BIENNIAL REPORT

—OF THE—

ATTORNEY GENERAL.

—OF THE—

STATE OF IDAHO

—FOR THE—

TWO YEARS ENDING DECEMBER 31, 1894.

BOISE, IDAHO.
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REPORT OF ATTORNEY GENERAL.

OFFICE OF THE ATTORNEY GENERAL,
BOISE CITY, IDAHO, *Dec.* 31, 1894.

HON. W. J. MCCONNELL,
Governor of Idaho.

SIR: Pursuant to the requirements of the Constitution, I have the honor to submit a biennial report of the official transactions of this office for the two years ending December 31st, 1894.

Appended hereto, and marked "Schedule A," is a list of cases that have been argued and decided by the Supreme Court, or are now pending therein, and in which this office has appeared for the State.

By comparison with former reports, it will be seen that the business that directly attaches to the Attorney General's office is rapidly increasing. The number of criminal cases on appeal naturally increases with the growth of the State in population, and it is of the utmost importance that these cases should be justly and rightly decided. This can only be accomplished by the presentation, in the Supreme Court, of a correct transcript and statement of the issues involved in the appeal.

Under existing statutes, notices of appeal, in criminal and civil cases, in which the State is concerned, are served upon District Attorneys. Settlements of statements and bills of exceptions on appeal are made after notice to District Attorneys. The important duty of giving a personal and careful supervision to the preparation of the record on appeal, placed upon these officers, is often neglected entirely, or performed in such a perfunctory manner that the effect is much the same, so that when the case finally reaches the Supreme Court, it is frequently a difficult matter for this office to determine whether or not the precise question submitted and decided in the lower court, and upon which an appeal is taken, is presented by the record for review by the Supreme Court.

This carelessness, and substantial neglect of duty, on the part of District Attorneys, requires this office to make the most careful investigation and closest scrutiny of records on appeal that justice may not be defeated and criminals escape a righteous punishment.

This danger is not a trivial one; it vitally concerns the State, and the statutes should be so amended as to reduce this danger to a minimum.

District Attorneys, as a rule, when an appeal is taken, give themselves no further concern about a case, but are only too willing that the responsibility of sustaining the conviction shall rest upon the Attorney General. Under exist-

ing statutes, no notice of an appeal is given this office, no transcript or other record of the proceedings below is furnished, and the Attorney General is compelled to rely on the courtesy of the Clerk of the Supreme Court for his first knowledge that an appeal is pending, and that he will be required to look after it in the Supreme Court, on the part of the State. I would suggest a radical change in the existing statutes in this respect.

The statutes should be so amended as to direct the clerk with whom the notice of appeal is filed to forward a copy immediately thereafter to the Attorney General.

Certified copies of the record, statement or bills of exceptions in a case should be prepared by the clerk, and should be served by mail or otherwise upon the Attorney General, at the same time that a copy is transmitted to the clerk of the appellate court. This will enable this office to make the necessary preparation for the trial of the cause in the Supreme Court, and in case the record is defective, to suggest such corrections therein as may be deemed necessary on the part of the State, before the day set for final hearing.

I would further suggest that, in all proceedings against defaulting officers and their bondsmen, the Attorney General be given a supervisory control in the prosecution thereof, with power to direct the District Attorneys in the

institution, management and settlement of the said causes.

It would be advisable, in this connection, to follow the statute of other States in requiring the District Attorneys of the several districts to make an annual or semi-annual report of the condition of the public business in their charge.

The statute relative to prosecuting offenses on information and dispensing with the calling of grand juries, except by order of the District Judges, has caused considerable discussion throughout the State as to whether or not it is a safe, as well as an economical, proceeding on the part of the people. I consider that it is both safe and economical. The exercise of even ordinary care on the part of committing magistrates will make it impossible for criminals, upon arraignment, to successfully move to quash or set aside an information upon the ground that a preliminary examination has not been had as provided by law.

In the case of the State vs. Clark, decided by our Supreme Court in February, 1894, reported in 35 Pacific Reporter, 710, the court held that a substantial compliance with the statute, relative to preliminary examination, is sufficient, and that "mere technicalities or defects in the preliminary examination of a defendant will not render it invalid, unless they actually prejudice the defendant or tend to his prejudice in respect to some substantial right;" and in the

same case the court further held that a "motion to quash an information on the ground that the court has no jurisdiction to try the defendant, for the reason that the law had not been complied with in the arrest and preliminary examination of the defendant, must be made before plea or trial, or the same is waived."

In this decision the substantial objections heretofore urged against proceedings by information are disposed of. The validity or legality of the proceeding is not made to depend upon a full observance of all the technical requirements of the statute, but a substantial compliance therewith is held to be sufficient; and again, unless the defendant, upon arraignment, urges his objection to the proceeding, that a proper and legal preliminary examination has not been had, he is deemed to have waived it. If his objection has merit, the court will set aside the information and direct that a legal preliminary examination be had, and thus the danger and expense of a reversal and new trial, because of these informalities, is avoided.

A general letter of instruction from District Attorneys to each committing magistrate in his district, calling the attention of the magistrate to the substantial requirements of the statute governing preliminary examinations, will prevent error, unless it is willfully committed, in which case the magistrate may, by proper proceedings, be removed from office.

A general revision of the Revenue Laws of

the State is imperative. Under the Constitu tion, the fiscal year commences on the second Monday in January in each year.

Tax Collectors are required by statute to make final settlement with the County Auditor on the first Tuesday after the first Monday in each year.

The Auditor and Treasurer of each County must, on the second Monday, make a joint statement of the revenues, and a full and specific showing of the financial condition of the county. But it will be observed that the statute further provides, in contravention thereof, that the regular term of these officers shall commence on the first Monday of January next after election, so that, under existing statutes, the outgoing Assessor and Tax Collector is not required to make settlement, and the outgoing Auditor or Treasurer is not required to file his report, until after he goes out of office; again, the Board of County Commissioners do not meet until the second Monday in January to examine and audit the accounts of the outgoing officers, who are then out of office.

I desire to call your attention to the law as it now stands, relative to the approval of the bonds of county officers elect, and the taking of the official oath. As stated above, the term of these officers commences on the first Monday in January next after election. (See section 13, page 60, 1st Session Laws.)

They are required to file their official bond

and take the oath of office before entering upon the duties of their office, (see section 350, Revised Statutes), but section 355 provides that "the oath of office must be taken by County Commissioners before the County Recorder of their respective counties on the second Monday of January succeeding each general election; and on the next judicial day the other county officers must take and subscribe the official oath before the Chairman of the Board."

From the above, which, however, is but a sample of the many inconsistencies in our present laws, it will be seen that an officer must take office on the first Monday in January; he must take the oath of office and file his bond before doing so; but he cannot do this, as the statute requires it to be done, until the Tuesday after the *second* Monday. I have advised county officers to file their bonds and take the oath of office on the first Monday and thereafter, at the regular meeting of the Board, to again file their bond and take the oath in the manner required by statute.

It is impossible to point out in my report the various changes in the laws that are necessary, but even a cursory examination will disclose the necessity for a complete revision of our Codes.

Eight years have passed since the work was last performed—ten years will have elapsed before the necessary revision can be made. Since the adoption of what is known as the "Revised

Statutes" we have entered upon the powers and responsibilities of Statehood. Many sections of the statutes are in conflict with the Constitution; the result, in many cases, is needless and expensive litigation. A careful, systematic, conservative revision of our laws, having in view the necessity of close economy in the administration of the various departments of county and State affairs, and also in view the necessity for the adoption of a plain, practical, easily understood, and modern code system, must result in inestimable good to our people and a great saving of money in the administration of public affairs. I would therefore suggest that you urge upon the coming Legislature the necessity for the appointment of a commission to arrange, revise, simplify and consolidate the present statutes of our State.

I have not embraced in this report a statement in detail of the many proceedings taken by this office, on the part of the State Board of Land Commissioners before the several United States land offices within the State and the departments in Washington, and reference is had to the report of said Board for all desired information in connection with the land interests of the State, and actions relative thereto; suffice it to say, that the duties of the Secretary of said Board, that now devolve upon the Attorney General, are most exacting.

The Board has employed Hon. William B. Matthews to represent the State in all proceed-

ings before the departments in Washington, and he has rendered most valuable service to the commonwealth, and in closing this report I desire to return my thanks to Frank A. Fenn, Chief Clerk of the Land Board, for the efficient and intelligent service he has rendered the Board and the State in the performance of the onerous duties of his office.

Respectfully submitted,

GEO. M. PARSONS,

Attorney General.

SCHEDULE A.

Criminal.

State vs. John P. Cox—Discharged on writ of habeas corpus.

State vs. F. A. Steptoe—Appeal. Vagrancy. Judgment affirmed.

State vs. P. Jorgenson—Appeal. Grand larceny. Judgment affirmed.

State vs. George B. Roberts—Petition for a writ of habeas corpus. Petition denied.

State vs. Frank Reed—Appeal from order denying change of place of trial. Order sustained.

State vs. Frank Reed—Appeal. Murder. Judgment affirmed.

State vs. I. F. Clark—Appeal. Robbery. Judgment affirmed.

State vs. Dennis Collins—Appeal. Assault with deadly weapon. Judgment affirmed.

State vs. John Handel—Appeal. Murder. Judgment affirmed.

State vs. John Gibbs—Appeal. Attempt to commit rape. Judgment affirmed.

State vs. Perry—Appeal. Murder first degree. Judgment affirmed.

State vs. Frank Preston—Appeal. Vagrancy. Judgment affirmed.

State vs. Stephen O'Donald—Appeal. Burglary. Continued.

State vs. John Hurst—Appeal. Murder. Continued.

State vs. Harry Schieler—Appeal. Murder. Judgment affirmed.

State vs. Frank Read—Petition for a rehearing. Petition denied.

Civil.

City of Genesee vs. Latah County—To recover road tax. Modified.

Delano and Clay vs. Board County Commissioners Logan County—Appeal. Allowance of witness fees. Reversed.

Matthew McFall vs. Board County Commissioners Logan County—Appeal. Hospital allowance. Reversed.

John W. Mellor vs. Board County Commissioners Logan County—Appeal. Allowance of attorney fees. Reversed.

John P. Campbell vs. Board County Commissioners Logan County—Appeal. Allowance sheriff's salary, Modified.

A. J. Dunn vs. State Board Wagon Road Commissioners—Writ of review. Contract declared void.

Bannock County vs. C. Bunting & Co.—Appeal. Issue of bonds. Affirmed.

State vs. Scott McDonald—Appeal. Suit on official bond. Continued.

Isaac Phillips vs. James F. Curtis, Secretary of State—Petition for a writ of mandate. Granted.

Thomas F. Nelson vs. James F. Curtis, Secretary of State—Petition for a writ of mandate. Granted.

S. S. Denning vs. James F. Curtis, Secretray of State—Petition for a writ of mandate. Denied.

J. M. Eakin vs. Nez Perce County—Appeal. Allowance fees of sheriff. Affirmed.

George S. Penny vs. Nez Perce County—Appeal. Allowance of warrants. Dismissed.

A. N. Ingraham vs. State Wagon Road Commissioners—Petition for a writ of mandate. Granted.

W. C. Wickersham vs. Board County Commissioners Elmore County—Appeal from refusal to allow fees. Affirmed.

Sundry Cases.

State vs. Frank Peed—Suit on official bond, Fourth District Court, Alturas County. Judgment for State.

Boise City Railway and Terminal Company vs. State et al.—Condemnation proceedings against M. F. Erby against lands mortgaged to the State. Settled.

State vs. Register and Receiver Boise City Land Office—Refusal to grant right to State to contest entry. Appeal to Secretary of the Interior and decision in favor of the State. Two cases.

Ex-parte State of Oregon and Idaho—Before Secretary of Interior. Right of State to enter double minimum lands. Decided in favor of the State.

Ex-parte State of Idaho—Involving $N\frac{1}{2}$, $SE\frac{1}{4}$, Section 28, Township 11 South, Range 22

East. Before Secretary of the Interior. Pending.

State ex rel. Attorney General vs. Heirs of Rhoda Potter—Involving title to school land in Custer County. Pending.

Ex-parte State of Idaho—Petition for opening forest reserve in Kootenai County. Before Secretary of the Interior. Granted, and reserve opened for settlement.

A number of cases involving the right of the State to certain selections are now pending in the Lewiston Land Office.