

**ANNUAL REPORT OF THE  
ATTORNEY GENERAL,  
OF THE STATE MICHIGAN,  
FOR THE YEAR 1880**

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Annual Report of the Attorney General, of the state Michigan, for the year 1880 by Various

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# REPORT.

STATE OF MICHIGAN,  
ATTORNEY GENERAL'S OFFICE,  
Lansing, December 31, 1880.

## *To the Legislature:*

In obedience to the requirements of law, I herewith submit my Annual Report.

The suits to which I attended on behalf of the State in the State Supreme Court are fully set forth in Schedule "A," annexed to this report.

Unless the questions involved were of public importance, or of a nature calling for legislative action, I have not deemed it necessary to state the point decided.

I beg to call your special attention to the following cases:

*Gordon vs. The People*, holding that Public Act No. 242, Laws 1879, p. 221, amending § 7569, Compiled Laws 1871, does not confer on Courts of Record power to sentence for one year any person convicted of the larceny of goods under the value of twenty-five dollars. The circumstances attending the passage of the Amendatory Act justify the inference that the full intent of the Legislature was not accomplished by it.

*People ex. rel. Robertson vs. The Commissioner of the State Land Office*.

The interests of the State would seem to require legislative action looking to the more efficient collection of taxes imposed on part paid lands.

*Hall vs. The People*. In this case the plaintiff in error, who had been convicted of breaking and entering a store, was ordered to be discharged merely because the Prosecuting Attorney had omitted to allege in the information, whether the offense had been committed in the day-time or in the night time. Had the offense been charged to have been committed at either time, the information would have been sufficient.

It seems to me that a provision requiring an objection of this kind to be taken by special demurrer and declaring it to be waived when not so taken will conduce to the efficient administration of criminal justice.

The case of the Auditor General *vs.* the State Treasurer, argued at the last October term and as yet undecided, involves questions of great importance to the State. Whichever way the court may determine the question, I think it worthy of serious consideration whether the sum of one-half million of dollars annually derived from specific taxes over and above what is required to pay interest on the trust funds and on the State debt, should swell the already large primary school interest fund, or go into the general fund to pay the expenses of

the State government. To render the primary schools almost free from local taxation would, it is feared, tend to withdraw from them that watchful care which self interest at least now induces the tax-payer to bestow upon them.

The case of *The People vs. The Lake Shore and Michigan Southern Railroad Company*, for specific taxes claimed to be due to the State, was tried in the Circuit Court for the county of Wayne in October last, and resulted in a verdict for the plaintiffs for \$83,484.85 damages. The case has been taken to the Supreme Court, and will be disposed of at the ensuing January term.

The examination of the questions involved in this case directed my attention to the very unsatisfactory state of the law relative to the assessment and collection of specific taxes. The following enactments on the subject are now found on the statute books, constituting a heterogeneous mass with which it is almost hopeless to struggle, viz: Chapter 21, Title 5, Revised Statutes of 1846; Act No. 82, laws 1855, p. 168; Act No. 57, laws 1872, p. 89; Act No. 11, laws 1873, p. 9. The Act of 1872 has been condemned by the Supreme Court in *Auditor General vs. The Pullman Palace Car Company*, 34 Mich., p. 59.

It would conduce greatly to speed and certainty in the collection of specific taxes, if all these various provisions were repealed, and a comprehensive system of assessment and collection adopted in their stead.

The suit brought on the appeal bond of Henry Gordon, formerly superintendent of the St. Mary's Falls Ship Canal, and sureties, still remains undetermined in the circuit court for the county of Wayne.

Schedule "B" is a list of chancery cases brought to set aside taxes and assessments upon the alleged ground of illegality. The Auditor General is a mere nominal party to these cases. They have been referred to the Prosecuting Attorneys of the respective counties, in accordance with the long established practice of this office.

This office is constantly applied to by private parties for leave to prosecute suits nominally in the name of the people in the relation of the parties really interested. I have in all cases required application to be made in writing, stating the nature of the case and the relief sought to be obtained. These applications are on file in this office.

Schedule "C" contains a list of cases thus authorized to be instituted by this department.

An abstract of the reports of the several Prosecuting Attorneys throughout the State, made to this office, is submitted in the appendix.

All of which is respectfully submitted.

OTTO KIRCHNER,  
*Attorney General.*



## SCHEDULE A.

## JANUARY TERM.

1. *Stephen Boody vs. The People.* Error to Eaton Circuit Court. Boody was sentenced for the statutory offense of horse stealing. The information did not allege the offense with sufficient certainty within the statute.

Judgment reversed and prisoner discharged.

2. *George F. Sutfin vs. The People.* Certiorari to Van Buren Circuit. Sutfin was adjudged guilty of being the father of an illegitimate child born in Indiana. The mother of the child was also living in Indiana. Held that under the circumstances the circuit court had no power to make an order for the maintenance of the child. Proceedings quashed.

3. *Mahony vs. The People.* Error to Manistee Circuit. Plaintiff in error was convicted of an assault with intent to commit rape. Judgment affirmed. (An able and exhaustive brief furnished by Louis E. Morris, Esq., Prosecuting Attorney of Manistee county, was of great value on the argument.)

4. *Charles Kapke vs. The People.* Error to the Recorder's Court of Detroit. Reversed and new trial granted.

## APRIL TERM.

1. *The People vs. Arnold.* Exceptions before judgment from the Recorder's Court of Detroit. Exceptions overruled, and Court below ordered to proceed to judgment.

2. *Moore vs. The People.* Error to Saginaw Circuit. Judgment reversed on confession of error by Attorney General.

3. *Fox vs. The People.* Error to Bay Circuit. Judgment reversed on confession of error by Attorney General.

4. *Hall vs. The People.* Argued for The People by the Prosecuting Attorney of St. Clair county. Judgment reversed and the prisoner discharged.

Hall was tried and convicted on an information attempting to charge him with the statutory offense of breaking and entering a store. The information failed to allege whether the offense was committed in the night-time, or in the day-time. This omission was held fatal.

Immediately on the discharge of the prisoner he was re-arrested on a new warrant in which the offense of which he was accused was properly charged within the language of the statute.

5. *The People vs. Whitson.* Exceptions before judgment from the Recorder's Court of Detroit. Exceptions overruled and Court below ordered to proceed to judgment.

6. *Lizzie Palmer vs. The People*. Certiorari to a Justice of the Peace by whom Lizzie Palmer had been required to enter into recognizance for her good behavior, she having been adjudged guilty of keeping a house for the resort of prostitutes. It was held that the procedure before the justice was not properly reviewable by a certiorari issuing immediately out of the Supreme Court, and the writ was therefore quashed.

7. *The People vs. Lilly*. Exceptions before judgment from Cass Circuit. Argued for the People by the Prosecuting Attorney of Cass County.

(At the June term the court sustained the exceptions and awarded a new trial.)

8. *The People vs. Bradley*. Exceptions from Cheboygan Circuit. Exceptions sustained and new trial awarded.

#### JUNE TERM.

1. *The People vs. Lilley*. Argued at the April term by the Prosecuting Attorney for Cass County, H. D. Smith, Esq. New trial awarded.

2. *The People vs. James H. Tann*. Exceptions before judgment from Kent Circuit. Exceptions sustained and new trial ordered.

3. *The People vs. Dennis Carroll*. Error to Mason Circuit. Carroll was surety on a recognizance of appeal from the sentence of a Justice of the Peace to the Circuit. His principal had been convicted before the Justice, of an assault and battery. The Justice imposed a sentence which was wholly void under the rule established by *Brownbridge vs. The People*. The Circuit Judge ruled on the trial below, that inasmuch as the sentence appealed from is void, the recognizance on the appeal was likewise invalid. The writ of error was issued to reverse this ruling. Judgment below affirmed.

4. *Marcouiller vs. The People*. Error to Mecosta Circuit. Bill of exceptions stricken from the files for want of authority of the judge of Mecosta Circuit to settle the same. Marcouiller had been convicted in another circuit. On the accession of his counsel to the bench, an order was made removing the cause to Mecosta Circuit. The Court held that there was no power under the Statute for such an order.

5. *The People ex rel. Robertson vs. The Commissioner of the State Land Office*. Application for mandamus argued and submitted.

6. *The People vs. Reithmiller*. Error to Jackson Circuit. Judgment affirmed. The Court held that Christmas day is a holiday within the Act regulating the sale of intoxicating liquors.

7. *McGuire vs. The People*. Error to the Superior Court of Grand Rapids. Argued and submitted.

At the October term the judgment below was affirmed.

8. *Kerr vs. W. Irving Latimer, Auditor General*. Appeal in Chancery from Shiawassee Circuit. A Bill to set aside certain taxes which had been imposed on land. It appeared that the proper persons had not been joined as defendants; the cause was remitted to the Circuit Court to enable the complainants to make the requisite amendments to the proceedings.

9. *Westinghausen vs. The People*. Error to Saginaw Circuit. Argued and submitted. Judgment affirmed at the October term.

Westinghausen was convicted in the Saginaw Circuit Court, of selling intoxicating liquors without having previously paid the tax imposed by the Act of 1879. (Public Act No. 268, Laws of 1879, p. 293.) He admitted the act

charged, but contended that the Act imposing the tax is unconstitutional. The Court affirmed the validity of the Act.

10. *The People vs. Oline, et al.* Exceptions before judgment from Huron Circuit. Argued and submitted.

At the October term the exceptions were sustained and Court below advised to grant a new trial.

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| 11. <i>Harris vs. The People.</i> | } Error to Recorder's Court of Detroit. |
| 12. <i>Higler vs. The People.</i> |   |
| 13. <i>Long vs. The People.</i>   |   |

Judgment affirmed in each case.

10. *Hovey Clark vs. The People.* Error to the Superior Court of Grand Rapids. The information was sworn to, and on the same day respondent was arraigned and sentenced on a plea of guilty. There was nothing to show that the Judge imposing the sentence, had complied with Act No. 99, Public Acts 1875. This rendered judgment erroneous under the rule in *Edwards vs. The People*, 39 Mich., 760, and the prisoner was therefore ordered to be discharged.

#### OCTOBER TERM.

1. *The People vs. Charles Stewart.* Exceptions before judgment from the Superior Court of Grand Rapids. New trial ordered.

2. *The People vs. Mrs. D. T. Weston.* Exceptions to Superior Court of Grand Rapids. Exceptions sustained, and Court below advised to discharge the prisoner.

3. *Lemuel Ellett vs. The People.* Error to Kent Circuit. Reversed on confession of error.

4. *The People ex rel. the County of Gratiot vs. Ralph Ely, Auditor General etc.* An application for mandamus directing the Auditor General to issue his warrant for an amount claimed to be due Gratiot for interest on moneys arising from the sale of certain swamp lands. Mandamus dismissed.

5. *The People ex rel. Auditor General vs. The State Treasurer.* Argued and submitted by Mr. Ashley Pond for the relator and by the Attorney General for the respondent. The case is one of unusual importance. The following is a statement of it as presented to the Court:

"There is now in the State treasury of this State, accumulated from specific taxes other than those received from the mining companies of the Upper Peninsula, an amount greater than the State debt. The State debt does not wholly mature until the year 1890.

"Section 1, Article 14, of the State Constitution provides:

"All specific State taxes, except those received from the mining companies of the Upper Peninsula, shall be applied in paying the interest upon the primary school, university, and other educational funds, and the interest and principal of the State debt, in the order herein recited, until the extinguishment of the State debt, other than the amounts due to educational funds, when such specific taxes shall be added to and constitute a part of the Primary School Interest Fund." \* \* \*

"The amount of specific taxes to be collected from corporations subject to the payment of the same is not fixed by the Constitution but is regulated by Statute.

"The relator applies for a mandamus to compel the State Treasurer to transfer to the Primary School Interest Fund, all moneys received from specific taxes other than those received from the mining companies of the Upper Peninsula, and now in the State treasury, in excess of the amount necessary to pay the