submission with the Supreme Court. The hearing of a number of other petitions of a like nature has been continued, pending the result of this appeal. The aggregate amount in the State Treasury, involved, is over \$80,000.

OIL RATE CASES.

Several actions were commenced in the State and Federal courts, to enjoin the Board of Railroad Commissioners from enforcing the rates fixed by the Board for the transportation of oil. After the filing of carefully prepared and voluminous pleadings by this office on behalf of the defendant Board, that body compromised the suits by abandoning the rates in controversy and establishing new rates, which were accepted by the plaintiff corporations.

STATE vs. CALIFORNIA & NEVADA RAILROAD COMPANY.

Commencing with 1896, and up to and including 1901, suits had been annually commenced against the corporation named, to recover delinquent taxes, penalties and costs for the fiscal year. Simultaneously with the commencement of the respective actions, petitions were filed by the State in the United States Circuit Court, in an action there pending wherein a receiver had been appointed for the corporation. Said petitions asked that receiver's certificates be issued for the amounts claimed. Early in 1901 I caused positive steps to be taken, looking to an immediate enforcement of the State's claims, and soon thereafter receiver's certificates were issued in full for over \$7,000, such certificates bearing interest at the rate of eight per cent per annum.

STATE vs. SIERRA VALLEYS RAILWAY COMPANY.

A series of actions had been commenced against this company to recover delinquent taxes and penalties for several years, and judgments were had therein in favor of the State. The defendant evinced no disposition to pay the judgments, and I caused executions to be issued and the rolling stock of the company then in operation to be seized by the Sheriff. The company thereupon came forward and paid the judgments, amounting to some \$4,600.

PEOPLE vs. WELLS, FARGO & Co.

This action was instituted by my predecessor in the Superior Court of this State, but was removed by defendant to the United States Circuit Court, where it was pending when I assumed office. I had it remanded to the State court, where I obtained judgment against the express company; whereupon an appeal was taken to the Supreme Court of the State. Meantime the Supreme Court of the United States rendered its decision in a precisely similar case from the State of Michigan, deciding in favor of the express company there a party, and the Supreme Court of this State, acting upon the law as there laid down, reversed the judgment of the lower court in the case here. Both cases involved the right of the express company to decline to forward express packages without the prepayment by the shipper of the revenue tax of one cent for each package forwarded, or rather, for the receipt therefor.

STATE vs. SONOMA COUNTY.

This is an action brought by the State to recover some \$6,000, the defendant county's proportion of the cost of maintenance of certain inmates of the California Home for the Care and Training of Feeble-Minded Children committed from said county. Judgment was rendered in the Superior Court in favor of the defendant; the State appealed, and the case is now under submission with the Supreme Court. Suits against seven other counties, involving some \$11,000 additional, are pending the result of this appeal.

The statutes concerning the State institution named show that it was the legislative intention that the claims of the State contended for should be charges against the several counties, but these statutes are so loosely drawn that there is grave doubt as to the result of the litigation above reported.

STATE vs. RENO MILL AND LUMBER COMPANY.

The defendant allowed the taxes upon its lands to become delinquent and its lands to be sold to the State, but continued cutting timber therefrom. An action was commenced to recover the value of the timber so cut, and to restrain the further cutting thereof. The defendant thereupon paid the delinquent taxes, penalties, and costs, amounting to over \$3,000, and redeemed its lands from the tax sale.

BOND INVESTMENT COMPANIES.

In December, 1900, a joint communication was received by me from the Commissioners of Building and Loan Associations and the Insurance Commissioner, requesting that I commence actions to restrain the following companies from the further transaction of business in this State, viz.: Pacific Mutual Debenture Company, Debenture Investment Company of San Francisco, National Mutual Maturity Company, Western Mutual Investment Company, and the American Guarantee and Trust Company, all with offices in San Francisco. The companies named were engaged in the sale of so-called "investment bonds," in one form or another, and concerns of a similar nature had been declared by the Supreme Court of Ohio and by the Attorney-General of the United States to be conducting an unlawful business. I at once took the matter up with each of the companies, and after rather extensive correspondence and negotiation, they all agreed to cease doing business in California and to liquidate their outstanding bonds. With the exception of the Pacific Mutual Debenture Company, so far as I have been able to determine, the companies entering into the agreement have lived up to its terms. I commenced suit against the Pacific Mutual Debenture Company and secured a permanent injunction restraining the further

collection of installments, and directing them to wind up the business of their so-called "Series A and B" contracts. I subsequently commenced an action to dissolve the corporation and to recover a fine of \$5,000 for the violation of its franchise, which action is now pending.

"COYOTE SCALP" CASES.

On March 23, 1901, an Act was approved authorizing suits against the State on claims or demands arising under an Act of the Legislature approved March 31, 1891, entitled "An Act fixing a bounty on coyote scalps."

Section 2 of the Act provides that service of summons in such suits shall be made upon the Attorney-General, whose duty it shall be to defend all such suits. Under this authority, summonses in forty-eight different actions have been served upon this office, involving about \$200,000. I have appeared and answered on behalf of the State in forty-seven of these, the appearance in the one last served not yet being due. Thirty-three of these cases have been tried and submitted, and in twelve of them judgments have been rendered against the State for the amount of \$35,660. In twenty of the cases tried and submitted judgments have not been rendered.

In the case of John J. Bauer vs. State, for \$11,770, judgment was rendered for the State, the plaintiff being unable to show ownership of the claims sued upon. From this judgment the plaintiff is about to prosecute an appeal.

There yet remain fifteen cases to be disposed of, in which summonses have been served upon this office.

The work attendant upon the trial of these cases has been enormous, and has taken the entire time and attention of a Deputy Attorney-General for almost a year. In one action alone, covering some ten thousand scalps, there are 2,300 distinct counts or causes of action. The trial of those actions which were either brought or transferred to the Superior Court of Sacramento County, of themselves consumed about six weeks' continuous attendance in court.

In the trial of these matters thus far, I have insisted upon the production of the original affidavits filed by the claimants with the Board of Supervisors, together with the order of the Board and the certificate issued by the Board thereon, and also proof of the plaintiff's ownership of the claim.

From an examination of the complaints it was discovered that in many instances precisely the same claims were sued upon in two or more different actions, each plaintiff basing his cause of action upon an alleged assignment of the claim. It therefore became necessary to pre-