

**ANNUAL REPORT OF THE
ATTORNEY GENERAL OF
THE STATE OF MICHIGAN**

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Annual Report of the Attorney General of the State of Michigan by Various

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VARIOUS

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ATTORNEY GENERAL OF
THE STATE OF MICHIGAN**

ANNUAL REPORT

OF THE

Michigan

ATTORNEY GENERAL'S *office*

OF THE

STATE OF MICHIGAN,

FOR THE YEAR 1871.



BY AUTHORITY.

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1871.



REPORT.

ATTORNEY GENERAL'S OFFICE, }
Lansing, January 15, 1872. }

To His Excellency, HENRY P. BALDWIN,
Governor of the State of Michigan:

I have the honor herewith to submit my official report for the year 1871.

At the January term of the Supreme Court, 1870, the case of John Defoe; plaintiff in error, against The People, defendants in error, was argued by my clerk, W. N. Brown, Esq., and submitted. Defoe was charged in the Eaton Circuit with an assault with intent to commit rape. He was convicted of the assault. He alleged errors in the charge of the Court, and refusals to charge as requested. The Supreme Court found error in the charge, and awarded a new trial.

At the same term, the case of Edward S. Geary, plaintiff in error, against The People, defendants in error, was argued by W. N. Brown, Esq., and submitted. Geary was charged in the Eaton Circuit with an assault with intent to commit rape. He was convicted of the assault. He alleged errors in the charge, and refusals to charge. The Supreme Court reversed the judgment and ordered a new trial.

At the same term, the case of John Foley, Frederick Fleming, and Dennis Corkey, plaintiffs in error, against The People, defendants in error, was argued and submitted. They were charged with the crime of robbery, in the Recorder's Court of the city of Detroit, and convicted. The Supreme Court affirmed the judgment.

At the same term, the case of Michael Nolan, William Rogers, and Peter Nicaise, plaintiffs in error, against The People, defendants in error, was disposed of. The plaintiffs in error were charged with the crime of burglary, in the Recorder's Court of the city of Detroit. The Supreme Court found no error in the record.

At the April term of the Supreme Court, the case of Henry Stewart, plaintiff in error, against The People, defendants in error, was argued and submitted. The plaintiff in error was charged, in the Bay Circuit, with the crime of burglary, and was convicted. There were several errors alleged, and the Supreme Court reversed the judgment, on the ground that the Circuit Judge refused the defendant the right to poll the jury.

At the same term, the case of Sherburn Gaige, plaintiff in error, against The People, defendants in error, was submitted and the judgment reversed. The defendant was charged in the Hillsdale Circuit, under section 5790, compiled laws, with willfully injuring a mill-dam.

At the same term, the case of Howard C. Bristol, plaintiff in error, against The People, defendants in error, was submitted. Bristol was charged in the St. Clair Circuit with the crime of taking or enticing away from the lawful custody of her parents, a female child under the age of sixteen years, without her consent, and against the wishes of her parents, for the purpose of marriage, concubinage, or prostitution. The defendant was convicted, and the Supreme Court found no error in the record, and affirmed the judgment.

In my last report, the case of The People vs. Henry Johr and his sureties is referred to as having, by the rulings of the Circuit Judge, been decided against The People. Believing these rulings to be erroneous, I caused a bill of exceptions to be settled, and the errors alleged were argued and submitted at the April term. The Supreme Court sustained my view of the law, reversed the judgment, and ordered a new trial.

After the case was remitted to the Circuit, the Judge permitted the defendants to amend their pleadings by filing an affidavit denying the execution of the bond, and setting up, by the sureties, that when they signed the bond, Johr agreed to procure other names to the bond, and was not to deliver it until such names were signed to the bond.

The decision of the Supreme Court in *Bay City vs. McCormick*, decided at the October term, effectually disposed of this last dodge. The case was noticed for trial at the May term of the Circuit, to be held at Port Huron, but owing to the uncertainty as to where the county seat of St. Clair county really was, the notice was countermanded. It was noticed for trial at the September term, when the Court permitted the defendants to amend their plea as above stated, and the case went over the term.

It was again noticed for trial for the December term, when the defendant sureties moved for a continuance, upon the ground that Johr was sick, and that they expected to prove by him that the bond was never delivered to the State by the defendants, and that it was surreptitiously taken and delivered to the Auditor General. This showing was deemed sufficient by the Circuit Judge, and the cause was continued. I am in hopes that the case may be disposed of during the year; and yet, judging from the past, it is difficult to foresee what new phase human ingenuity may assume to delay the payment of an honest liability.

At the July term I recovered a judgment of ouster against the *Ætna Live Stock, Fire, and Tornado Insurance Company* of Oxford, Oakland county, upon an information in the nature of a *quo warranto*, filed for that purpose. The corporation, by the judgment of the Court, was ousted and altogether excluded from exercising any of the corporate rights, privileges, and franchises of an insurance company under the laws of this State, and the said company was dissolved.

At the same term, the case of *William Schweitzer*, plaintiff

in error, against The People, defendants in error, was argued and submitted. The defendant was charged, in the Recorder's Court of Detroit, with the crime of larceny. The Supreme Court reversed the judgment because of the admission of improper evidence, and sent the case back for a new trial.

At this term the Supreme Court settled the county-seat question of St. Clair county, and determined that the action of the people and the board of supervisors in locating it at Port Huron was legal.

At the April term, Joseph Trombly of Bay City applied for an order on the Auditor General to show cause why a writ of mandamus should not issue to compel him to draw his warrant on the Treasury of the State for the sum of \$6,722.50, which the relator claimed to be his due from the State under and by virtue of Act No. 119, laws of 1867, as amended by Act No. 15, laws of 1869.

These acts attempted to authorize the Governor of the State to seize and procure the condemnation of lands to be used by the United States for light-house purposes. The United States, being desirous to erect light-houses at the mouth of the Saginaw river, and not being able to purchase of the owners, applied to the Governor, under the above acts, to appoint a commission to seize and condemn them. The Governor appointed a commission of three gentlemen, who heard the proofs of the relator and the other parties who had an interest in the land. It was an *ex parte* proceeding, and neither the State nor the United States had any notice of the same. Under the proofs submitted, the commissioners awarded the sum of \$17,496.84 for less than twelve acres of land, and which land was not only covered with water, but the United States had refused to give the owners for the same the sum of \$2,500.

The above statutes were so carelessly framed that the relator seemed to have a legal claim against the State, notwithstanding the United States absolutely refused to take the land at the price fixed by the commissioners.

At the October term the Auditor General showed cause, and the questions involved were argued by myself and Hon. Geo. V. N. Lothrop on behalf of the State. The Court decided that the State had no power to authorize the condemnation of lands except for its own use, or that of its citizens, and therefore held said acts of the Legislature unconstitutional and void.

At the same term, the case of Joseph J. Strang, plaintiff in error, against The People, defendants in error, was argued and submitted. Strang was charged, in the Hillsdale Circuit, with the crime of rape, and was convicted and sentenced. He took the case to the Supreme Court on bill of exceptions, and alleged fifty-three errors. The Supreme Court failed to discover any error in the record, and affirmed the judgment.

At the same term, the case of Samuel and Abraham Williams, plaintiffs in error, against The People, defendants in error, was argued and submitted. Plaintiffs in error were charged, in the Recorder's Court of Detroit, with the crime of grand larceny, and were convicted. The proof disclosed the fact that the larceny was committed in New Orleans, and that the stolen money was brought into this State. This raised the same question involved in *Morressy vs. The People*, 11 Mich., 327. The Recorder held section 5797, Com. Laws, constitutional. The Court, Judge Campbell dissenting, affirmed the judgment of the Recorder in holding the statute constitutional, but reversed the judgment, because of the admission of improper testimony.

At the same term, the case of John M. Jones against The People was argued and submitted. This was a case made from Lapeer Circuit. Jones was charged with, and convicted of, an attempt to commit the crime of arson, with intent to defraud an insurance company. The decision of the Supreme Court was rendered at the January term, 1872, and will be found in my next report.

At the same term, the case of Charles Merrill, complainant,