BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR.

FOR THE YEARS 1889-90.

OMAHA, NEB.:
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REPORT OF THE ATTORNEY GENERAL.

STATE OF NEBRASKA,
ATTORNEY GENERAL'S OFFICE,
LINCOLN, NEBRASKA, December 20, 1890.

To His Excellency, John M. Thayer, Governor of Nebraska:

In compliance with the provisions of Section 22 of Article 5 of the constitution, I have the honor to report to you the business of my department for the years 1889 and 1890.

Schedule "A" shows the number of cases had in the Supreme Court during the term in which the state has been a party or interested therein, in which I have been called on to prosecute or defend.

It will be observed that the business in the Supreme Court has increased within the past two years—has almost doubled—but I am pleased to say that, with the help given me by the legislature, I have been prepared at all times to meet the cases when called for hearing.

Your excellency will observe from the reports made by other state officers that the business of the state has been greatly increased in each department, caused, no doubt, by the rapid progress of Nebraska, and as the Attorney General is, ex-officio, a member of the most important of these boards, he is held responsible for the management of the same. It is rather remarkable that a report from the various boards is never submitted to him for examination until it has been printed and distributed, and, as I am an active member of these boards, and am held responsible for the management of the same, I desire to call your

attention to a few defects, that such action may be taken by the legislature to remedy the same, should they deem it advisable.

BOARD OF PUBLIC LANDS AND BUILDINGS.

As a member of this board, I find that it is made our duty to take the general supervision and control of all the public lands, lots, and all institutions, buildings, and the grounds thereunto, under the constitution, but also are made responsible for the proper disbursements of the funds appropriated for the maintainance of all the said institutions. All accounts of the several public institutions must be audited by the board, and this duty is in itself enough to keep the board busy for ten days at least, if the accounts are properly scrutinized. It is an utter impossibility for the board to give the time actually necessary to properly examine every account presented each month, without neglecting the business that properly belongs in his own department. The method that has been adopted by this board is to have the Secretary of State, who is, ex-officio, secretary of the board, to examine each account as it is presented, and whenever, in his opinion, there is an account that is found to have been drawn on the wrong fund, or an account that should not be allowed, or looks suspicious, he lays them aside for the board to examine. The other accounts, amounting to hundreds of thousands of dollars, are passed on the inspection alone of one member of the board. This, to my mind, is wrong, and yet it is the only method by which the board is enabled to get through with the business. I do not wish to cast any reflections on the Secretary of State, for I can cheerfully say that on this board he has ever been a faithful officer, but I desire to call attention to the facts so that a remedy may be provided, and in this connection I will speak of the imperfections in our

BOARD OF PURCHASERS AND SUPPLIES.

This board, under Section 2 of Article 12 of Chapter 83, Compiled Statutes, is composed of five state officers, including in that

number the Attorney General. It is the duty of the board to advertise four times each year to furnish supplies for the various institutions.

The heads of the institutions make out estimates that are found to be necessary to run the respective institutions for three months.

This business is generally left to the stewards of the institution, and, as the board has no knowledge of the actual demands required, the several items asked for is, as a rule, taken to be the demands necessary to keep the institutions supplied.

The advertisement is made asking for bids on these various estimates, and in many cases it is found that the institution does not purchase the full amount stated in the estimates, and a system has grown up in this particular branch of the state's business whereby the bidder to furnish the goods, discovers that, in some of the items asked for, the supply on hand is such that the institution will not require the whole amount stated on the estimate, and, therefore, the price bid for furnishing such item is made very low, sufficiently so to reduce the aggregate value of the bid on all the articles, and the contract is awarded to such bidder, while, in truth, the state pays more than the actual value on the other items specified, on account of the low price alone bid on some article that the state institution does not actually need, or at least does not buy what they ask for in their quarterly estimates. Notably, one particular fact is where one bidder, at the last meeting of the board in October, bid one cent per pound for granulated sugar, it is unnecessary to say that he was awarded the bid.

It might be said that the board is to blame for this state of affairs, but it is impossible for the board to know the actual demands only through the heads of the various institutions, and, when an estimate becomes before the board properly certified, the board takes this for its authority.

I have endeavored in the six years' service on this board to remedy this, and in some institutions have been successful to a great degree, while in others we have not been so successful.

I mention these matters for the purpose of showing that the system of purchasing supplies is liable to great abuse. Take the item of fuel and lights required to run our public institutions, the last legislature appropriated for this item alone $102,000.00. If all of our coal needed for all of our institutions could be purchased at the mines on one contract, a saving of at least $25,000.00 could be made.

Take the item of board and clothing. The appropriation to meet this item for the past two years was $268,500.00. It seems to me that the state has made such rapid strides in population and wealth that the old laws governing this subject are together too limited, and if some change could be made, whereby the purchasers and supplies could be governed by an agent or board created for this purpose alone, with headquarters where all the necessary supplies could be had on short notice, or shipped directly from the seller to the various institutions, the state would be the gainer by thousands of dollars every year. It is a subject worthy of consideration, and it is respectfully submitted.

BOARD OF EDUCATIONAL LANDS AND FUNDS.

This board is also composed of five state officers, including the Attorney General, and whose duty under Section 1 of Article 6 of the constitution is to take charge of the leasing and general management of all lands and funds set apart for educational purposes, and for the investment of school funds in such manner as may be provided by law.

The proceeds arising from the sale of our school lands is placed in what is known as the permanent school fund of the state. The interest received on this fund and the interest on all school land sold, as well as the rental received on leased land, is placed in what is known as the temporary school fund, and is distributed to the several school districts throughout the state.

This board loans the permanent fund, but is restricted in its investments to the United States, or state securities, or registered county bonds. It is found to be impracticable to invest this

money in United States securities and there are no state securities to be purchased, and we are confined to the purchase of registered county bonds alone.

In seeking an investment in such bonds we are confronted by a strong competition from non-resident investment companies, who are always willing to pay a slight premium on a registered county bond, drawing interest at 5 per cent. per annum, and as the state has no appropriation with which to pay this premium the consequence is that the state loses the investment, and to-day we have a large amount of money in our permanent fund uninvested.

In several instances the board has purchased bonds drawing 4½ per cent. interest, but this proceeding only opens the way for all other counties having their bonds in our permanent fund to call them in for exchange on the optional clause which is contained in all bonds, and the state is obliged to surrender such bonds on payment or make an exchange with such counties, surrendering the 5 and 6 per cent. bonds and taking in exchange a 4½ per cent bond. By these means alone we are enabled to keep some of the interest at home, instead of having it sent abroad, and thereby increase the apportionment to the school districts throughout the state.

It is well to say here that on the account of the failure of crops the past year the board has passed a resolution extending the time of forfeiture of all leases until the farmers could raise another crop. I do not believe it is a good policy to forfeit our school contracts when the citizens generally have met with a misfortune that deprives them of the means of paying, and it is to be hoped the legislature will sanction the action of the board.

I would also suggest that the rental on our school lands be reduced from 6 per cent. to 3½ or 4 per cent. on the valuation. The most of our leased land is now held by our citizens, who use them for agricultural purposes, and our temporary school fund is derived mostly from the western part of our state from rentals of school lands, and from the eastern part of the state from interest on registered county bonds.

I will also call your attention to the fact that many contracts of sale of educational lands are expiring, and there is no provision of law by which the board can extend the payment of the purchase money beyond the twenty years' limit, while with rentals it is left largely with the board. I do not see why the state should demand the cash to be paid on sale contracts that are now drawing interest, when we cannot find investments for the cash now on hand, and I would suggest to your excellency to recommend to the legislature a law extending the payment of all sales where the contract is about to expire.

BOARD OF TRANSPORTATION.

This board is also composed of five state officers, including the Attorney General. We have power to appoint three secretaries, who are presumed to do the work.

The subject of transportation is one of the most important questions that we are called on as state officers to meet.

I have given this subject as much attention as my other official duties would permit, and I am free to say that the present system is a complete failure. I am thoroughly convinced that the only true solution to the railroad problem must be worked out through a railroad commission, but any system such as ours, that requires three men to do the work and make all reports or recommendations to the various companies, only to be signed by certain state officers who have not had a chance to examine into the subject-matter, is to my mind very unsatisfactory, especially so when the board alone is the responsible party, and held to a strict account for his work by the people of the state who place them in office.

Experience has fully demonstrated that the railroad corporations of the state are too powerful in their influence, and too corrupt in their methods of defense, for the people to expect much relief from exorbitant rates or unjust discrimination under our present system. Our board is too cumbersome, and I believe the present law should be repealed; a maximum

schedule of rates be adopted by the legislature on a basis with other states similarly situated; that the Governor be given the power to appoint three secretaries to see that the law is not violated, and I feel safe in saying that such a law will answer until a constitutional amendment could be submitted to the people to elect a commission, and will certainly be an improvement on our present system. This board has not acted in harmony on all matters as has been the case on the other board, of which I am a member, and yet I do not claim that I am entirely blameless for the discord, believing as I do, from a conscientious standpoint, that the railroad corporations have been and are now charging too great a rate for the transportation of freight in this state. I have tried my best to so reduce the tariff, or schedule of rates, as to bring it down to somethimg near an equality with the rates charged for a similar service in the state of Iowa. I did not claim that the rate in Nebraska should be the same as that charged in Iowa, but did claim and claim now that the basis of rate making in the two states should be the same, and whatever the conditions might be that entitled Iowa to a less rate than Nebraska, let Iowa have it. No good reason has ever been advanced to the board why a tax on every article of produce or merchandise a person uses should be placed on the same the moment it is placed on Nebraska soil.

It is true that Iowa has a greater mileage than Nebraska, and has a greater tonnage than we have, still, when we come to consider the advantages of construction and maintenance the roads in this state have over those in Iowa, I am not prepared to say that our rates should be much in excess of that charged in Iowa, if any, in fact. The grades in Nebraska are very low compared with Iowa, we have far less bridging to do, and less washouts and snow blockades, but the majority of the board could not or would not view the question as I did and steadfastly refused to make any reduction whatever.

The question has agitated the public mind for some time, and at times has received public recognition in our party plat-

forms, but all to no purpose. The result is unmistakably found in the political revolution of November 4, 1890.

It seems to me that if the railroad companies could be made to understand that it was for their interest to lighten the burdens of the people, and that the prosperity of the people was the prosperity of the corporation, it would be a step in the right direction, but such is not the case, in fact it is directly opposite, for when the people prosper the railroads prosper, and when the people suffer the rates go on and the railroads prosper just the same.

I can only account for this on one hypothesis, and that is the necessity of the managers on the western lines making a large percentage as dividend to the stockholders. This is where the great difficulty lays. The rates charged to-day are large enough to yield a dividend amounting, in some cases, to 8 per cent. on stock that cost the stockholders nothing whatever but for the printing. And the officers of these roads use every effort and strain every point to have the stockholders of their respective lines of road receive their annual dividends. How can this be remedied? is the question we ask ourselves. Railroad corporations are entitled to a fair return on the money they have invested, and nothing more. What, then, is the actual capital invested on which a corporation is entitled to have a dividend? Is it the money received from the sale of mortgaged bonds, or is it the amount of actual cash paid in by the stockholders for the stock they have received, or is it the actual cash put in the road and derived from both the sale of bonds and for stock issued? Any other capital, either in bonds or stocks, is fictitious, and expressly declared by Section 5, Article 2, of our constitution to be absolutely void. It is a notorious fact that the roads is Nebraska are now openly violating this plain provision of our fundamental law. And in many instances the only money invested in railroads is that derived from the sale of bonds and then stock to the same amount is issued gratuitously to the shareholders, upon which the people of the state are required to pay dividends by paying exorbitant rates of transportation. The capital of a railroad corporation cannot legally exceed the cash, labor and

property actually received and applied to build, operate and maintain a railroad.

Section 5 above mentioned provides, "No corporation shall "issue any bonds or stock, except for money, labor, or property "actually received and applied to the purpose for which the cor-"poration was created, and all stock, dividends and other fictitious "increase of capital stock or indebtedness of any such corporation, "shall be void." It is an admitted fact that the railroads in this state have outstanding bonds and outstanding stock to a very large amount that have not been issued for money, labor, or property, and the several reports of these roads show a dividend on all such stock; and the state officer who endeavors to bring these corporations to an account for such open and notorious violations of our fundamental law is at once branded as a demagogue or a seeker for office. The subsidized press is turned loose on him, and the officer in charge of the road will write letters, or have others do so, condemning him, and publish them in all the papers throughout the state that they can control.

All this is wrong, and the officers of the corporations well know it, and it should be stopped at once, for unless these gigantic monopolies are checked in their mad race for wealth and power the day is not far distant when the people will be bound hand and foot.

I would recommend a law forbidding any railroad corporation from issuing any mortgage bonds or stock, until an itemized account of the cash, labor or property, duly sworn to, has been presented to some officer of the state for examination, and if found to be a true account of the money, labor or property received, to register and certify the same as issued in pursuance of law, and as constituting a part of the capital stock of such corporation. Such a law would strike out all fictitious increase of capital stock of all the roads now in operation, as well as those to be formed hereafter, and with such a law the rates of transportation could be fixed, so that an honest dividend could be made on an honest dollar invested. Such a law now governs all counties, cities, precincts and school districts in this state, limit-

ing the issue to a per cent. of the valuation, and I know of no good reason why such a provision could not be carried into effect limiting the indebtedness of railroad corporations to an issue of stock or bonds, or both, to its full value.

Two years ago, in my biennial report, I called your excellency's attention to the bill pending before Congress to extend the debt due to the government from the Union Pacific Railway Company, and while my views may not have been couched in the nicest language, your excellency criticised the same, and refused to concur therein, The notice given to that part of my report in your message, did, however, attract the attention of Congress as well as the citizens of this state, and 26,000 people of Nebraska have petitioned Congress to vote against the bill to extend the debt due to the government, and praying that the government might foreclose their lien, and put the Union Pacific Railway on a cash basis. On January 20, 1890, I called the attention of W. H. H. Miller, Attorney General of the United States, to this company's many violations of the law, but all to no purpose. Exhibit "B" attached hereto is a copy of the letter.

The bill to extend the debt, I am happy to say, has not thus far become a law. It is true that the government lien is inferior to the first mortgage of $33,539,512.00, but by extending the government debt, amounting now to about $65,000,000.00, it will be inferior to $115,000,000.00 indebtedness. The acts of 1862 and 1878 secure the government debt as follows:

First, by a *second* lien on 1,400 miles of road, that net the company about $6,000,000.00 annually.

Second, by a *first* lien on all Union Pacific assets, surplus net earnings and properties acquired since 1878, and therefore a *first lien on all branch lines* purchased or built with such properties.

Third, by a lien on all the unsold land of the Union Pacific Railroad, amounting to over $10,000,000.00.

Fourth, by a *first* lien for $9,000,000.00 on the land notes and cash in hand of the land trustees valued at $12,000,000.00.

The Fry funding bill, the one now pending, proposed that the government surrender this lien and accept a new lien due in fifty years, inferior to all the bonds and indebtedness, amounting to about $115,000,000.00.

Such an unbusiness-like transaction has never been known before in any civilized country, excepting the one transaction made by the government with the credit mobilier.

CENTRALIZATION OF POWER.

By the recent change in the affairs of the Union Pacific Railroad, one man standing in his office in New York City can, by raising his hand, advance the rates of transportation over the routes that he controls, reaching from China to the Atlantic coast. This transaction is only a part played in the formation of a gigantic railroad trust, that is a menace to public rights, and unless something is done, and that, too, immediately, the day is not far distant when the people of this country are bound hand and foot, and condemned to perpetual bondage.

The people of this state are cognizant of the above facts, and their appeals year after year for relief have been laughed to scorn, and it remains only for some stronger means to be used, and that is *government control of all railroads.* This is a question that takes precedence of the many important ones that are now agitating the public mind, and the question we ask ourselves is, whether or not it is better for the people to submit themselves and their business to the tender mercies of the railroad trust, or to the government of our country. The principal objections made against the government control and ownership is, that competition will be destroyed, and that this vast increase of patronage of the government would be dangerous to our republican institutions.

The first objection is as untenable as the latter, with one man controlling the principal roads of this country, competition will be as much destroyed, as it is now between Seward and Lincoln, where the Chicago, Burlington & Quincy is the owner of both lines of railroad.

Competition will be destroyed in either case, and it resolves itself down to the one question, whether or not the profits go into the pockets of the one man, or go to the government. If the masses were to determine this question there would be one unanimous voice in favor of government control.

The second argument is absurd. There is no corner of this union that is free from railroad influence in all political matters. It enters the doors of the merchants, the sanctum sanctorum of the press, and the courts of our state and nation, always taking an active part, from the election of a chairman of a board of village trustees to the election of a President of the United States, savagely holding back in its ranks those who would break from its corrupting embrace and deteriorating influences.

If the government should take the control, this growing danger to the people's rights would be forever removed.

The civil service rules could be strictly carried out, where removals cannot take place without cause, and ability and personal merit alone, and not political influence, would be the test for advancement.

The crowned heads of Europe have operated railroads in a very satisfactory manner, and can it be said that a government of the people, for and by the people, is so dishonest and corrupt that we cannot trust it with the same power?

Or must we continue to trust to the Jay Goulds and Vanderbilts and Rockafellers? I believe in the government control, and also believe that a commencement should be made by foreclosing the lien of the governument against the Union Pacific Railroad, and taking possession of the same, and trust that your excellency will bring the matter before our legislature, so that they can send a memorial to our congressmen, and bring the question to an issue before the people of the country.

I believe that if the government is ever going to try the experiment the time is now, and the place is here in Nebraska, by foreclosing the lien of the government on the Union Pacific Railroad Company.

The road is worth the first mortgage bonds, which the government has to pay anyway, and could lose nothing by taking the road. The trial could be made, and, if the experiment was successful on this one road, the ways and means could be provided by the government to take charge of all other roads, and at the same time the most gigantic trust this world has ever seen will be nipped in the bud.

The government will settle a long-standing debt with an insolvent creditor. The question should have a starting-point from our state through our state legislature. The cry of individuals go unheard, and if Nebraska, through her chief executive, causes our legislature to speak on this subject, our representatives will obey their will.

It only resolves itself down to one question—the will of the corporation, or the will of the people?

I will say, in conclusion, that I have mentioned these facts because I am about to retire from office, where for six years I have labored to restore some of the rights to the people of the state that have been stolen from them by the continual encroachments of the railroad corporations, but I am sorry to say that I have discovered that the people cannot obtain any relief under existing conditions, and believe that the best way to relieve the people from the impending danger is for the government to take the absolute control of the railroads of our country.

Respectfully submitted,

WILLIAM LEESE,

Attorney General.

SCHEDULE "A."

LIST OF CASES DISPOSED OF AND UNDETERMINED IN THE SUPREME COURT.

	No. 1.
Ole Anderson, vs. State of Nebraska.	Brown County. Murder in first degree. Judgement was affirmed, and the testimony being insufficient to sustain murder in first degree, sentence was reduced to murder in second degree. Prisoner was sentenced for life.
	No. 2.
Peter B. Burgo, vs. State of Nebraska.	Douglas County. Assault with intent to kill. Judgment affirmed.
	No. 3.
Perry R. Burrel, vs. State of Nebraska.	Frontier County. Selling liquor without license. Reversed for errors occuring at the trial.
	No. 4.
Antionette Conklin, vs. State of Nebraska.	Frontier County. Murder in second degree. Reversed for errors of law.
	No. 5.
Benjamine Deyarmon, vs. State of Nebraska.	Holt County. Assault and battery. Dismissed.
	No. 6.
J. R. Jacobs. vs. State of Nebraska.	Dundy County. Larceny. Under advisement.

No. 7.

Samuel W. Johnson, vs. State of Nebraska.	Burt County. Assault with intent to commit rape. Reversed.

No. 8.

Owen Jones et al., vs. State of Nebraska.	Gage County. Disturbing religious meeting. Reversed.

No. 9.

John McGrath, vs. State of Nebraska.	Douglas County. Burglary. Reversed. Not sustained by sufficient evidence.

No. 10. (3019).

George Martin, vs. State of Nebraska.	Lancaster County. Selling liquor in violation of law. Affirmed.

No. 11. (3107).

George Martin, vs. State of Nebraska.	Lancaster County. Selling liquor in violation of law. Reversed.

No. 12. (3445).

George Martin, vs. State of Nebraska.	Lancaster County. Selling liquor without license. Affirmed.

No. 13.

Alonzo Mead, vs. State of Nebraska.	Adams County. Larceny. Judgment was reversed, the testimony being insufficient.

No. 14.

George Messenger, vs. State of Nebraska.	Lancaster County. Violation of civil rights bill. Reversed.

No. 15.

Henry Paulson, vs. State of Nebraska.	Original Petition, asking the Supreme Court for a new trial. Demurrer to the Court's jurisdiction sustained. Petition dismissed.

No. 16.

George Reynolds, vs. State of Nebraska.	Saunders County. Rape. Reversed and remanded.

No. 17.

William B. Thorne, vs. State of Nebraska.	Adams County. Embezzlement. Dismissed.

No. 18.

Thomas Vincent, vs. State of Nebraska.	Custer County. Murder in second degree. Pending.

No. 19.

William B. Winslow, vs. State of Nebraska.	Johnson County. Burglary. Reversed and remanded.

No. 20.

State, ex rel, Attorney General, vs. A. & N. Railway Company.	Lancaster County. Mandamus. Submitted on part of State.

No. 21.

State, ex rel, E. S. Beck et al., vs. Thomas H. Benton, Auditor.	Lancaster County. Mandamus to compel Auditor to draw a warrant on Capital Building Fund. Under advisement.

No. 22.

State, ex rel, Attorney General, vs. Madison County et al.	Lancaster County. Mandamus to compel payment for keeping insane patients. Dropped from the docket.

No. 23.

State, ex rel, City of Beatrice, vs. Thomas H. Benton, Auditor.	Gage County. Mandamus to compel Auditor to register bonds. Writ allowed.

No. 24.

State, ex rel, City of Beatrice, vs. Thomas H. Benton, Auditor.	Gage County. Mandamus to compel registration of bonds. Writ denied.

No. 25.

State, ex rel, Board of Transportation, vs. F. E. & M. V. R. R. Company,	Lancaster County. Mandamus to compel obedience to order of Board. Dismissed.

No. 26.

State, ex rel, F. E. & M. V. R. R. Co., vs. H. A. Babcock, Auditor.	Lancaster County. Mandamus to compel registration of bonds. Writ allowed.

No. 27.

State. ex rel, City of Fremont, vs. H. A. Babcock, Auditor.	Dodge County. Mandamus to compel registration of municipal bonds. Writ denied.

No. 28.

State, ex rel, Foreign Ins. Co's, vs. Thomas H. Benton, Auditor	Lancaster County. Mandamus. Writ denied.

No. 29.

William C. Braithwaite, vs. State of Nebraska,	Boone County. Larceny. A firmed.

No. 30.

Willie Brooks et al., vs. State of Nebraska.	Lancaster County. Larceny. Reversed.

No. 31.

John Charles, vs. State of Nebraska.	Douglas County. Burglary. Judgment affirmed.

No. 32.

State of Nebraska, vs. Commercial State Bank.	York County. Application of Attorney General for Receiver. Receiver appointed. Pending.

No. 33.

Bush Elliott, vs. State of Nebraska.	Cheyenne County. Larceny. Under advisement.

No. 34. (3711).

James L. Gandy, vs. State of Nebraska.	Richardson County. Perjury. Reversed.

No. 35.

State of Nebraska, vs. James W. Maher.	Perkins County. Application of Attorney General for Receiver. Receiver appointed and Bank wound up.

No. 36.

Lish Nelson, vs. State of Nebraska.	Adams County. Murder in second degree. Under advisement.

No. 37.

Orvin Skinner, vs. State of Nebraska.	Dundy County. Rape. Reversed.

No. 38.

Marshall A. Thurman, vs. State of Nebraska.	Johnson County. Shooting with intent to kill. Reversed.

No. 39.

V. W. Hagler et al., vs. State of Nebraska.	Saline County. Action on Treasurer's bond. Under advisement.

No. 40.

State, ex rel, Attorney General, vs. Republican Valley and Wyoming Ry. Co.	Lancaster County. Mandamus to compel company to build its road. Pending.

No. 41.

State, ex rel, Geo. W. Post, vs. Thomas H. Benton, Auditor.	York County. To determine the amount of fees due Bank Examiner. Under advisement.

No. 42.

Charles White, vs. State of Nebraska.	Douglas County. Burglary. Reversed.

No. 43.

State, ex rel, Attorney General, vs. Farmers Bank of Hampton	Hamilton County. Application of Attorney General for Receiver. Settlement made in full.

No. 44.

State, ex rel, Attorney General, vs. Chicago, Milwaukee & St. Paul Railroad Co.	Knox County. Quo Warranto. To forfeit franchise. Judgment of ouster.

No. 45.

Albert E. Haunstien, vs. State of Nebraska.	Custer County. Murder in the first degree. Under advisement.

No. 46.

James W. Leahey, vs. State of Nebraska.	Fillmore County. Rape. Under advisement.

No. 47.

Albert E. McCoy, vs. State of Nebraska.	Cedar County. Larceny. Under advisement.

No. 48.

State of Nebraska, ex rel, Attorney General. vs. Nebraska Distilling Co. et al.	Otoe County. Quo Warranto. To forfeit franchise of Trust. Ouster.

No. 49.

Bermuda Beers, vs. Board of Educational Lands and Funds.	Lancaster County. Injunction to restrain collection of rental on school land. Under advisement.

No. 50.

State, ex rel, School District of Omaha, vs. Thos. H. Benton, Auditor.	Douglas County. Mandamus. Writ denied.

No. 51.

Thomas. P. Owens, vs. State of Nebraska.	Hamilton County. Forgery. Pending.

No. 52.

William Wendt, vs. State of Nebraska.	Platte County. Giving away intoxicating liquors. Under advisement.

No. 53.

State, ex rel, State Board of Transportation, vs. Missouri Pacific Railway Company.	Cass County. Mandamus to compel road to comply with order of the board and build an elevator. Writ allowed, and taken to Supreme Court, United States, where it is now pending.

No. 54.

State, ex rel, Jenkins, vs. John M. Thayer et al.	Madison County. Mandamus to compel State Board of Equalization to increase valuation of railroad property. Writ denied.

No. 55.

State, ex rel, Lancaster County, vs. The Chicago, Burlington & Quincy Railway Company.	Lancaster County. Mandamus to compel Railroad Company to build approaches to bridge over Salt Creek. Settled with county and dismissed.

No. 56.

Ex parte, Louis Stricklett.	Burt County. Habeas Corpus. Writ denied. Under advisement.

57.

George Burton, vs. State of Nebraska.	Harlan County. On re-taxation of costs. Under advisement.

No. 58.

Frank W. Clark, vs. State of Nebraska.	York County. Burglary. Under advisement.

59.

Sherman Davis, vs. State of Nebraska.	Richardson County. Murder in second degree. Under advisement.

No. 60.

John Flanagan, vs. State of Nebraska.	Dakota County. Robbery. Under advisement.

61.

Christian Furst, vs. State of Nebraska.	Dodge County. Murder in first degree. Under advisement.

No. 62.

Charles Shepard, vs. State of Nebraska.	Dodge County. Murder in first degree. Under advisement.

No. 63.

Albert Gretzinger, vs. State of Nebraska.	Richardson County. Horse stealing. Under advisement.

No. 64.

Phineas Langford et al., vs. State of Nebraska.	Dakota County. Robbery. Under advisement.

No. 65.

William Leach, vs. State of Nebraska.	Dakota County. Larceny. Under advisement.

No. 66.

James E. North, vs. County of Platt.	Platte County. Injunction to enjoin taxes levied to pay bonds held by the state school fund. Injunction dissolved and action dismissed.

No. 67.

Owen R. Owens, vs. State of Nebraska.	Gage County. Incest. Under advisement.

No. 68.

Thomas M. Roberts, vs. State of Nebraska.	Burt County. Assault and battery. Under advisement.

No. 69.

Al. Roberts, vs. State of Nebraska.	Lancaster County. Assault with intent to commit rape. Pending.

No. 70.

John Arnold, vs. State of Nebraska.	Douglas County. On exceptions of County Attorney. Under advisement.

No. 71.

William Miller, vs. State of Nebraska.	Gage County. Murder in first degree. Reversed.

No. 72.

William Rutherford. vs. State of Nebraska.	Hall County. Arson. Under advisement.

No. 73.

Moses Smith et al., vs. State of Nebraska.	Lancaster County. Selling liquor without license. Under advisement.

No. 74.

Louis M. Stricklett, vs. State of Nebraska.	Burt County. Assault with intent to inflict great bodily injury. Under advisement.

No. 75.

Henry Thornhill, vs. State of Nebraska.	Hamilton County. Murder in first degree. Pending.

No. 76,

George Brown, vs. State of Nebraska.	Douglas County. Larceny. Pending.

No. 77.

George S. Arnold, vs. State of Nebraska.	Scott's Bluff County. Murder in first degree. Pending.

No. 78.

State of Nebraska, vs. McCarn Brothers, bankers.	Knox County. Application of Attorney General for Receiver. Pending.

No. 79.

John Taylor, vs. State of Nebraska.	Lancaster County. Murder. Pending.

No. 80

Milo Hodgkins et al., vs. State of Nebraska.	Lancaster County. Pending.

No. 81.

Ed Neal, vs. State of Nebraska.	Douglas County. Murder in first degree. Pending.

No. 82.

Thomas Bailey, vs. State of Nebraska.	Seward County. Adultery. Pending.

No. 83.

In re Constitutionality, Senate file No. 31.	Lancaster County. Constitutionality of prohibition. Amendment sustained.

No. 84

John T. Bressler, vs. Wayne County.	Re-hearing of case decided in 25th Nebraska Rep., p. 468. Under advisement.

No. 85.

State, ex rel., Edward Bates, vs. State Board of Canvassers.	Lancaster Co. Mandamus to compel State Board to canvass votes of District Judge. Under advisement.

No. 86

Barney Smith, vs. The State.	Douglas County. Pending.

No. 87.

In re Louis Berghoff.	Douglas County. Habeas Corpus. Writ Denied.

No. 88.

Marshall Thurman, vs. State of Nebraska.	Johnson County. Shooting with intent to kill. Under advisement.

No. 89.

Emma Jameson, vs. State of Nebraska.	Douglas County. Larceny. Affirmed.

No. 90.

Louis Berghoff, vs. State of Nebraska.	Douglas County. Obtaining goods under false pretenses. Reversed for errors of law occuring at the trial.

No. 91.

David Van Etten, vs. State of Nebraska.	Douglas County. Embezzlement. Reversed.

No. 92.

Clinton M. Brown, vs. A. J. McPeak, Treasurer Furnas County.	Furnas County. Mandamus to compel defendant to accept a tender for payment of rental on school lands. Under advisement.

No. 93.

State, ex rel., City of Kearney, vs. H. A. Babcock, Auditor.	Buffalo County. Mandamus to register city bonds to build a city hall. Writ allowed.

No. 94.

Valley County, vs. A. D. Robinson,	Valley County. Action on bond of defaulting County Treasurer. Under advisement.

EXHIBIT "B."

ATTORNEY GENERAL'S OFFICE,
LINCOLN, NEBRASKA, January 21, 1890.

Hon. W. H. H. Miller, Attorney General United States, Washington, D. C.:

MY DEAR SIR:—I desire to call your attention, in an open letter, to a subject which is of vital importance to the people of the United States, and more particularly to the West, especially Nebraska.

It is in regard to the gross violations of law by the Union Pacific Railway Company. You will remember that Section 5256 of the act of 1873, United States Statute, page 1,017, forbids the Union Pacific Railroad from making any mortgage on, or giving pledges of its property or future earnings without the consent of Congress.

The law is plain and readily understood by any one who will read, and, notwithstanding this positive law, the Union Pacific Railway Company has grossly violated its plainest provisions—For, without the consent of Congress, it issued in

1879 collateral trust bonds amounting to.....	$ 4,852,000.00
In 1883 another like issue was made of.....	4,500,000.00
On January 12, 1882, it issued and guaranteed Oregon Short Line bonds.....	14,800,000.00
This guarantee costs the Union Pacific road annually.....	300,000.00
In 1886 it issued and guaranteed the St. Joe & Grand Island bonds for.....	7,000,000.00
This guarantee cost the Union Pacific road in 1888.	140,000.00
In 1888 it issued and guaranteed the Union Pacific, Lincoln & Colorado Railroad bonds.....	4,400,000.00

This guarantee cost the Union Pacific road that year.....	11,000.00
It also leased and guaranteed dividends on the stock of the Oregon Railway & Navigation Company; this guarantee cost the Union Pacific Railway in 1888.....	349,000,00
And in 1889.....	700,000.00
And now propose to issue and guarantee the Denver & South Park Railroad bonds to the amount of	2,200,000.00
The stock of this last mentioned road was purchased for.....	4,000,000.00
And the road has never earned its operating expenses; and in 1888 its earnings fell short of the operating expenses,.....	172,000.00

Under the act of 1878, the assets and net earnings of the Union Pacific Railway have been made subject to the lien of the government, and the president of the road, Charles Francis Adams, in his testimony before the Union Pacific Railway Commission, tries to excuse the violations of law in wasting the assets and net earnings by saying that he acted under advice of counsel, that is, under the advice of counsel he employs he has used the money that should have been applied to the payment of the government debt in the construction and purchase of about 2,500 miles of branch lines that fail to earn the annual interest on their bonds by $1,500,000, and this deficiency is paid by the Union Pacific Railroad from its net earnings. When we come to consider these branch line transactions and the participation some of the directors have taken therein, it looks rather suspicious, to say the least.

Then, again, I find on examination that $9,000,000.00 have been paid on land grant bonds from the earnings of the Union Pacific Railroad instead of from the proceeds of the land grant sales.

These land sales, as far as the Nebraska lands are concerned, were sold to a favored few at a nominal price, when by a little

judicious advertisement the lands would have brought their value. The remainder of the lands are being used in paying off before maturity the third mortgage or sinking fund bonds, when the act of 1878 covers the assets of the roads, and makes them subject to the government lien (Section 9, Chapter 96, act of May 7, 1878), and should be preserved for that purpose. Some $2,500,000.00 in bonds inferior to the lien of the government have been paid off in 1889.

It is true that the United States Supreme Court has said that the government had no right to the income from lands, but the earnings of the road have been used to pay the land grant bonds.

Again, the directors have also used the assets and earnings of the Union Pacific to partly construct a rival road, consisting of the Oregon Railway & Navigation Company. The Oregon Short Line Railroad and the Denver & Ft. Worth Railroad, and I am strongly inclined to the belief that the traffic which properly belongs to the Union Pacific Railway through Nebraska is being diverted over the rival road. If such should be the case, the object is plainly visible; it is that the government lien on the Union Pacific will be rendered valueless should the government be compelled to take foreclosure proceedings.

The fact is apparent that the directors of the Union Pacific cling to the belief that the branch lines have been created out of the net earnings of the road that should have been used as dividends and paid to the stockholders, claiming their dividends having been diverted into branch roads, they by right should have such roads as their own.

These few facts are here set forth, and, should you conclude to act promptly in the matter, a large amount of valuable assets belonging to the government lien would be preserved that are now being diverted.

Then, again, Nebraska is groaning under extortionate freight charges. Our granaries are overflowing with a bountiful harvest, but our farmers are unable to send the same to market

on account of the high rates of transportation. The Union Pacific, being a creature of Congress, refuses to obey the orders of the transportation board, and claims federal protection, which is cheerfully given.

Under this state of facts, their local rates are unjust and unreasonable, but are protected by our federal courts. The unsubsidized roads make their rates a trifle lower, and all turn to the rates charged by the Union Pacific Railroad as a precedent.

It is needless to call your attention to the political revolution in Iowa. The farmers of that state have been goaded to madness by exorbitant freight charges, but they arose in their might and rendered asunder the chains and party ties, and to-day that state which but a few years ago yielded up 50,000 republican majority is now under a democratic administration.

If the rates in Iowa which caused this mighty revolution were oppressive, what can you expect from Nebraska, that pays from 100 to 350 per cent. greater rates than is charged in Iowa for similar services ?

These are facts that we must meet as republicans, and should Congress pass the extension bill it will entail upon the people of this state the payment of the enormous debt that will last for generations to come, and I solemnly protest in the name of an outraged people against the extension of the government lien until these violators of the law have been punished under the acts.

What reason can be advanced, or what right have we to believe that these same people, who have violated the old law, will comply with the new law, when they have wilfully set at defiance every provision of the act of 1873 and 1878, will they not act in the same manner under the new law if it should pass, and then say they acted under the advice of counsel?

It seems to me that the advice of such counsel should be approved by the Attorney General of the United States, or some higher power than themselves, when the security of the government lien is at issue. The new act, if passed, will confer a large

subsidy on the Union Pacific road, and robs the government of a large amount of property due it, as well as all security for the final re-payment of the principal.

All this will certainly be secured to the government, should an investigation and prosecution precede the passage of the act.

It will give confidence to the western people that the present administration will do its duty without fear or favor. It will inform the people of the East that no more tribute in the way of freight charges will be levied on those who desire to locate in Nebraska.

Yours very truly,

WILLIAM LEESE,

Attorney General of Nebraska.