

REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF IDAHO

1923-24

A. H. CONNER, Attorney General

HERBERT WING, JAMES L. BOONE, SAM E. BLAINE, Assistants

Lillian C. Fraser and Margery Scholes, Stenographers

TERRITORIAL ATTORNEYS GENERAL

*D. B. P. Pride	1885-1886
*Richard Z. Johnson	1887-1890

STATE ATTORNEYS GENERAL

*George H. Roberts	1891-1892
*George M. Parsons	1893-1896
*Robert E. McFarland	1897-1898
Samuel H. Hays	1899-1900
Frank Martin	1901-1902
John A. Bagley	1903-1904
*J. J. Guheen	1905-1908
D. C. McDougall	1909-1912
Joseph H. Peterson	1913-1916
T. A. Walters	1917-1918
Roy L. Black	1919-1922
A. H. Conner	1923-

*Deceased.

JUSTICES OF THE SUPREME COURT, 1923-1924

Alfred Budge	Pocatello
Robert N. Dunn	Coeur d'Alene
Charles P. McCarthy	Boise
William A. Lee	Blackfoot
William E. Lee	Moscow

Clerk of the Supreme Court—I. W. Hart

JUSTICES OF THE SUPREME COURT, 1925-1926

Robert N. Dunn	Coeur d'Alene
William A. Lee	Blackfoot
William E. Lee	Moscow
Alfred Budge	Pocatello
Raymond L. Givens	Boise

Clerk of the Supreme Court—I. W. Hart

UNITED STATES DISTRICT JUDGE

Frank S. Dietrich	Boise
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IDAHO DISTRICT JUDGES
1923-1926

District		Address
First	A. H. Featherstone	Wallace
Second	E. C. Steele	Moscow
Third	xM. I. Church	Boise
	Raymond L. Givens.....	Boise
	Dana E. Brinck.....	Boise
Fourth	Henry F. Ensign.....	Halley
Fifth	O. R. Baum.....	Pocatello
	Robert M. Terrell.....	Pocatello
Sixth	Ralph W. Adair.....	Blackfoot
Seventh	Ed. L. Bryan.....	Caldwell
	B. S. Varian.....	Weiser
Eighth	W. F. McNaughton	Coeur d'Alene
	zJohn M. Flynn.....	Coeur d'Alene
	Herman H. Taylor.....	Sandpoint
	George W. Edgington.....	Idaho Falls
Ninth	zWallace N. Scales.....	Grangeville
Tenth	Miles S. Johnson.....	Lewiston
	T. Bailey Lee.....	Burley
Eleventh	William A. Babcock.....	Twin Falls

xResigned

zDeceased

PROSECUTING ATTORNEYS FOR THE VARIOUS COUNTIES
OF IDAHO

1923-1924

1925-1926

County	Name	Name	Residence
Ada	Laurel E. Elam	Laurel E. Elam	Boise
Adams	W. R. McClure	C. H. Swanstrom	Council
Bannock	R. J. Hogan	H. J. Swanson	Pocatello
Bear Lake	D. C. Kunz	Geraint Humphreys	Paris
Benewah	Robt. E. McFarland	Wm. D. Keeton	St. Maries
Bingham	Hamilton Wright	Hamilton Wright	Blackfoot
Blaine	Wm. A. Brodhead	Proctor K. Perkins	Hailey
Boise	John H. Myer	John H. Myer	Idaho City
Bonner	Allen P. Asher	Wm. J. Costello	Sandpoint
Bonneville	Lewis A. Lee	A. D. Erickson	Idaho Falls
Boundary	S. E. Henry	A. T. Aronson	Bonnors Ferry
Butte	Jo. G. Martin	W. J. Lamme	Arco
Camas	R. M. Angel	R. M. Angel	Fairfield
Canyon	Logan Hyslop	Logan Hyslop	Caldwell
Caribou	A. A. Mattson	D. K. McLean	Soda Springs
Cassia	C. W. Thomas	John I. Burgess	Burley
Clark	Grant W. Soule	Wm. I. Rice	Dubois
Clearwater	Frank F. Kimble	Arthur S. Guerin	Orofino
Custer	xM. A. Brown	Merle L. Drake	Challis
	W. W. Adamson		
Elmore	R. W. Beckwith	R. W. Beckwith	Mtn. Home
Franklin	John A. Carver	John A. Carver	Preston
Fremont	N. D. Jackson	N. D. Jackson	St. Anthony
Gem	J. P. Reed	J. P. Reed	Emmett
Gooding	M. F. Ryan	M. F. Ryan	Gooding
Idaho	Frank E. Fogg	Frank E. Fogg	Grangeville
Jefferson	F. A. McCall	F. A. McCall	Rigby
Jerome	Henry M. Hall	M. L. Lewis	Jerome
Kootenai	Roger G. Wearne	E. H. Berg	Coeur d'Alene
Latah	Frank L. Moore	W. E. Stillinger	Moscow
Lemhi	Francis R. Hall, Jr.	Francis R. Hall, Jr.	Salmon City
Lewis	G. C. Pennell	G. C. Pennell	Nez Perce
Lincoln	Paul S. Haddock	Harlan D. Heist	Shoshone
Madison	C. J. Taylor	C. L. Hillman	Rexburg
Milidoka	zCecil M. Adams	H. V. Creason	Rupert
	H. V. Creason		
Nez Perce	John L. Phillips	J. D. Zurcher	Lewiston
Oneida	T. E. Ray	T. E. Ray	Malad
Owyhee	B. R. Riordan	B. R. Riordan	Silver City
Payette	R. E. Haynes	Calvin Keller	Payette
Power	R. S. Anderson	R. S. Anderson	Americ'n Falls
Shoshone	S. S. Gundlach	Chas. E. Horning	Wallace
Teton	B. W. Driggs	R. S. Wilkie	Driggs
Twin Falls	J. W. Taylor	J. W. Taylor	Twin Falls
Valley	F. M. Kirby	Rex Kimmel	Cascade
Washington	zFred C. Erb	Kate Feltham	Weiser
	D. L. Carter		

xDeceased

zResigned

REPORT OF ATTORNEY GENERAL

Honorable C. C. Moore,
Governor of Idaho,
Boise, Idaho.

Sir:

I have the honor to make this report concerning the affairs of this department up to December 1, 1924. Accompanying this report is a transcript of the Attorney General's docket showing the status of cases handled during the past biennium.

DUTIES.

The principal duties of the Attorney General are defined in section 178, Laws of 1923. In addition to the duties there detailed, the Attorney General acts as attorney for various other departments, such as the Public Utilities Commission, the Industrial Accident Board, State Insurance fund, etc. The Attorney General is a member of the State Board of Prison Commissioners, which has the management and control of the Idaho State Penitentiary, and acts as a parole board; the State Board of Pardons, which deals with pardons and commutations of prisoners in the penitentiary and jails of the state; the State Board of Land Commissioners, which has jurisdiction of all state lands; the State Board of Equalization, charged with the duty of equalizing assessments made by the county officers, and with assessing certain public utilities; the State Board of Canvassers, which canvasses the returns of all elections of state and district officers; the State Board of Examiners, whose principal duty is to pass upon all claims against the state, except salaries and compensation of officers fixed by law; the State Library commission, which is charged with the management of the Traveling Library; the Board of the Teachers' Retirement Fund, which manages that fund; and the Reclamation District Bond Commission, whose duty it is to pass upon bonds issued by ir-

rigation districts and authorize their certification by the State Treasurer in proper cases.

PERSONNEL.

The work of this department is performed by six persons—the Attorney General, three assistants, and two stenographers. The time of the Attorney General is largely spent in attendance upon the various boards of which he is a member, and in directing the activities of his assistants. In general, the time of one assistant is taken up in handling criminal cases in the Supreme Court; another assistant devotes himself almost exclusively to the examination of abstracts of title, transcripts of bond proceedings, and to handling foreclosure cases for the Department of Public Investments; the third assistant has charge of the civil cases in which the state is interested. All three assistants prepare briefs upon which are based the numerous opinions the Attorney General is called upon to give. The stenographers employed must necessarily be highly competent and skilled in law and stenographic work.

Due to the large amount of work performed by this office for the Department of Public Investments, that department has been furnishing one stenographer in addition to the two carried on the Attorney General's payroll. The cost of stationery, supplies and equipment used in this work, and the salary of this stenographer, has heretofore been paid out of the appropriation of the Department of Public Investments. This plan is peculiar to this one department. It is not a matter of extreme importance, but the appropriation for the salary of this stenographer, and the incidental expense, should be transferred from the budget of the Department of Public Investments to that of the Attorney General. The expenditures of this office will then reflect the entire cost of the legal work performed for all departments and institutions.

PUBLIC UTILITIES COMMISSION.

Prior to this biennium, there was a special assistant who handled cases pending before the Public Utilities Commis-

sion, and represented the commission in all proceedings brought in the various courts and before the Interstate Commerce Commission. The last legislature saw fit to discontinue the appropriation for this work. This office has, therefore, been required to discontinue representing consumers, shippers, and others, in cases pending before the Public Utilities Commission and the Interstate Commerce Commission, and has only been able to give the commission the same service it renders to other departments and institutions of the state in the way of opinions and of appearing in cases in the various courts. The former service cannot be resumed unless a sufficient appropriation is made for another assistant.

LEGAL OPINIONS.

During the past biennium this office has prepared and written over 2300 opinions to the various heads of departments and institutions in the state. Many of these, of course, relate to departmental matters and are not of general public interest. A digest of the more important of these opinions is included in the report which Sections 411 and 412, Compiled Statutes, require to be printed for distribution.

Since statehood, one of the burdens of the Attorney General's department has been the great number of requests for opinions on legal questions of every conceivable kind, coming from citizens, county officers, cities, schools, highway districts, and others. Prior to this administration, the Attorney General had yielded to the pressure of these requests, and a great amount of time was consumed in looking up the law and giving opinions to persons who had no legal claim upon this department for such service. The 1921 legislature attempted to amend Section 178, Compiled Statutes, referred to above, so as to prohibit the Attorney General from giving or rendering opinions to persons other than those for whom he is made the legal adviser by law. For some reason, this proposed amendment was vetoed by the then Governor. This amendment was not necessary, however, except to give the Attorney General a convenient reason for refusing to write these extraneous opinions. The

rapid growth of the state's law business and the curtailing of the force of this office by the last legislature made it necessary for the present Attorney General to discontinue the practice of thirty years, and to refuse to give opinions to persons not entitled to command the legal service of this office. There is no reason why the taxpayers of the state of Idaho should pay the salary of an attorney to do the legal work of private individuals or of local taxing districts. The Prosecuting Attorney is the legal adviser of the county and its officers. Other municipal units such as cities, school districts, highway districts, irrigation districts, drainage districts, etc., have authority under the law to employ attorneys.

An inquiry for an opinion which seems to be of general public interest and involves the administration of some department of state government is referred to the head of the proper department, and an opinion given thereon if the head of the department so desires. For instance, an inquiry involving the school laws is referred to the State Superintendent of Public Instruction; questions relating to water and water rights to the Commissioner of Reclamation; banks and banking to the Commissioner of Finance; etc. If the heads of these departments are interested in the question asked, they usually request this office for an opinion and it is given to that department.

County officers have been requested to go to their own legal adviser, the Prosecuting Attorney, but upon his request opinions on county matters have been freely given.

This change of policy has caused a great deal of friction, but it has been necessary to adhere strictly to it, regardless of criticism, so that the time of the Attorney General and his assistants might be devoted to the clients the law gives him. The effect of the policy has been very noticeable. At the beginning of the biennium this office received an average of about six such requests per day. At the present time they scarcely average one per day.

This policy will be continued during the balance of this administration in the hope that it will become so well estab-

lished that future Attorneys General may be relieved of the burden of which all past officials have bitterly complained.

RECLAMATION DISTRICT BOND COMMISSION

The Attorney General is a member of the Reclamation District Bond Commission. After watching the operation of the Reclamation District Bond Commission law for the past two years, I am thoroughly convinced that this law should be repealed in its entirety. Briefly, the law requires that upon proper showing, the bonds of irrigation districts may be certified by the Treasurer of the state, when authorized to do so by the Reclamation District Bond Commission. While this certification does not in any way involve the state in any financial responsibility, the state becomes morally the guarantor of the validity and the safety of the bonds it certifies. This is not a proper function of government, any more than it would be to certify to the validity and safety of bonds of cities, school districts, grocery stores or railroads.

INHERITANCE TAXES.

The inheritance tax law of the State of Idaho is deficient in many respects and should be amended. This tax when collected goes to the state. The law makes it the duty of county officers to enforce the collection of the tax. County officers, as a rule, have no interest in the enforcement of this law since the county receives no direct benefit from it. The result is that the state is losing many thousands of dollars of inheritance taxes which it should get. This is a case where it would be economy to spend money. I have not requested it in my budget, but if the legislature should see fit to appropriate sufficient money for the salary and expenses of another assistant attorney general, and give the Bureau of Public Accounts sufficient help so that an auditor could be assigned to the examination of estates in the various counties, the state would be repaid many fold for the expense incurred. As an illustration of this, I need only point to the fact that in Ada county, where we are able to attend to inheritance tax matters without leaving the capitol, and without incurring

any particular expense, we have been able to insure the collection for the state of several thousands of dollars, which would otherwise have been lost. I recommend this to you for your serious consideration, as it is one tax the payment of which is being too generally avoided.

ESCHEATED ESTATES

The comments I have made regarding the inheritance tax, apply with equal force to the law relating to escheated estates.

CONCLUSION.

I would invite your attention to some of the facts disclosed by the transcript of the Attorney General's docket submitted herewith. This office has been required to appear in the Supreme Court of the United States, in the United States District Court, in the Supreme Court of the State of Idaho, in nearly all of the District Courts, in the Probate Courts of some of the counties, and in the Department of the Interior. The state has been successful in an exceptionally large proportion of these cases. All criminal cases have been disposed of and those criminal appeals listed as pending will be disposed of at the next session of the Supreme Court.

During the past biennium, this office has had the hearty and sympathetic co-operation of every department and institution in the state.

Respectfully Submitted,
A. H. CONNER,
Attorney General.

DIGEST OF OPINIONS RENDERED

(Only opinions of general interest are included)

BLUE SKY LAW: COMMON LAW TRUST.

1. Under the Blue Sky Law, the trustee of a common law trust, so formed that it is in fact a trust and not a joint-stock association, must secure an agent's permit in order to sell stock.

CORPORATIONS: FEES, EXEMPTION.

2. A corporation which has the power under its articles of incorporation to operate for pecuniary profit is required to furnish the annual statement provided for in Section 4780, C. S., and pay the annual license tax prescribed in Section 4782, C. S., even though it may not be operating at a profit or have no present intention of so operating.

3. Upon failing to comply with the provisions of Section 4781, C. S., under which exemption may be claimed, a company entitled to such exemption takes the same status as any other company required to pay an annual license fee. In case of the forfeiture of its charter it can be reinstated under Section 4787, C. S., in the same manner as any other corporation.

CORPORATIONS: FEES, FILING.

4. Under Sections 4780 and 138, C. S., the Secretary of State is required to charge and collect \$2.00 for filing the annual statements of corporations.

COUNTIES: APPEALS FROM BOARD.

5. Under Section 3509, C. S., an appeal from an order of the Board of County Commissioners does not operate as a stay of proceedings unless the order appealed from obligates the county to pay directly or indirectly the sum of \$300 or more.

COUNTIES: ASSESSOR, EXPENSE OF.

6. A Board of County Commissioners cannot lawfully reimburse an assessor for the use of his private automobile at a set rate per mile in cases where he uses such car for county business.

COUNTIES: COMMISSIONERS, EXPENSES OF.

7. Under the provisions of Sections 3697 and 3698, a County Commissioner who does not reside at the county seat can only recover his traveling expenses while engaged in the performance of his duties at the county seat. While engaged in the performance of his duties, except at his residence or the county seat, he can recover his traveling and hotel expenses.

COUNTIES: FEDERAL PRISONERS, CARE OF.

8. The duty to take care of federal prisoners is one laid upon the sheriff by Section 9419, C. S. This is a duty which attaches to the office as distinguished from the individual, and moneys received by the sheriff for the performance of this duty would be received by him by virtue of his office.

Section 7, Article 18 of the Constitution, provides that all fees which may come into the hands of the sheriff "from whatever source"

over and above his expenses "shall be turned into the county treasury at the end of each quarter." Under Section 8 of the same article the neglect or refusal of the sheriff to account for and pay such fees into the county treasury within the time fixed is made a felony.

The case of *Finley v. Territory* (Okla.) 73 Pac. 273, discusses at considerable length the principal questions involved here, but I think the whole matter may be determined upon the authority of the case of *Rhea v. Board*, 12 Ida. 455.

I am of the opinion that the sheriff is required by law to account for fees or compensation received from the federal government for the care of federal prisoners.

COUNTIES: FEES, JURORS AND WITNESSES.

9. It is the duty of the County Auditor to draw warrants for witnesses' fees in criminal cases in the district court upon the certificate of the clerk of the district court, and for attorney's fees for the defense of an indigent defendant in a criminal case on the certificate of the judge of the court, without said claims being submitted to the board of county commissioners, such claims having already been audited by the clerk or the judge of the court. Claims for fees for jurors and witnesses in criminal cases in the district court, and jurors and witnesses in criminal cases in the probate and justice courts and jurors and witnesses at coroners' inquests must be audited by the board of county commissioners.

COUNTIES. NEGLIGENCE OF EMPLOYEE.

10. A county in managing a ferry is acting in its sovereign, not its proprietary capacity, and is therefore not liable for the negligent acts of the ferryman.

COUNTIES: OFFICER, CLAIMS OF.

11. A county officer, who is delinquent in his taxes, cannot compel the county commissioners to allow his claims and order warrants issued in his favor while he is so delinquent.

12. A claim for the regular, fixed salary of a county officer has to be presented to the Board of County Commissioners for the purpose of being audited, and allowed or disallowed, before the auditor of the county is authorized to issue a warrant therefor.

COUNTIES: PROPERTY, SALE OF.

13. Section 3423, Compiled Statutes, covers the sale of property belonging to the county not necessary for its use, and the provisions of this section as to paying the proceeds into the county treasury "for use of the county," must be considered in connection with the fact that the county takes title in trust for the various taxing districts represented. So far as the sale of property is concerned, however, Section 3423 should be followed.

14. When a county acquires title to property by the tax route, it has a right to dispose of it the same as any other property.

COUNTIES: PROSECUTING ATTORNEY'S DUTIES.

15. The Prosecuting Attorney when acting on behalf of the public administrator in administering estates under her jurisdiction must do so without charge.

COUNTIES: SALARY, INTEREST ON.

16. In the absence of a statute expressly permitting the same the county cannot pay interest on suspended salary of an officer who has been declared by the supreme court to be legally entitled to the office for which he or she has been elected.

COUNTIES: TAXES: COLLECTION, FEE FOR.

17. A county may retain 1% of all taxes collected on behalf of school districts as compensation for the services of county officers in collecting, holding and disbursing such sums.

COUNTIES: WARRANTS.

18. There is no statutory authority which permits county commissioners to authorize the issuance of warrants in anticipation of funds which are hoped to be secured by the sale of county bonds.

COUNTIES: WARRANTS, PAYMENT OF.

19. The practice of jumping over certain county warrants and not paying them in rotation is prohibited by Sections 3503, 3569 and 3570, C. S.

DELINQUENT CHILDREN: JURISDICTION OF.

20. When a child under the age of eighteen is arrested for an offense, except a felony, such child must be taken directly before the Probate Court.

DELINQUENT CHILDREN: TRANSPORTATION.

21. Under the provisions of Section 1020, the expense of transporting delinquent children to the Industrial Training school is to be paid by the county from which the child is committed. It is true that Section 1147 provides that minors of certain ages convicted of a felony may be sent to the Industrial Training school and the expense shall be paid as in the case of convicts conveyed to the penitentiary.—that is, by the state,—but this provision only applies to that particular class of delinquent children.

DISCRIMINATION: PRICE FIXING.

22. A buyer of butter fat has no right, under the Idaho anti-discriminating act, to pay a farm association more than is paid producers that are not organized.

ELECTIONS: BALLOTS.

23. It is discretionary with the County Auditor as to which party ticket shall be printed in the first column on the official ballot.

24. Section 4, Article VI of the Idaho Constitution authorizes the legislature to prescribe the condition for the right of suffrage involved in the requirement that no name shall appear on the ballot more than once. (Sec. 573, C. S.). I am of the opinion that this requirement is constitutional.

ELECTIONS: DELEGATES TO CONVENTIONS.

25. Under Section 518 of the Compiled Statutes each precinct is entitled to at least one delegate, and under Section 525 the qualifications of delegates to the convention are to be passed upon by the convention itself. If the County Central Committee of a political party should presume to select delegates to the county convention to represent precincts where no primary was held, and such county convention should decide that such delegates were entitled to their seats, I

doubt whether the proceedings of such convention could be successfully attacked.

ELECTIONS: EXPENSE ACCOUNT OF CANDIDATE.

26. If a party whose name is written in on the ballot receives 20% of the votes cast for the office it will be necessary for him to file an expense account. There is no provision under which an auditor could refuse to print his name on the ballot in case he refuses to file an itemized expense account.

ELECTIONS: PRIMARY: DUTY OF COUNTY CANVASSERS.

27. The duties of the County Commissioners are merely as canvassers. It is not their duty or their right to pass on the legality of a primary election. The ballots are not submitted to the County Commissioners, and all they have before them are the returns. They cannot go back of these returns, and I am of the opinion it is their duty to certify the names of the persons nominated according to such returns as shown by their canvass. If a primary is illegally held the remedy must be taken in some other way than by refusal to canvass the returns and certify the result.

ELECTIONS: PRIMARY: FEES.

28. There is no provision in the primary law which requires the payment of a fee by a candidate whose name has been written in.

ELECTIONS: PRIMARY: NOMINATIONS.

29. The fact that a person filed as a Progressive would not prevent him from becoming the nominee on the Democratic ticket, as there is nothing in the primary law which would prevent the Democratic party selecting a member of some other party as their nominee if they so desire.

30. The person receiving the second highest number of votes in a primary would not be nominated even though the person receiving the highest number of votes were ineligible as a candidate.

31. Under Section 538, C. S., the person who receives the highest number of votes becomes the nominee. The fact that he may have withdrawn his nomination paper would not alter the fact that he was nominated. A man can be nominated even though his name is not printed on the ballot.

32. The County Auditor in printing the ballots acts merely as a ministerial officer. He has no right to determine the judicial question of the legality of a primary election. The place to try that out is in the Courts.

33. To have his name printed on the primary ballot of a particular party, the candidate must belong to that party, but if the voters of one political party desire to nominate a person affiliated with a different political party, they may do so by writing in his name.

34. Under Section 538, C. S., the person of each party receiving the highest number of votes is nominated, and unless such person shall decline such nomination, as he may do by complying with the provisions of Section 553, C. S., he is the nominee of that party, and his name must be placed on the official ballot, unless he is otherwise disqualified; subject, of course, to the prohibition contained in Section 573, C. S., that no name shall appear on the ballot more than once.

ELECTIONS: PRIMARY: QUALIFICATIONS OF VOTER.

35. Anyone may challenge a person offering to vote at a primary election on ground that he is not a member of the party whose ticket he wishes to vote. Oath may be administered and testimony taken. It is up to the judges to determine his qualifications.

FISH AND GAME: BEAVER HIDES.

36. The mere possession within the State of Idaho of a beaver hide, unless held under the exception provided in Sec. 2790, C. S., as amended, constitutes a misdemeanor and is punishable accordingly, and it is immaterial whether the hide was taken lawfully in another state.

FISH AND GAME: DAMS.

37. Section 2741, C. S., uses the word "dam" and says nothing about its size. The purpose of the statute is to prevent fishing within a certain distance of any artificial obstruction which would prevent the free passage of fish and thereby cause a congestion at the obstruction. The courts construing this statute might read this purpose into it, but the statute is plain and I am inclined to think that the courts would hold that it would apply to any artificial obstruction, no matter how little the obstruction would interfere with the flow of the stream.

FISH AND GAME: GAME FARM.

38. The whole purpose of the fish and game law is to protect the game of the state and to aid in its propagation, cultivation and distribution. The operation of a game farm by private persons for the sole purpose of the propagation, cultivation and distribution of game birds, under the supervision of the State Game Warden, would not contravene any of the provisions of the law relating to fish and game.

FISH AND GAME: LICENSES, ALIENS.

39. For the purposes of Chapter 126, C. S., which is the fish and game law of the state, the only aliens who are entitled to the class one license are those aliens who have been bona fide residents of the state for six months and who have declared their intention to become citizens (Sec. 2691, C. S.). All other aliens must be classed as non-residents of the state for the purpose of the fish and game law.

FISH AND GAME: PREDATORY ANIMALS.

40. A magpie is not a predatory animal. Section 2684, C. S., defines predatory animals, and magpies are not included therein.

GASOLINE TAX: LEVY.

41. The gasoline tax confines the levying of the tax to motor fuels sold.

HIGHWAYS: ADVERTISING ON.

42. Under Section 345, C. S., the Department of Public Works has general supervision of all state highways and bridges within the state, including their construction, maintenance and improvement, and may prescribe rules and regulations affecting state highways and enforce compliance therewith. Under this general power the Department of Public Works has the right to forbid advertising signs on state highways.

43. The Department of Public Works has the power under existing laws to forbid advertising signs on fences along state highways, if the fences are on the right of way. If they are not on the right of way, they would be the same as any other private property, and the department would have no control over them.

44. The Department of Public Works has the power under existing laws to forbid advertising signs on telegraph, telephone or power poles on state highways. There are no franchises granted to use the highways for advertising purposes.

HIGHWAYS: GOOD ROADS DISTRICT.

45. A good roads district cannot use its sinking fund for construction work. There is no limitation upon the amount which a good roads district may levy.

HIGHWAYS: HIGHWAY DISTRICTS: SINKING FUND.

46. A highway district made a levy to provide a sinking fund to meet certain bonds, and has since discovered that it need not have made such levy until the expiration of ten years from the date of the bond issue. The commissioners of a highway district cannot use any of their sinking funds as co-operative funds on a federal aid project in the district. There is no authority for such a diversion.

HIGHWAYS: HIGHWAY DISTRICTS: TAXES.

47. A highway district may not levy a special tax over and above the limit fixed by law with which to pay indebtedness which has arisen by reason of the division of highway districts.

HIGHWAYS: FINES AND PENALTIES.

48. Fines collected for infraction of the traffic regulations on state highways, when the arresting officer is employed by the county or highway district, must be disposed of as provided in Sec. 1621, C. S. No provision is made for using these fines and penalties to pay salaries of the arresting officers.

HIGHWAYS: MAINTENANCE.

49. Such portions of a state highway as lie within an incorporated city or village must be kept in repair by the municipality.

HIGHWAYS: TRACTORS, ETC.

50. There appears to be no statutory power vested in anyone by which tractors, threshing machines, etc., can be excluded from roads, other than state highways.

INHERITANCE TAX: ACCRUES WHEN.

51. The transfer tax provided for in Chapter 148, C. S., applies at death, and accrues at that time. Any appreciation or depreciation thereafter in the value of the property is not to be considered in the calculation of the transfer tax.

INHERITANCE TAX: DEDUCTION FEDERAL TAXES.

52. State inheritance taxes must be paid upon the value of an estate without deducting the federal tax.

INHERITANCE TAX: EXPENSE OF ADMINISTRATION.

53. In computing inheritance taxes the debts, expenses of administration and like deductions are to be taken from the whole of the community property and not merely from the deceased's half.

INHERITANCE TAX: EXEMPTIONS, DEDUCTIONS OF.

54. In determining the amount of inheritance tax, any legal exemptions should be deducted from the first block or step, in other words, the first \$25,000.

INHERITANCE TAX: LEVY.

55. Where the deceased in his will has bequeathed a part of the estate to an entire stranger in blood, and a part of the estate to a grandniece, whose mother is living, the share of both the stranger in blood and the grandniece are subject to inheritance tax.

INHERITANCE TAX: WAIVER.

56. It is not necessary to procure a waiver from anyone as a prerequisite for the transfer of stocks and bonds belonging to an estate.

INSURANCE: GROUP.

57. It is my opinion that under the laws of this state group insurance can be written covering members of trade unions.

INSURANCE: RESIDENT AGENT.

58. An insurance company located outside the State of Idaho cannot lawfully write insurance on property in the State of Idaho without having the policies countersigned by a resident agent.

INSURANCE: STATE PROPERTY.

59. If property belongs to the State of Idaho, the insurance thereon must be secured and contracted for as provided in Chapter 236, Laws of 1921.

MOTOR VEHICLES: ASSESSOR, DUTIES OF.

60. The entire matter of the licensing and registration of motor vehicles is under the supervision and in charge of the Department of Law Enforcement. The assessor is merely the agent of the department in receiving applications, collecting fees and in keeping certain records. He does not function in this respect under any constitutional or statutory power as a taxing officer, but is limited to the particular duties imposed by the motor vehicle license law. In other words, he does not act by virtue of his office, but merely because the legislature happened to impose certain duties upon him in connection with this particular matter. The legislature could just as well have imposed those duties on the County Auditor, the Sheriff or the Probate Judge.

MOTOR VEHICLES: TRUCKS.

61. If a motor vehicle is designed by the manufacturer, or any other person, for the transportations of commodities, etc. it is a motor truck, whether it is used for that purpose or not. On the other hand, a motor vehicle not so designed, which is used for the transportation of commodities, etc., is a motor truck, where that use is the principal one and not merely incidental.

The statute defines a motor truck to be any motor vehicle "designed or used" for the transportation of commodities, etc. The word "or" indicates an alternative—that there are two classes of vehicles being considered, one which is "designed" for the transportation of commodities, and one which is "used" for that purpose. The legislative use of the word "or" is fatal to any other interpretation.

MOTOR VEHICLES: CLASSIFICATION.

62. Since it is the duty of the Department of Law Enforcement to determine the class into which a motor vehicle falls, and in order to do so it is necessary to determine the weight of the vehicle as operated upon the roads, the department has the implied power to make such reasonable rules and regulations as may be necessary to determine any question of fact which must be decided before the class of

the motor vehicle can be determined. I do not know enough about the various classes of cars to say whether or not the 5 per cent rule is a reasonable one or not. In any event, the owner is completely and fully protected by his right to have the license fee based upon the weight of the motor vehicle as operated, such weight to be established by an actual weighing.

63. The assessor makes a tentative classification of the vehicle and collects the fee for that class. The application and the duplicate receipt for the money is forwarded to the Department of Law Enforcement. If the application discloses that the assessor has made an error and that a different fee should have been collected, it is the duty of the assessor to make the correction at the direction of the Department of Law Enforcement. Should the assessor fail, refuse or neglect to collect the license fee prescribed by the Department of Law Enforcement, or to perform any of the other duties imposed upon him, he could be compelled by mandamus so to do.

MOTOR VEHICLES: DEALERS.

64. Under Section 1604, C. S., as amended by Chapter 75 of the laws of 1923, a dealer who receives four sets of license plates is entitled to exemption from the assessment for only four cars. The statute grants the exemption from the assessment for personal property taxes to the "vehicle to which said plates may be attached." It is obvious that a set of plates can be attached to but one vehicle at a time. The exemption from taxation only applies when the license plates are attached.

65. If a dealer maintains an established place of business within the state for the sale of motor vehicles, he must comply with the law relating to dealer's license, regardless of whether or not he has licenses for all the cars he has in stock.

MOTOR VEHICLES: LICENSES.

66. If the owner of an automobile has paid a license fee therefor, he is not a taxpayer, as the word is used in Section 19, Chapter 215, Laws of 1921. If, however, he has not paid a license fee and, in lieu thereof, the automobile is assessed as other personal property, the person against whom such taxes are assessed would be in the same position as any person assessed with other classes of personal property.

NEPOTISM: BROTHER-IN-LAW.

67. Section 416, C. S., prohibits an officer of a county from appointing or voting for the appointment of any person related to him, or to any of his associates, by affinity within the third degree to any position when the salary is to be paid out of public funds. As a brother-in-law is a relation by affinity within the third degree, such an appointment would be illegal and would subject not only the commissioner who is related to the appointee, but also either of the commissioners voting for him, to the penalty of Section 417, C. S.

PUBLIC UTILITIES: COMMISSION: FERRIES.

68. The Public Utilities Commission has no jurisdiction over ferries operating either within the state or between points in the state and points outside the state.

PUBLIC UTILITIES: COMMISSION: JUDICIAL QUESTIONS.

69. The Supreme Court of Idaho has specifically held that the Public Utilities Commission in exercising the powers and discharging

the duties conferred upon it, has the right to reach conclusions upon and make decisions of questions which can only be finally and conclusively adjudicated by the courts. If it is necessary for the commission to interpret any instrument and determine the rights of the parties thereto in order to reach a conclusion upon questions which are within the jurisdiction of the commission, the commission may do so.

PUBLIC UTILITIES: COMMISSION: ORDERS OF.

70. Under Section 2501, C. S., the Public Utilities Commission may at any time, upon notice, and after an opportunity to be heard is given, amend any order or decision which it may have made.

PUBLIC UTILITIES: MUNICIPAL CORPORATIONS.

71. Under the provisions of Section 2371, C. S., municipal corporations are excluded from the operation of the public utilities act.

PUBLIC UTILITIES: MUNICIPALITY: EXCESS WATER.

72. Under the provisions of Section 3971, C. S., a municipally-owned waterworks system may supply excess water "to persons (including municipal and private corporations) without the limits of the municipality, and to charge therefor; * * *".

PUBLIC UTILITIES: SCHOOL DISTRICTS.

73. School districts have no power to engage in a public utility business.

PURE FOOD AND DRUGS: POISONS.

74. All poisons furnished by the Extension Division of the University under the authority of Section 3491, Compiled Statutes, must bear "a label having plainly printed upon it the name of the contents, the word 'poison' and the names of at least two readily obtained antidotes," as provided in Section 2173, C. S.

SCHOOLS: BONDS: ISSUANCE.

75. The general rule is that public officers are not personally liable for acts performed by them in the line of their duty. If the bond is properly authorized and within the power of the school district to issue, it may be stated with certainty that the school trustees would incur no personal liability in issuing the same, and even if the trustees in signing such bonds exceeded their authority, if they acted in good faith, there are many courts which hold that they are not individually liable.

SCHOOLS: BONDS, REFUNDING OF.

76. No election is necessary for the refunding of school district bonds under the provisions of Section 61, Chapter 215, Laws of 1921.

77. If a common or joint common school district desires to refund an outstanding bond or bonds, the refunding bonds must be issued on the amortization plan. In any other class of district, the bonds must be refunded on the same plan as issued.

SCHOOLS: COUNTY SUPERINTENDENT, EXPENSES OF.

78. The meeting of County Superintendents called pursuant to Section 182, C. S., is for the purpose of school organization and school supervision. Such meeting is, therefore, for the use and benefit of the county, and while there may be no way to compel a County Superintendent to attend such meeting, if she does attend it, the expense thereby incurred is in the performance of her official duty and is a proper charge against the county.

SCHOOLS: ELECTIONS.

79. The County Superintendent has the power to canvass the returns of a school election and announce the result of such canvass. The County Superintendent, however, does not have power to determine wheather legal or illegal ballots have been cast

80. In a school election where names are written in on the ballot by the voter irrespective of whether a cross is placed after the name, the ballots should be counted for the person whose name is written in.

SCHOOLS: FUNDS, REVERSION OF.

81. There are general statutes which provide that under certain circumstances unencumbered balances in special funds revert to the general fund in the case of the state, and to the warrant redemption fund in the case of a county, but there is no similar provision which is applicable to school funds.

SCHOOLS: INSURANCE.

82. It is not legal for the trustees of school districts to insure school property with insurance companies in which the amount of premium is not a fixed and definite sum. (School District No. 8 v. Twin Falls etc. Co. 30 Ida. 400).

SCHOOLS: LEGAL SERVICES.

83. Under Subdivision 15, Section 46, Chapter 215 of the Laws of 1921, a charge for legal services incurred under proper authority is a proper charge against a school district.

84. It is not the duty of prosecuting attorneys to advise school districts.

SCHOOLS: QUARANTINE.

85. No one has the power to issue a permit to a child to attend school from a home in which there exists any of the diseases mentioned in Section 1666, C. S., until the quarantine has been removed.

SCHOOLS: RELIEF FUND.

86. An independent school district is not entitled to any part of the 17 per cent of the public school funds specifically provided for in Section 908, C. S.

SCHOOLS: RURAL ROUTES.

87. Section 48, Chapter 215, Laws of 1921, contains the general provision which requires school trustees to advertise for bids for all contracts which involve an expenditure exceeding \$500. There is a special provision controls, and in contracting for the transportation of found in Section 50, Chapter 215 of the Laws of 1921, as amended by Chapter 52 of the Laws of 1923. In this amendment the legislature specifically says that the trustees may receive contracts for the transportation of children to and from school with or without bids. This special provision controls, and in contracting for the transportation of school children the Board of Trustees does not need to comply with the provisions of Section 48, above referred to.

88. An independent class A school district may pay for the maintenance of rural routes out of the general fund in the absence of a special levy for that purpose, provided, of course, that the district trustees see fit to establish a rural route.

SCHOOLS: SCHOOL BUS, ACCIDENTS.

89. A school district is not liable in damages for accidents arising from the operation of a school bus.

SCHOOLS: SCHOOLHOUSE, USE OF.

90. A school house may not be used for religious services, or any other community purpose, except with the permission of the Board of Trustees of the district, but such permission, when given, is subject to such reasonable limitations as the State Board of Education may prescribe in the performance of its constitutional duty of supervising the public school system of the state.

SCHOOLS: TAXES.

91. Under Section 52 of Chapter 215, Laws of 1921, as amended by Chapter 162, Laws of 1923, the board of trustees of independent, independent class A, joint independent, and joint independent class A districts maintaining rural routes may levy an additional tax not to exceed four mills for the purpose of maintaining such rural routes, except if such districts are united with other districts to form a rural high school district, they may levy not to exceed two mills for that purpose. This statute then provides that no sum shall be expended in excess of the amount raised by such levy for the maintenance of such rural routes.

92. If an independent school district fails to vote its extra mill levy, I know of nothing the school district can do except to adjust their expenditures to meet their available funds. The express limitations upon the expenditure of money of a school district apply to the payment of tuition as well as to the other ordinary and necessary expenses of the district, and if there are no funds available, I know of no way in which such tuition can be paid.

93. The Board of trustees under Section 52, Chapter 215 of the Laws of 1921, as amended by Chapter 162, Laws of 1923, are authorized to levy whatever may be necessary to meet accruing bonded indebtedness and judgment obligations, and may levy not to exceed eight mills on the dollar for the maintenance and support of the schools. They may also make a certain levy for the maintenance of rural routes. If the board finds that the eight mills will not raise sufficient money to maintain and support the schools, or if it desires to make a levy for the maintenance and care of gymnasiums and playgrounds, a special meeting of the qualified electors of the district must be held. This meeting has nothing to do with the making of a levy to meet accruing bonded indebtedness and judgment obligations. That is the duty of the board.

94. County Commissioners in making the levies for school districts are acting in a ministerial capacity and have no discretion. In case they refuse to make a levy certified to them by the board of trustees of a district, an action of mandamus would lie to compel them to make the proper levy.

95. Where the voters of a school district fail to vote a special tax for the support and maintenance of a school, and the board of trustees refuses to levy a special tax, the proper remedy is for the persons interested to mandamus the board of trustees of the school district.

SCHOOLS: TEACHERS.

96. The language used in the first two paragraphs of Section 46, Chapter 215, Laws of 1921, is a limitation upon the power of trustees in the hiring of substitute teachers. They can only employ substitute teachers who are legally qualified to teach.

SCHOOLS: TEACHERS, EXAMINATION OF.

97. Section 78, Chapter 215 of the Laws of 1921, in so far as it fixes the time for taking of teachers' examinations, is directory and not mandatory. While the statute fixes a day certain for the beginning of the examinations, and a person might compel by mandamus, or otherwise, the holding of the examinations on the day fixed, yet if an examination was held on some other day, certificates issued pursuant thereto would be valid certificates.

SCHOOLS: TEXTBOOKS.

98. There is no law which makes it compulsory for a school district to furnish free textbooks to pupils.

99. The only way pupils can be forced to buy textbooks is to refuse admission to the schools.

100. The State Board of Education decides the matter of free textbooks for common school districts, joint common districts, rural high school districts and joint rural high school districts. (Subd. 6, Sec. 803, C. S.). The board of trustees decides for independent, joint independent, independent class A and joint independent class A districts. (Sec. 47, Para. 4, Sec. 2, Chap. 21, Laws of 1923.)

101. The Board of Trustees of an independent school district has the power to require parents to make a deposit on textbooks issued to pupils.

SCHOOLS: TUITION.

102. Under the provisions of Sections 998, 999 as amended, 1000, and 1001, C. S., where a high school is on the accredited list and has been placed there by the State Board of Education, the fact that an improperly certified teacher is employed is not ground for a county superintendent to refuse to transfer tuition to the high school.

103. The sections which deal with the high school tuition, to-wit: Sections 998, 999, as amended; 1000 and 1001, contemplate a uniform rate of tuition to every non-resident pupil. While it is optional with the district to charge a tuition I do not think it has the power, where it has decided to charge a tuition, to discriminate between individuals, or districts.

104. Where the same pupils' names appear on two census lists a county superintendent may refuse to transfer tuition until she has received proof sufficient to satisfy her of the pupils' real places of residence.

SCHOOLS: TUTORING.

105. Parents who live in an isolated place comply with the compulsory school law if the mother, an experienced teacher, gives the children daily lessons, following the state course of study.

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SCHOOLS: WARRANTS.

106. If warrants are issued to a school district to the amount of 95% of the income and revenue of the district for the current school year, for the purpose of operating and maintaining school for the current school year, no more warrants can be issued until there is money

in the treasury. The avails of each year's levy must take care of the expenses of the school year for which the levy is made.

107. It is the duty of the County Superintendent to countersign all warrants which are legally drawn; that is, warrants which are drawn for purposes which are allowable under the law. If the County Superintendent knowingly should countersign a warrant drawn for an illegal purpose, such superintendent would be subject to removal from office, and would in most cases be liable on his official bond.

108. On the grounds of public policy, the governments of the individual states and their officers and agents are exempt from the process of garnishment.

STATE: LANDS: IMPROVEMENT.

109. Until there is a forfeiture of a sale contract for state land the improvements are the property of the purchaser, and the state has no interest therein. Upon the forfeiture of the contract, however, the improvements which are attached to the realty become the property of the state.

STATE: LANDS: DRAINAGE DISTRICTS, SALE BY.

110. A drainage district may not sell state land for failure to pay drainage assessments.

STATE: LANDS: SALE OF BY IRRIGATION DISTRICTS.

111. There is no way an irrigation district can sell state lands included within the irrigation district for delinquent taxes.

STATE: LANDS, SALE OF

112. The minimum price of \$10 per acre applies to the sale of all state lands, whether acquired through special grants, mortgage foreclosures or escheated estates.

STATE: LOANS, APPLICATION FOR.

113. The Department of Public Investments is not required to accept applications for farm loans, and may exercise its discretion in refusing to consider applications.

STATE: PROPERTY, LIEN ON.

114. A lien does not lie against a building belonging to the State of Idaho.

STATE: PROPERTY, MUNICIPAL REGULATION OF.

115. The general police power conferred upon a municipality does not include power to compel compliance by the state with the building ordinances of the municipality in cases where the building to be constructed belongs to and is entirely under the control and management of the state.

STATE: PROPERTY, SALE OF.

116. Under the provision of Chapter 68 of the Laws of 1921, supplies or equipment of no further value to a department can be sold after procuring the consent of the Board of Examiners. The proceeds of such sale must be covered into the General Fund of the state.

TAXES: EXEMPTION.

117. A dental chair comes within the exempted class named in paragraph 8, Sec. 3099, C. S.

TAXES: LIEN OF.

118. Title to land sold under foreclosure passes to the purchaser at the time of sale. This title, of course, is subject to the right of redemption within the statutory period, but the title vests when the sale is made. Taxes are a lien on real property, which lien attaches on the second Monday in January in the year the levy is made. Such lien can only be discharged by the payment, cancellation, or rebate of the taxes. In the case of a foreclosure sale to the State in June of 1923 the tax collector is entitled to collect all of the taxes for the year 1923.

TAXES: PAID IN LAWFUL MONEY.

119. Under Section 3233, C. S., all taxes must be paid in lawful money of the United States.

TAXES: REDEMPTION, PERIOD OF.

120. The amendment to Section 3256, Compiled Statutes, found in Section 4, Chapter 45, Laws of 1923, increased the period of redemption from three to four years, and taxes must be delinquent four years before the property can be deeded to the county.

TAXES: REDEMPTION FROM DELINQUENT.

121. Where a county sells property in 1923 acquired by it by virtue of a tax deed for delinquent 1919 taxes, the purchaser must pay the 1920, 1921, 1922 and 1923 delinquent taxes.

TAXES: STATE LANDS, EQUITIES.

122. I do not think there is any question about the constitutionality of Section 3282, which provides that equities in state lands shall be assessed "at that proportion of the full cash value of the land which the amount paid thereon bears to the total amount of the purchase price." Our constitution, Section 5, Article 7, provides that all taxes shall be uniform "upon the same class of subjects within the territorial limits," etc. Section 3282 C. S., provides a uniform method of levying taxes upon a particular class of property. This method of assessing equities in state lands has been upheld and approved by the supreme court in case of *Lewis v Christopher*, 30 Ida. 197.

WATER AND WATER RIGHTS: APPROPRIATION.

123. The Commissioner of Reclamation has no authority under the statutes or constitution to deny permits to appropriate the public waters of the state when applications for such permits are filed in his office in proper form, accompanied by the requisite data and statutory fee.

WATER AND WATER RIGHTS: IRRIGATION DISTRICTS: TELEPHONE LINE.

124. An irrigation district has no power to acquire a telephone line or install the necessary distribution system to accommodate prospective patrons.

WATER AND WATER RIGHTS: WATERMASTER, DUTIES OF.

125. Neither the Reclamation Commissioner nor the watermaster may properly recognize the existence of rights based upon a naked claim to the delivery of water where no decree or record of appropriation by application for permit or otherwise has ever been made.

126. The watermaster is a ministerial officer and cannot disregard the decree of a court or a plain statutory requirement.

1923-1924
DOCKET, 1922-1923

SUPREME COURT OF IDAHO

CRIMINAL APPEALS SUBMITTED.

State v. Jeanoes, District Court, Bannock County, Statutory rape. Judgment of conviction affirmed. 36 Ida. 810, 213 Pac. 1017.

State v. Mitchell, District Court, Ada County, Robbery. Judgment of conviction affirmed. 36 Ida. 724, 214 Pac. 217.

State v. Smith, District Court, Ada County, Robbery. Judgment of conviction affirmed. 36 Ida. 724, 214 Pac. 217.

State v. Moore, District Court, Ada County, Possession of intoxicating liquor. Judgment of conviction affirmed. 36 Ida. 565, 212 Pac. 349.

State v. Nelson, District Court, Madison County, Violation city ordinance. Judgment of dismissal affirmed. 36 Ida. 713, 213 Pac. 358.

State v. Sawyer, District Court, Twin Falls County, Practicing medicine and surgery without a license. Judgment of conviction affirmed. 36 Ida. 814, 214 Pac. 222.

State v. Chacon, District Court Bannock County, Possession of intoxicating liquor. Judgment of conviction affirmed. 37 Ida. 442, 216 Pac. 725.

State v. Cox, District Court, Butte County, Grand larceny. Judgment of conviction affirmed. 37 Ida. 397, 216 Pac. 724.

State v. Dingman, District Court, Bonner County, Violation of criminal syndicalism act. Judgment of conviction affirmed. 37 Ida. 253 219 Pac. 760.

State v. Doyle, District Court, Shoshone County, Violation criminal syndicalism act. Judgment of conviction reversed. 37 Ida. 296, 219 Pac. 775.

State v. Foell, District Court, Madison County, Possession of intoxicating liquor. Judgment of conviction affirmed. 37 Ida. 722, 217 Pac. 608.

State v. Folden, District Court, Bonner County, Possession intoxicating liquor. Motion to dismiss appeal granted. Judgment of conviction affirmed. 37 Ida. 540, 217 Pac. 252.

State v. Hansen, District Court, Nez Perce County, Involuntary manslaughter. Judgment of dismissal affirmed. 37 Ida. 734, 219 Pac. 1062.

State v. Hunsaker, District Court, Jefferson County, Sale of intoxicating liquor. Judgment of conviction affirmed. 37 Ida. 413, 216 Pac. 721.

State v. Main, District Court, Fremont County, Grand larceny. Judgment of conviction reversed. 37 Ida. 449, 216 Pac. 731.

State v. McMahon, District Court, Power County, Possession of intoxicating liquor. Judgment of conviction affirmed. 37 Ida. 737, 219 Pac. 603.

State v. McRea, District Court, Bonner County, Possession intoxicating liquor. Motion to dismiss appeal granted. Judgment of conviction affirmed. 37 Ida. 538, 217 Pac. 251.

State v. Montroy, District Court, Kootenai County, Appeal from order retaxing costs and judgment. Judgment affirmed in part and reversed in part. 37 Ida. 684, 217 Pac. 611.

State v. Roe, District Court, Payette County, Gambling. Judgment of conviction affirmed. 37 Ida. 297, 215 Pac. 835.

State v. Sayko, District Court, Bingham County, Marrying the spouse of another. Judgment of conviction affirmed. 37 Ida. 430, 216 Pac. 1036.

State v. Sorenson, District Court, Bonneville County, Larceny. Judgment of conviction reversed. 37 Ida. 517, 216 Pac. 727.

State v. Walker, District Court, Minidoka County, Possession intoxicating liquor. Motion to dismiss appeal granted. Judgment of conviction affirmed. 37 Ida. 18, 214 Pac. 885.

State v. Abbott, District Court, Ada County, Robbery. Judgment of conviction affirmed. 38 Ida. 61, 213 Pac. 1024; 224 Pac. 791.

State v. Allen, District Court, Bannock County. Possession intoxicating liquor. Judgment of conviction affirmed. 38 Ida. 168, 219 Pac. 1050.

State v. Clemens, District Court, Bannock County. Possession intoxicating liquor. Judgment of conviction affirmed. 38 Ida. 168, 219 Pac. 1050.

State v. Bariger, District Court, Gem County. Possession intoxicating liquor. Judgment of conviction affirmed. 227 Pac. 314.

State v. Hoagland, District Court, Valley County. Murder in the first degree. Judgment of conviction affirmed. 228 Pac. 314.

State v. Short, District Court, Payette County. Statutory rape. Judgment of conviction reversed. 228 Pac. 274.

State v. Gillum, District Court, Ada County. Conspiracy to sell intoxicating liquor. Judgment of conviction affirmed. 228 Pac. 334.

State v. Brockman, District Court, Idaho County. Violation Blue Sky law. Judgment of conviction affirmed. 228 Pac. 250.

State v. Arnold, District Court, Bonner County. Murder in the first degree. Judgment of conviction confirmed. Unreported.

State v. Cosler, District Court, Gooding County. Statutory rape. Judgment of conviction affirmed. 228 Pac. 277.

State v. Purcell, District Court, Blaine County. Violation white slave law. Judgment of conviction reversed. 228 Pac. 796.

State v. Fisher, District Court, Jefferson County. Possession intoxicating liquor. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Huschke, District Court, Ada County. Violation liquor laws. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Yugi, District Court, Bannock County. Bribery. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Parkin, District Court, Ada County. Manufacturing intoxicating liquor. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Starcher, District Court, Ada County. Possession intoxicating liquor. Judgment of conviction affirmed. 227 Pac. 386.

State v. Bubis, District Court, Ada County. Possession intoxicating liquor. Judgment of conviction affirmed. 227 Pac. 384.

State v. Johnson and Rodriques, District Court, Washington County. Burglary in the first degree. Judgment of conviction reversed. 227 Pac. 1050.

State v. Stenberg, District Court, Kootenai County. Burglary in the first degree. Judgment of conviction reversed. 227 Pac. 1050.

State v. Shepard, District Court, Bannock County. Violation liquor laws. Judgment of conviction affirmed. 228 Pac. 87.

State v. Ashby, District Court, Canyon County. Intoxicated at a public gathering. Case argued. Under advisement.

State v. Boykin, District Court, Bannock County. Voluntary manslaughter. Case argued. Under advisement.

State v. Dawson, District Court, Twin Falls County. Unlawful sale of intoxicating liquor. Case argued. Under advisement.

State v. Green, District Court, Kootenai County. Motion to dismiss appeal granted. Judgment of conviction affirmed.

State v. Epalza and Chavey, District Court, Bannock County. Battery. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Jausoro, District Court, Canyon County. Violation of liquor laws. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Arregui, District Court, Ada County. Violation of liquor laws. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Jensen, District Court Twin Falls County. Violation of liquor laws. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Noonan, District Court, Shoshone County. Maintaining a common nuisance. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Breyer, District Court, Custer County. Murder in the first degree. Case argued. Under advisement.

State v. Bradshaw, District Court, Washington County. Possession intoxicating liquor. Motion to dismiss appeal granted. Judgment of conviction affirmed. Unreported.

State v. Petereit, District Court, Bear Lake County. Possession of intoxicating liquor. Judgment of conviction affirmed. Unreported.

State v. McLennan, District Court, Canyon County. Murder in the second degree. Case argued. Under advisement.

State v. Brassfield, District Court, Ada County. Grand larceny. Case argued. Under advisement.

State v. Wilson, District Court, Lincoln County. Violation banking laws. Case argued. Under advisement.

State v. Hart, District Court, Canyon County. Possession intoxicating liquor. Case argued. Under advisement.

State v. Pederson, District Court, Canyon County. Obtaining money under false pretenses. Case argued. Under advisement.

State v. Kelly, District Court, Valley County. Possession of intoxicating liquor. Judgment of conviction reversed. Unreported.

State v. Armstrong, District Court, Ada County. Practicing chiropraxy without a license. Judgment of conviction reversed. 38 Ida. 493, 225 Pac. 491.

State v. Carr, District Court, Bannock County. Assault with intent to commit murder. Judgment of conviction affirmed. 38 Ida. 120, 219 Pac. 1119.

State v. Bilboa, District Court, Ada County. Possession of intoxicating liquor. Judgment of conviction reversed. 38 Ida. 92, 213 Pac. 1025; 222 Pac. 785.

State v. Keyser, District Court, Custer County. Statutory rape. Judgment of conviction affirmed. 38 Ida. 57, 219 Pac. 775.

State v. Price, District Court, Bannock County. Robbery. Judgment of conviction reversed. 38 Ida. 149, 219 Pac. 1049.

State v. Siepert, et al, District Court, Madison County. Possession of intoxicating liquor. Judgment of conviction reversed. 38 Ida. 20, 225 Pac. 135.

CRIMINAL APPEALS SUBMITTED

Coeur d'Alene and Lewiston Districts.

State v. Maki.

State v. Kohkonen.

Pocatello District.

State v. Killian, et al.

State v. Egli.

State v. Kastel.

State v. Wheeler.

Boise District.

State v. Caviness.

State v. Bowman.

State v. Dawne.
State v. Dudgeon.
State v. Dunlap.
State v. Frace.
State v. Jurko.
State v. McLaughlin.
State v. Otto.
State v. Peters, et al.
State v. Rambo.
State v. Southard.

UNITED STATES SUPREME COURT

State v. Moore. Appeal from judgment of conviction of violation of prohibition law. Judgment of conviction affirmed. 44 Sup. Ct. 333. 68 L. Ed. 387.

SUPREME COURT OF IDAHO

ORIGINAL PROCEEDINGS.

State v. Banks. Mandamus to compel issuance of refunding bonds. Writ quashed. 37 Ida 27, 215 Pac. 468.

State v. Ensign. Writ of review granted to review action of District Court in annulling and vacating sentence of person convicted of bigamy. Order vacating sentence held void by the Supreme Court of the State of Idaho. 38 Ida. 539, 223 Pac. 230.

State v. Dunbar. Application for Writ of Mandate to compel County Auditor to place the name of Perry W. Mitchell upon the general ballot on more than one ticket. Writ quashed. Unreported.

Jackson v. Gallet. Petition for Writ of Mandate to compel State Auditor to issue a warrant for expense of the petitioner as a member of the State Bar Association. Writ quashed. 228 Pac. 1068.

Earl Fruit Company v. State. Action for recommendatory judgment to refund fees paid under protest by plaintiff corporation to Secretary of State. Pending.

Newton v. State Board of Land Commissioners. Action for Writ of Prohibition to prevent exchange of state lands. Writ granted. 37 Ida. 58, 219 Pac. 1053.

Ada County Investment Company v. State. Action for recommendatory judgment to obtain payment of retained percentages on Contract No. 61, Department of Public Works. Pending.

Thompson v. Adair. Proceeding for Writ of Prohibition to restrain the trial of a criminal offense. Writ denied. 36 Ida. 790, 214 Pac. 214.

In re Moore, Bates and Perring. Violation of Criminal Syndicalism Law. Petition for writ of habeas corpus. Petitioners discharged. 38 Ida. 506, 224 Pac. 662.

UNITED STATES DISTRICT COURT

Idaho Power Company v. Public Utilities Commission. Action to establish rates. Pending.

Cassia County v. Fidelity and Deposit Company of Maryland. Action on county depository bonds. Judgment in full amount sued for returned for plaintiff.

United States v. Oliver, et al. Condemnation proceedings, re-esteated estate. Pending.

CIVIL APPEALS TO SUPREME COURT OF IDAHO

State v. Twin Falls Land & Water Company, District Court, Twin Falls County. Mandamus to compel land and water company to sell water right. Judgment for plaintiff. Reversed. 37 Ida. 73, 217 Pac. 252.

Mittry v. Bonneville County, District Court, Bonneville County. Action to recover the balance of the contract price for erection of courthouse. Judgment for plaintiff. Reversed. 38 Ida. 306, 222 Pac. 292.

Drainage District No. 2 v. Ada County, District Court, Ada County. Action for damages. Affirmed in part and reversed in part. 38 Ida. 778, 226 Pac. 290.

Washington County v. Paradis, District Court, Washington County. Action to enjoin redemptions from tax sales and execution and delivery of deeds. Judgment for defendant. Affirmed. 38 Ida. 364, 222 Pac. 775.

Burley Independent School District v. Cordell, District Court, Cassia County. Action to restrain county assessor from collecting automobile license tax on automobile trucks owned by school district. From judgment in favor of district the county appealed. Pending.

Department of Law Enforcement v. Myers, District Court, Ada County. Action to restrain Department of Law Enforcement from revoking dental license. From decision in favor of Myers the Department appealed. Pending.

Fralick vs. Guyer, District Court, Ada County. Action by Commissioner of Finance to recover from stockholder of a defunct bank. Judgment of dismissal. Affirmed. 36 Ida. 648, 213 Pac. 337.

Smith v. Canyon County, et al., District Court, Canyon County. Action to restrain tax levy. Judgment for the county. Appeal from order denying new trial. Pending.

Foster v. Kellogg Power & Water Company, District Court, Shoshone County. Appeal from order of the Public Utilities Commission. Pending.

Albrethsen v. Wood River Land Company, District Court, Blaine County. Action for abandonment of water. Pending on rehearing.

Chicago, Milwaukee & St. Paul Railway Company v. Public Utilities Commission. Appeal from order of the Public Utilities Commission. Argued. Under advisement.

Brady v. State Insurance Fund, District Court, Kootenai County. Appeal from award of Industrial Accident Board. Pending.

Fisk vs. State Insurance Fund, District Court, Bonner County. Appeal from award of Industrial Accident Board. Argued. Under advisement.

Fall River Irrigation Company v. Swendsen, District Court, Fremont County. Action to establish priority of water right. Pending.

CIVIL CASES IN DISTRICT COURTS

Fidelity & Deposit Company v. Adams County, Adams County. Action on contract; highway construction. Settled out of court.

State v. American Falls Realty & Waterworks Company, Power County. Action for mandamus to compel changes and purification in water system. Writ granted.

Minidoka Irrigation District v. Swendsen, Cassia County. Action for injunction. Pending.

Ake v. Swendsen, Elmore County. Action for injunction. Pending.

Independent Irrigation Company v. Baldwin, Watermaster, Jefferson County. Action for injunction. Pending.

Hansen v. State Insurance Fund, Jefferson County. Appeal from award of Industrial Accident Board. Award affirmed.

Anderson v. State of Idaho, Bonner County. Action to quiet title. No appearance made. State has no interest in land.

Washington County Irrigation District v. Swendsen, Washington county. Action for injunction. Pending.

Thornton v. State, Power County. Condemnation proceedings. Pending.

Schodde v. Swendsen, Twin Falls County. Action to establish priority of water right. Pending.

Oregon Short Line Railroad Company v. State, Ada County. Condemnation proceedings. Closed.

Oregon Short Line Railroad Company v. State, Twin Falls County. Condemnation proceedings. Closed.

Hamilton v. Swendsen, Custer County. Action to decree waters of Pahsamaroi river. Pending.

In re Donald Simpkins, Bonneville County. Habeas corpus for inmate of Industrial Training School. Writ granted.

CASES IN PROBATE COURT

In the matter of the estate of Helen Sommer, deceased, Washington County. Action to determine amount of inheritance tax due the State. Appeal to district court pending.

In the matter of the estate of Samuel Marx Rothchild, deceased, Ada County. Determination of the amount of inheritance tax due the State. Pending.

In the matter of the estate of Anne Falk Rothchild, deceased, Ada County. Determination of the amount of inheritance tax due the State. Pending.

DEPARTMENT OF THE INTERIOR

State v. Culver. Appeal from Lewiston land office and Commissioner of General Land Office to Secretary of the Interior. Protest against granting of mineral patent. Protest denied.

MORTGAGE FORECLOSURES

(Closed)

Loan No.

- 260 State v. Clark, Administratrix, District Court, Ada County.
- 2287 State v. Shay, District Court, Benewah County.
- 1187 State v. Christ, District Court, Bingham County.
- 2170 State v. Tanner, District Court, Bingham County.
- 2724 State v. Toews, District Court, Bingham County.
- 2301 State v. Buhler, District Court, Blaine County.
- 2306 State v. Moore, District Court, Blaine County.
- 2521 State v. Jacklin, District Court, Blaine County.
- 2525 State v. Jacklin, District Court, Blaine County.
- 2534 State v. Brackett, District Court, Blaine County.
- 2543 State v. Nielsen, District Court, Blaine County.
- 2544 State v. Scott, District Court, Blaine County.
- 2547 State v. Barben, District Court, Blaine County.
- 2568 State v. Larsen, District Court, Blaine County.
- 2611 State v. Buhler, District Court, Blaine County.
- 2770 State v. Barben, District Court, Blaine County.
- 2771 State v. Buhler, District Court, Blaine County.
- 2773 State v. Workman, District Court, Blaine County.
- 2774 State v. Buhler, District Court, Blaine County.
- 2944 State v. Grayson, District Court, Blaine County.
- 2945 State v. Grayson, District Court, Blaine County.
- 2946 State v. Marshall, District Court, Blaine County.
- 2977 State v. Curley, District Court, Blaine County.
- 2978 State v. Cahoon, District Court, Blaine County.
- 2979 State v. Cahoon, District Court, Blaine County.
- 2980 State v. Curley, District Court, Blaine County.
- 2884 State v. Ahern, District Court, Butte County.
- 2406 State v. Russell, District Court, Canyon County.
- 2600 State v. McDevitt, District Court, Canyon County.
- 780 State v. Bailey, District Court, Cassia County.
- 2445 State v. Pierce, District Court, Elmore County.
- 920 Frances Cruser, Guardian of the estate of Oakley Hunter, v. State, District Court, Fremont County. Action for partition. answer filed by state.

- 1185 State v. Lane, District Court, Gem County.
794 State v. Johnson, District Court, Idaho County.
2930 State v. Rogers, District Court, Jerome County.
2274 State v. Webster, District Court, Madison County.
3102 State v. Bowman, District Court, Minidoka County.
317 State v. Palmer, District Court, Oneida County.
469 State v. Altmyer, District Court, Power County.
2034 United States v. State, United States District Court, Power County. Action by plaintiff in condemnation proceedings. Loan of State of Idaho paid.
1676 State v. Voight, District Court, Power County.
761 State v. Shaw, District Court, Valley County.
1052 State v. Barnes, District Court, Valley County.

MORTGAGE FORECLOSURES

(Pending)

Loan No.

- 3300 State v. Bolitho, District Court, Ada County. Service complete, pending on demurrer.
2817 State v. White, District Court, Adams County. Service incomplete.
2307 State v. Bowlden, District Court, Blaine County. Service incomplete.
2575 State v. Jones, District Court, Blaine County. Service incomplete.
2987 State v. Cahoon, District Court, Blaine County. Service incomplete.
750 State v. Montgomery, District Court, Butte County. Service incomplete.
1327 State v. Jones, District Court, Camas County. Judgment entered, pending sale.
2582 State v. Emerson, District Court, Canyon County. Judgment entered, pending sale.
2865 State v. Bolitho, District Court, Canyon County. Service complete.
2900 State v. Bolitho, District Court, Canyon County. Service complete.
729 State v. Workman, District Court, Cassia County. Service complete, pending on demurrer.
1235 State v. Barker, District Court, Cassia County. Service incomplete.
1762 State v. Roberts, District Court, Clark County. Service incomplete.
763 State v. Muir, District Court, Custer County. Service complete, pending sale.
1285 State v. Wells, District Court, Custer County. Service complete.
2316 State v. Zumbrunn, District Court, Custer County. Ready for trial.
1300 State v. Bowen, District Court, Custer County. Service incomplete.

- 3126 Ross v. Taggart and State, District Court, Custer County. Cross-complaint of state on foreclosure. Service incomplete.
- 672 State v. Hartley, District Court, Gem County. Pending on demurrer.
- 944 State v. Colburn, District Court, Gem County. Pending on demurrer.
- 1048 State v. Coate, District Court, Gem County. Service incomplete.
- 195 State v. Heirs of John E. Beede, deceased, District Court, Idaho County. Action to quiet title pending, service incomplete.
- 770 State v. Neil, District Court, Owyhee County. Service complete. pending sale.
- 836 State v. Rock, District Court, Owyhee County. Service incomplete.
- 528 State v. Altschul, District Court, Owyhee County. Ready for trial.
- 1303 State v. Cruse, District Court, Owyhee County. Partly tried.
- 929 State v. Cruse, District Court, Owyhee County. Partly tried.
- 880 State v. Schmelzel, District Court, Owyhee County. Partly tried.
- 3024 State v. Shimp, District Court, Payette County. Service incomplete.
- 1053 State v. Shuck, District Court, Power County. Service incomplete.
- 3267 State v. Zimmerman, District Court, Power County. Service incomplete.
- 1206 State v. Pyry, District Court, Valley County. Ready for trial.
- 891 State v. Ford, Administrator, District Court, Washington County. Judgment entered, pending sale.
- 3261 State v. Brown, District Court, Washington County. Ready for trial.