



BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

State of Colorado.

---

ALVIN MARSH, ATTORNEY GENERAL.

TO THE GOVERNOR.



**F O R E W O R D**

This is an exact photo reproduction of an original copy of the

**BIENNIAL REPORT  
Of The  
ATTORNEY GENERAL  
Of The  
STATE OF COLORADO  
1887 - 1888**

in the Library of the University of Washington

Special acknowledgment is made to the University of Washington Law Library, and Dr. Arthur S. Beardsley, Law Librarian, for the kind permission to use the original pamphlet in this reproduction.

As a copy of the original is practically unobtainable this reprint is offered to enable law libraries to round out their Attorney General Reports. This reprint has a very limited printing.

**DENNIS & CO., INC.**

**Buffalo, N. Y.  
February, 1941**



BIENNIAL REPORT  
OF THE  
ATTORNEY GENERAL

OF THE  
State of Colorado,

CONTAINING  
A SUMMARY OF THE WORK DONE BY THE OFFICE,  
AND OPINIONS GIVEN TO STATE OFFICERS  
AND BOARDS, FOR THE YEARS  
1887 AND 1888.

---

ALVIN MARSH, ATTORNEY GENERAL.



TO THE GOVERNOR.



Office of the ATTORNEY GENERAL, }  
STATE OF COLORADO. }

To His Excellency,

ALVA ADAMS,

Governor of Colorado:

SIR:—In compliance with the Constitution of the State, I beg herewith to submit to your Excellency the regular Biennial Report of the business of this office, ending on the fifteenth day of December, A. D. 1888.

The cases pending in the Supreme Court when I assumed the duties of the office, and which have been finally disposed of, are as follows:

ELIZA HARDING, }  
vs. } *Misdemeanor.*  
THE PEOPLE. }

Error to the Criminal Court of Arapahoe county.  
Judgment reversed and cause remanded.

JOSEPH LOWE, }  
vs. } *Misdemeanor.*  
THE PEOPLE. }

Error to the Criminal Court of Arapahoe county.  
Judgment reversed and cause remanded.

THE PEOPLE, *ex rel.* }  
W. B. JOHNSON, } *Petition for disbarment.*  
vs. }  
L. M. GODDARD. }

Denied.

JAMES BUSH, }  
vs. } *Indictment for murder.*  
THE PEOPLE. }

Error to District Court of Chaffee county. Judgment reversed and cause remanded.

BLURTT REDUS, }  
*vs.* } *Indictment for murder.*  
 THE PEOPLE. }

Verdict, murder in the second degree; judgment affirmed; prisoner serving out his sentence.

---

The following is a list of the cases pending in the Supreme Court at the commencement of my term of office, which have since been submitted:

N. HURD, }  
*vs.* } *Contempt.*  
 THE PEOPLE. }

---

LOUDEN MULLEN, }  
*vs.* } *Contempt.*  
 THE PEOPLE. }

---

THORNTON THOMAS, }  
*vs.* } *Contempt.*  
 THE PEOPLE. }

---

WILLARD TELLER, }  
*vs.* } *Contempt.*  
 THE PEOPLE. }

---

Criminal cases brought to the Supreme Court and disposed of or submitted:

CHAS. E. REYNOLDS, }  
*vs.* }  
 THE PEOPLE. }

Petition for *habeas corpus* denied.

---

URI S. CLARK, }  
*vs.* } *Abortion.*  
 THE PEOPLE. }

Error to Criminal Court of Arapahoe county. Submitted.



ANNA PEARSONS, }  
vs. }  
THE PEOPLE. }

Error to Criminal Court of Arapahoe county. Death of plaintiff in error suggested. Case dismissed.

EDWARD LANGDON, }  
vs. }  
THE PEOPLE. }

THOMAS C. TAYLOR, }  
vs. }  
THE PEOPLE. }

Error to . . . . . Court of . . . . . county. Writ of Error dismissed. Plaintiff in error serving out his sentence.

CHARLES PATTEN AND }  
ROBERT WISDOM, }  
vs. }  
THE PEOPLE. }

*Burglary.*

Error to Criminal Court of Lake county. Judgment reversed and case remanded.

WILLIAM I. ROBERTS, }  
vs. }  
THE PEOPLE. }

*Larceny.*

Error to Criminal Court of Lake county. Judgment affirmed; defendant in prison serving out his sentence.

JOHN B. KEARNEY, }  
vs. }  
THE PEOPLE. }

*Indictment for murder.*

Error to District Court of Pitkin county. Judgment reversed and case remanded. New trial in Court below. Defendant was convicted and is now serving out his sentence.

Criminal cases brought to Supreme Court, December term, A. D. 1888:

S. A. JOSEPHI, }  
*vs.*  
 THE PEOPLE. }

Error to District Court of Fremont county. Error joined.

---

MATT M. CRAWFORD, }  
*vs.*  
 THE PEOPLE. }

Error to District Court of Douglas county. Error joined.

---

HERMAN P. BABCOCK, }  
*vs.*  
 THE PEOPLE. }

Error to District Court of Garfield county. Error joined.

---

Civil cases brought in the Supreme Court:

THE PEOPLE, *ex rel.* }  
 REID, } *Quo warranto*  
*vs.*  
 CHARLES M. WILLIAMS. }

Judgment of ouster against defendant as treasurer of La Plata county.

---

THE PEOPLE *ex rel.* N. }  
 HURD, *Superintendent* }  
*of Insurance,* } *Petition for a writ of quo*  
*vs.* } *warranto.*  
 THE SILVER STATE INS. }  
 Co. }

Writ denied.

THE PEOPLE, *ex rel.* }  
*Attorney General,* }  
*vs.* }  
 JOHN C. KEEGON. }

Petition for disbarment. Rule entered returnable on fourteenth of December, 1888.

THE PEOPLE, *ex rel.* }  
 AUSTIN, Treasurer, }  
 etc., } *Mandamus.*  
*vs.* }  
 CONEJOS COUNTY. }

Agreed case. Brought for the purpose of determining as to which class of county-warrant holders are entitled to privilege of payment under the Session Laws of 1887. Judgment in favor of the old warrant holders.

RIO GRANDE RAILWAY }  
 COMPANY, }  
*vs.* }  
 FRANK CHURCH, }  
 County Treasurer, etc. }

Agreed case. Brought for the purpose of determining whether defendant can coerce payment of taxes of Pullman Palace Car Company, assessed against plaintiff. Argued and submitted.

THE MUTUAL RESERVE }  
 FUND LIFE ASSOCIA- }  
 TION, }  
*vs.* }  
 DARWIN P. KINGSLEY, }  
 Auditor of State and }  
*ex officio* Superintend- }  
 ent of Insurance. }

Appeal from District Court of Arapahoe county.

Cases brought and disposed of or submitted in the District Court of Arapahoe county:

THE PEOPLE, <i>ex rel.</i>	}	<i>Mandamus.</i>
GEORGE C. FAVILLE,		
<i>vs.</i>		
D. P. KINGSLEY, Auditor of State.		

Case settled and dismissed as per stipulation.

STATE OF COLORADO,	}	<i>Ejectment.</i>
<i>vs.</i>		
HARRIET HOLCOMB.		

Trial and verdict for plaintiff for possession of lots in block 81, in John W. Smith's addition to Denver.

This case and one of like character against W. H. Clise and A. B. Sullivan, was settled by defendant's grantor conveying to the State of Colorado block 81 in Brown, Smith & Porter's addition to Denver, and paying \$10,000 cash besides. Cases dismissed.

THORNTON THOMAS,	}	<i>Mandamus.</i>
<i>vs.</i>		
PETER W. BREENE, <i>State Treasurer.</i>		

Case settled and dismissed.

UNION PACIFIC, LINCOLN & COLORADO RAILWAY,	}
<i>vs.</i>	
JAMES RICE, <i>Secretary of State.</i>	

Action brought to secure \$2,000, alleged to be illegally demanded by defendant for filing plaintiff's certificate of incorporation. Demurrer to complaint sustained. Final judgment for defendant.

THE PEOPLE, *ex rel.* }  
 CHARLES F. BURRELL, }  
*vs.* } *Mandamus.*  
 MELVIN EDWARDS, *ex-* }  
*Secretary of State.* }

DENVER, TEXAS & FORT }  
 WORTH R'Y CO., }  
*vs.* }  
 JAMES RICE, *Secretary* }  
*of State.* }

Action brought to recover \$3,000, alleged to be illegally demanded for filing plaintiff's certificate of incorporation.

W. D. RICHARDSON, }  
*vs.* }  
 STATE BOARD OF CAPI- }  
 TOL MANAGERS. }

In U. S. Circuit Court. Action to recover damages for work and labor done upon the Capitol building. Complaint demurred to, argued and submitted. This case was argued before Judge Brewer, who referred the same to Judge Miller, of the U. S. Supreme Court, for decision thereon, which has not yet been rendered.

#### IRRIGATION.

Owing to the unprecedented low stage of water running in the natural streams of the State during the summer season of 1888, some important questions arose, growing out of the fundamental law bearing upon the subject of irrigation, which had not before then received much consideration.

Two or three of these questions were involved in the following cases, commenced in the District Court of Larimer county, viz:

THE LAKE COUNTY CA-  
NAL Co.,  
vs.  
JOHN L. ARMSTRONG,  
*Water Commissioner.*

---

THE NEW MERCER  
DITCH Co.,  
vs.  
JOHN L. ARMSTRONG,  
*Water Commissioner.*

---

THE LARIMER COUNTY  
DITCH Co.,  
vs.  
JOHN L. ARMSTRONG,  
*Water Commissioner.*

---

THE LARIMER COUNTY  
CANAL AND IRRIGA-  
TION Co.,  
vs.  
JOHN L. ARMSTRONG,  
*Water Commissioner.*

These cases were all brought against the Water Commissioner, who was at that time acting under orders from the State Engineer in distributing the waters of the Cache la Poudre river for agricultural purposes, only to companies and individuals according to their several rights and priorities, as they respectively appeared from the decrees of the Court in the Water District in which said stream is situate. The object briefly stated being to have a judicial determination as to the rights of the plaintiff's stockholders to divert the waters of said stream to be used by them for domestic purposes only; as against the rights of prior appropriators of the waters then using the same for agricultural purposes, only; in other words, to determine whether or not the right to divert the water of the river and convey it by means of canals and

ditches to any distance out whatever and whenever required for domestic purposes, is a right paramount to all other rights for all other purposes, and regardless of prior appropriations for such purposes.

Another question arose incidentally upon the bearing of these cases, which, in times of very low stages of water in the running streams of the State, is of equal if not still greater importance, and that was the true purport and meaning to be given to the words "domestic purposes," as used in Section 6, Article XVI., of the Constitution of the State; that is, whether the words are to have a restricted meaning, and the water supply to be confined to household purposes, and to such domestic animals as are under the immediate care and protection of the family; or whether they should have a broader interpretation, and should be construed to imply many other uses that might with very good reason come under the general expression, "Domestic purposes."

In one of the cases above referred to, which was, by agreement of counsel, made a test case, the Court held: Hon. T. M. Robinson, J., substantially, that when the water supply was insufficient for all purposes, those claiming it for domestic purposes were entitled to it, as against any prior appropriation for any other purpose.

Held also, that the term "domestic purposes" means the following, and none other, viz.: "Household purposes, including water for drinking, washing, bathing, culinary uses and the like; water for such domestic animals as are used and kept about the home, such as work animals and cows, kept to supply their owners and their families with dairy products, and such other uses not being either agricultural or mechanical as directly tend to secure and promote the healthfulness and comfort of the home."

The laws concerning irrigation, which are quite numerous, fourteen different acts having been passed

upon that subject at the last session of the General Assembly, need to be revised, if not entirely remodeled.

They are at present very inharmonious and imperfect, and water-rights claimed under them, when brought to the attention of the courts, are found to be, in many cases, too uncertain and indeterminate for such an important interest, and involving so much labor and capital.

The question of the right to divert water from the natural streams for domestic purposes only, at times when it is absolutely needed by prior appropriators for agricultural purposes, may in the future become an embarrassing one, and it ought to receive early attention at the hands of the General Assembly, and a legislative declaration of the meaning and effect to be given to the term "domestic purposes," as employed in the organic law, would remove all doubt as to just what is included in this somewhat ambiguous expression.

---

#### COAL LAND CASES.

---

My time has been largely taken up during the past year in defending the State's interest in her coal lands.

These lands were not, unless in one or two exceptional cases, known to be coal lands at the time of the grant of the same by the General Government to the State. Subsequent development has proven them to be coal-bearing lands, and the most valuable lands of the State, and an attack has been made upon the State's title to some of the most valuable of them, upon the alleged ground that they were generally known to be coal lands at the time of the grant, and chiefly valuable for the mineral they contained. Fifteen applications have been filed in the United States Land Office at



Pueblo, to purchase the same from the Government of the United States, upon the theory that the title to the same never passed from the General Government to the State.

Protests have been filed by the State in all of these cases. Eleven cases have been tried and submitted, and four are yet pending.

In one case, which was dismissed for default in appearance, the State is receiving a revenue of several hundred dollars per month through her lessees.

The following is a list of the cases:

JOHN M. BURKHART, <i>vs.</i> THE STATE.	}	<i>Submitted.</i>
MARTIN V. WARREN, <i>vs.</i> THE STATE.	}	<i>Submitted.</i>
HENRY H. GRIFFIN, <i>vs.</i> THE STATE.	}	<i>Submitted.</i>
WILLIAM B. CUNNINGHAM, <i>vs.</i> THE STATE.	}	<i>Submitted.</i>
JOSEPH H. BURTON, <i>vs.</i> THE STATE.	}	<i>Submitted.</i>
JOHN N. BRIGHT, <i>vs.</i> THE STATE.	}	<i>Submitted.</i>
DELOS A. CHAPPELL, <i>vs.</i> THE STATE.	}	<i>Submitted.</i>

JOSEPH N. RAMEY, }  
*vs.*  
 THE STATE. } *Submitted.*

---

ALLEN D. CHAPPELL, }  
*vs.*  
 THE STATE. } *Submitted.*

---

JOHN M. RAWEY, }  
*vs.*  
 THE STATE. } *Submitted.*

---

MARY P. WHITE, }  
*vs.*  
 THE STATE. }

Dismissed for want of appearance.

---

AUGUSTUS MACON, }  
*vs.*  
 THE STATE. }

For hearing pending notice.

---

VIRGINIA H. MACON, }  
*vs.*  
 THE STATE. }

Notice for hearing pending.

---

EDGAR S. GRAVES, }  
*vs.*  
 THE STATE. }

Notice for hearing pending.

---

THOMAS R. BEAUMONT, }  
*vs.*  
 THE STATE. }

Pending notice for hearing.

REVENUE LAWS.

---

The Attorney General is under no legal obligations to advise county officers in the performance of their official duties. It frequently happens, however, that these duties are so closely allied with the duties of the State officers and press so directly upon the interests of the State at large, especially in connection with the collections of the State revenues, that I have felt it to be my duty to give these officials, when they solicited it, such aid and counsel as I could in construing and harmonizing, so far as possible, the various laws bearing upon the assessment of property and the collection of taxes generally.

This subject and others more or less affecting the State's interest, though local in their character, has received almost daily attention from this office during the past two years. The revenue laws are defective; property is not, as a rule, equally nor equitably assessed; for taxable purposes, too much is not assessed at all, and quite a large amount that is assessed, or attempted to be, notably, the Pullman Palace Car Co., escape payment of taxes altogether.

County assessors in some of the counties are grievously remiss in their duties.

The State Board of Equalization is required to meet on or before the second Monday of August in each year. On or before the first day of September following, the Auditor of State is required to transmit to the various county clerks the changes, if any, in assessments, and rate of taxes made by the board. The taxes are payable on the first day of November and the penalty attaches on the first day of January following.

The assessor is required to complete and deliver the assessment roll to the County Clerk on or before the

twenty-fifth day of June, in each year, yet as I learn it invariably happens that the roll is only completed and returned by some assessors until a month or two months after the time expires for the meeting of the State board.

I am informed that principally for this reason there has never yet been an equalization of values of the property of the counties of this State since its organization.

The statute provides for a forfeiture of \$500 to be recovered against the County Clerk, in a civil action, for any neglect upon his part in forwarding the returns to the State Auditor within the time limited by law; but there is no penalty attached for any neglect of duty upon the part of the Assessor in making his returns to the County Clerk.

The labors connected with this department, can no longer be performed with fidelity and efficiency without the aid of assistant counsel.

The Attorney General is a member of several State boards; the land board alone draws heavily upon his time. Many important questions are submitted to him by the heads of the several departments of State, and the officers of the various State institutions, which require careful investigation. He can not perform these imperative duties besides attending to cases in the various courts and land offices of the State, and preparing these cases for trial without assistance.

I therefore recommend an appropriation, for the next two years, the same as made by the last General Assembly, for that purpose. At the same time it would be both just and expedient to raise the salary of the office to four or five thousand dollars a year.

ALVIN MARSH,  
*Attorney General.*