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SOME PIONEER LITIGATION

By HENRY B. BABB, *of the Denver Bar.*

GIVE a dog a bad name," and the implication is, it will be augmented by accretions for which he is in no way responsible. The "Robber Seventh" General Assembly seems to bear the odium of the contemporary chaotic condition of the state's finances. As will later appear, such condition already existed when that body first met, and what it did was to aggravate bad conditions. There were warrants unpaid and uncollectible that had been issued to former Governor Alva Adams for his official salary; like warrants that had been issued to J. C. Helm and other members of the Supreme Court; such warrants aggregating hundreds of thousands of dollars par value had been issued in payment of legitimate demands sold by the immediate payees and held by innocent purchasers. It is useless to say that the state's credit was nil.

In the confusion of demands for payment, censure of newspapers and grave official responsibility, the Auditor and Treasurer of the administration beginning in 1891 and next following that of the Seventh General Assembly, did not know what to do and the mess was put up to the Legal Department of the State Government. There were no precedents whatever. An erudite case lawyer might have found himself in the situation of Mark Twain's invincible bulldog. That warrior's ever-effective method of combat was to clench his enemy's hind leg between his jaws and hold on until any degree of canine fortitude would succumb. Yet this hero of a hundred battles was finally whipped out of his skin by a dog that had lost both hind legs in a sawmill. From which it may be inferred that an unsophisticated rustic mentality, that knew no resource but to face the constitution and statute law, was the better instrument for dissecting the difficulty. Accordingly, uniformly successful defenses of suits brought against the Auditor, following the opinion given, gave judicial sanction to the policies then adopted and since followed by the fiscal officers of the state and they have pursued the even tenor of their way with little or no controversy. This is not saying that excess warrants have not at times been issued—warrants,

that after issue, proved to be automatically invalid by reason of the inadequacy of funds in the specific appropriations from which they were to be paid, and inaccurate previous official guesses as to such adequacy.

In the administration preceding the Seventh Assembly, one Peter Breene had been elected State Treasurer. His qualifications for office were his genial disposition and he had struck it rich in Leadville. He had built a rather pretentious house. A number of friends were calling and one said, "Pete, you ought to have a chandelier for this room." He demurred, but when it was the unanimous judgment of the company that it ought to be, he yielded and said to his secretary, "Go downtown in the morning and have a chandelier sent out," but added to his friends, "Now, I don't believe there is one of you can play the damn thing when it comes." Another less familiar story of his arrival in Denver, more aptly illustrating the man, might be told but the well known implacable asceticism of the bar forbids.

Prior to Breene's administration there had been rumors of speculation in the Treasurer's office, which reached high tide during his term.

At the 1890 November election, James N. Carlisle had been elected State Treasurer. The Eighth General Assembly made an effort to correct existing disorders by passing a law increasing the Treasurer's bond to \$500,000 and his salary to \$5,000. The Colorado constitution forbids such increase of salary during the officer's term of office. To avoid the prohibition the bill was rushed through both houses and signed by the outgoing Governor before the officers-elect were sworn in. Carlisle filed his increased bond and at the end of the first month demanded his increased salary. The courts sustained the refusal to pay the increase.

The Eighth General Assembly, by joint resolution, engaged a printing firm to print the State Engineer's report, which, in addition to the usual statistical and historical matter, would include complete maps of each and all the irrigation districts in the state, and the resolution provided an appropriation of \$7,500 as compensation for the service. The work was acceptably done by the printers and they demanded the promised payment. No. Why not? Congress might, by a

joint resolution, make a valid contract of the kind and appropriate money for payment. The Colorado constitution says that no law shall be passed except by bill, and prescribes the formula, "Be it enacted by the General Assembly of the State of Colorado." The courts sustained the Auditor's refusal to pay. The account was afterwards paid by valid appropriation.

A man was deserted by his wife. He shot her lover down in her presence and was indicted for murder in the first degree. He was brought to trial and the woman was called to testify for the prosecution. Upon his objection, to his complete surprise a decree of divorce was submitted in evidence. Her testimony was admitted. He was convicted of murder in the first degree and sentenced to be hanged. He appealed the case to the Supreme Court and brought suit to vacate the decree of divorce on the ground that he had never been served with summons. The trial court vacated the decree and the woman appealed the case to the Court of Appeals, where the order of vacation was promptly affirmed. The man was guilty. Why not let him hang? Contra: Could it be permitted that the administration of justice might be so prostituted that the basic safeguard of life and liberty of the citizen might be flouted or ignored, even to punish the guilty? If not, what could be done? The record in the Supreme Court was watertight and airtight. The Chief Justice of the Supreme Court suggested a way out. It was that that court, in a case before it, would take notice of the action of its affiliate court upon an issue so vital to the cause of justice, and so The People confessed error. Retrial resulted in a life sentence.

The case of The People against J. Thatcher Graves attracted nation-wide attention. Major steps in the trial court and in the Supreme Court were subjects of press notice and comment throughout the United States. Mistress Barnaby, a wealthy New England woman, was visiting friends in Denver. She received a package through the mails, endorsed, "From your friends in the woods." It was a bottle of whiskey. She drank part of its contents and speedily died of arsenical poison. Suspicion fastened on her family physician and he was indicted by a Denver grand jury, charging murder in the first degree. He was advised by his eastern lawyer to sur-

render himself and stand trial. If personal security was the consideration, it was and is impossible to understand why such advice was given, for he could not have been extradited. The Supreme Court of the United States in like cases has since so decided the question more than once. The pertinent language of the Federal Constitution is:

"If any person charged in any state with treason, felony or other crime, *who shall flee from justice* and be found in another state," etc.

It was stated that he came very reluctantly, taking some three weeks from starting to reach his destination. Upon his arrival in Denver he was locked up and in due time tried, convicted of murder in the first degree and sentenced to be hanged. Upon appeal to the Supreme Court the case was reversed, chiefly for error in instructing the jury. The writer had occasion to see him in the penitentiary while his case was pending in the Supreme Court. He was apparently full six feet high, erect, and of generous physical proportions without pudginess—a rather impressive figure at some distance. Upon close approach, his rather large nose was flattened as much as could be on the left cheek; his eyes were pale blue, presenting, possibly, to a prejudiced observer a sinister physiognomy; to an impartial observer, a more or less disappointment of first impression. In the brief conversation, he said that it would seem very strange that a scientific man would resort to such a crude method of homicide when he could accomplish the result in a manner that would not even suggest suspicion. On reversal of his case he was, of course, remanded to the Denver jail. One sunny summer Sunday afternoon the newsboys began shouting, "Suicide of Doctor Graves. Read all about it." In two letters to his wife, he discussed the step he was taking. In one of them he said, "I could not have been so bad a man to have had the love of so good a woman." A highly significant fact was that a careful autopsy failed to discover the cause of his death. His vital organs were all in a perfectly healthy condition. Was self-vindication his purpose, or part of it? If so, so far as known, only one person ever thought of one death in connection with the other.

The foregoing cases are mentioned because each in its own way is believed to be of special interest. Other cases of minor interest and cases involving large monetary values, as

the Coal Land cases, were cases for which the same administration was responsible.

The state had reached a stage of maturity at which it concluded to assert its inherent dignity of statehood, when its officials must obey its laws and when fashionable schemes for plundering its resources must be frustrated.

Note: What was done with the unpaid warrants? This question is not within the purview of the above caption, but the young lawyer and the lawyer who has forgotten will probably like to know its answer. The Eleventh General Assembly submitted an amendment to the state constitution which provided for the issue of not exceeding \$2,115,000 three per cent refunding bonds. The preamble of the bill recited that, "Whereas, a major portion of the above indebtedness is held in the State School Fund as an investment, which, under the constitution of the State, must forever remain inviolate and intact, any loss thereof to be supplied by the State," etc. The bill was introduced in the Senate by Senator Frank E. Gove and put over in the House by majority leader Henry A. Hicks. Being submitted, the teachers of the state went at it tooth and nail and secured its adoption by the people. The credit of the state was redeemed and financial infamy was effaced.

EDITOR "DICTA:"

I want to thank the participants and the splendid audience for their response at the "Major Bowes" lawyers' amateur hour and stag smoker on the evening of November 12th at the Denver Athletic Club. Such affairs as this are directly successful in proportion to the response and spirit of the audience and those participating, and I feel that I would be remiss if I did not say that I never saw a more responsive and happy audience over which I have had the pleasure of presiding than the members of the bar on this occasion.

I also want to thank the officers of the Denver Bar Association, particularly "Bob" More, its President, and "Jimmie" Wood, its Secretary, for their untiring help and support in having the tickets distributed and in arousing interest in the smoker, also for the fine co-operation of my