SUPREME COURT SCORED AT ANNUAL BAR MEETING.

Addresses by President Varian and Attorney W. A. Lee Have Critical Reference To That Body—Recent Decisions the Cause—Inconsistent Conclusions Strongly Hinted At—Election of Officers.

HON. C. S. VARIAN,
President Utah Bar Association.

Something over three score of Salt Lake's leading lawyers assembled in the federal court room last night on the occasion of the annual meeting of the State Bar association. The feature of the night was the address of President C. S. Varian, although the paper of Attorney Will A. Lee on the "Uncertainty of the Law, its Cause and Remedy," also attracted great interest.

In addition to the delivery of these addresses which received marked applause officers were elected for the ensuing year. Mr. Varian was rechosen president much against his own inclination. The other officers elected were: C. S. Kinney, secretary; George L. Nye, treasurer; Andrew Howat, P. L. Williams, E. M. Allison, Jr., and E. B. Critchlow, executive counsel; W. I. Snyder, H. E. Booth and Frank B. Stephens, committee on grievances.

Attorney D. H. Wells, Jr., introduced a resolution which is to receive consideration at a special meeting called for Monday evening next. It requires that the association put itself on record as being against the securing of pledges or promises of support from citizens by aspirants for judicial nominations and creates a committee of twenty one to assist in securing lawyers of learning, dignity and integrity for judicial offices.

A committee of five was named on state of law, consisting of President Varian, M. L. Ritchie, Waldemar Van Cott, Elmer V. Jones and Frank Pierce

W. A. Lee, G. M. Sullivan, F. A. Sweet, D. H. Wells, Jr., and Allan T. Sanford were admitted to membership and Justice Baskin and District Judges Marioneaux, Hall and Booth were elected honorary members. The selection of delegates to the meeting of the American Bar association at Saratoga next summer was placed in the hands of the president and executive counsel.

PRESIDENT VARIAN'S ADDRESS

Able and Comprehensive Statement of Matters of Public Importance.

Gentlemen of the Bar Association:—I welcome you to this annual meeting. The object of this association, as declared by its constitution, is "the elevation of the standard of professional learning and integrity, to inspire the greatest degree of respect for the efforts and the influence of the bar in the administration of justice; and to cultivate fraternal relations among its members."

The elevated purpose here disclosed demands our most thoughtful consideration to the end that results commensurate to the undertaking may be attained. Certain it is, that this association can, if it will, exercise a most powerful influence for good along the lines suggested by its constitution.

Since our last meeting, Brothers James H. MacMillan and Presley Denny have died, and Brothers Andersen, Gray, Judd, Kahn, Pence, Schroeder, Street, Taylor, Costigan, Norrell and Zane have removed from the state.

MEMORY OF JOHN MARSHALL.

On the 4th day of February, 1901, the bench and bar of the United States commemorated with fitting ceremonies, the centennial anniversary of the elevation of John Marshall, to the supreme bench of the United States. At a special meeting of the Bar Association of the state, held at the Federal Court room in this city on the night of December 10, 1900, pursuant to a call issued by me, a committee of nine was directed to be appointed by your president, with full power to provide for the proper observance of the day. Such committee was appointed and a program for the day and evening at the capital city arranged. The aid of the bar and bench throughout the state in the observance of the day was solicited, and cheerful responses received. Wherever the courts were in session proper recognition of the day was given. In the capital city, addresses were made at the bars of the national and state courts, to which responses were made by the judges, and the records made. In the evening, at a banquet largely attended by members of the bar and judges, many eloquent and instructive addresses were delivered.

Throughout the country the day was observed with earnest enthusiasm, truly indicating the veneration of the American lawyer and citizen for John Marshall and his great work. The celebration of the day was not confined to the bar and bench alone—everywhere, universities of learning, municipalities and business men, united with the bar in a public expression. The children of the public schools added their tribute to the memory of the life and character of the great judge. The President of the United States with his cabinet and the justices of the supreme court, assembled with the Senate and House of Representatives at the Capitol, to listen to great orations, which added luster and renown to the occasion.

To the committee who had the matter of the celebration in charge, must be given all the credit for its success. Efficiently and well every member labored in the cause, and we are all under obligations to them for their services. In this connection, I direct attention to the fact that there is a deficit in the expense fund at the disposition of the committee for which the members are personally liable. I submit the report of the chairman of the sub-committee, with accompanying bills, and recommend the prompt liquidation of the same.

SUMMARY OF THE YEAR'S WORK.

At the annual meeting of the American Bar association, A. D. 1900, the following resolution was adopted:

"Resolved, That the State Bar associations of the United States be requested to report on or before the first day of August of each year to the secretary of the American Bar association a brief outline of summary of the year's work, including the titles of addresses read before them and a synopsis of all affirmative actions taken on reform legislation recommended by the association."

I recommend that you take the necessary action in response to this resolution, giving your secretary such instructions as may be required.

At the annual meeting of the association at Denver, Colorado, held on the 21st, 22nd and 23rd of August, 1901, the Utah State Bar association was fully represented by Messrs. E. B. Critchlow, C. S. Kinney and D. H. Wells, Jr.; Mr. M. M. Warner, who was elected as a delegate, was unable to attend the session, and Mr. Critchlow was appointed in his place. The next session of the American Bar association will be held at Saratoga, New York, and, in the following year, when the exposition will be opened, the association will convene at St. Louis. It is believed that great good has been and is being accomplished by the American Bar association, and it is, in my judgment, of the greatest importance that we should annually send representatives to its meetings.

The by-laws of this association provide that delegates to the American Bar association shall be elected at each annual meeting, which is now fixed for the second Monday in January. This is the busiest season for lawyers, and it is impossible to secure the desired attendance at these annual meetings. It has been suggested that if the meetings were held later, in the spring or early part of the summer, the interests and convenience of its members would be best subserved, and I submit the suggestion for your consideration. Any change in this particular will necessities an amendment to the constitution, which can only be accomplished by a vote of two-thirds of the members.

PSYCHO-PHYSICAL LABORATORY.

I am in receipt of a communication from Mr. Arthur MacDonald, of Washington, D. C., who is a specialist in the United States Bureau of Education, requesting me to bring before this association the following resolution:

"Resolved, That we are in favor of the establishment of a psycho-physical laboratory in the department of the interior at Washington for the practical application of physiological psychology to sociological, jurisprudential and abnormal or pathological data, especially as found in institutions for the criminal, pauper and defective classes and in hospitals, and also as may be observed in schools and other institutions."

Accompanying the communication is some typewritten and printed matter, conveying information in the premises, and which the secretary now has for your information. The subject is worthy of your careful consideration, and I recommend that it be given attention during the present session.

CHANGES IN THE LAW.

Since the last annual meeting, which was held in 1898, the legislature has made certain changes in the laws, which, with some new enactments, it may be of interest to note.

The law providing for the manner of locating and recording mining claims, has been re-enacted, and, so far as I am advised, has proven to be well adapted for its purposes. The provision requiring $50 worth of work to be done on a claim within ninety days after location has been eliminated. The law still authorizes the making of rules and regulations by the miners of the several mining districts, subject to the laws of the United States.

In my annual address of 1898, I took occasion to suggest that the state law should embrace the whole subject, leaving nothing to the determination of local rules and regulations, because a general law uniform in its operation through the state, would best conserve the interests of the mining public. The subject is receiving attention in other states and territories, and should be carefully considered by this association.

TO PREVENT MINE FIRES.

The statutes providing for protection against fire and for safety cages and apparatus in mines, indicate a realizing sense of a just responsibility in the premises on the part of the legislature. The dreadful disaster at Scofield in the Pleasant Valley Coal mines on May 1st, 1900, impressed the legislature with the necessity of providing for the safety and health of coal miners, and the result has been the enactment of a comprehensive statute providing for the inspection by a state inspector of all coal and hydro-carbon mines in the state, at least once every three months, and oftener if the condition of the mines require it. Provision as to openings and safety apparatus is made, and a series of rules to be observed by mine owners, managers and employes, is prescribed. I have not heard of any complaints as to the operation of this law, which seems to have been enacted in response to an imperative demand for the protection of life and health.

STATE SCHOOL OF MINES.

The act of the legislature establishing a state school of mines as a department of the state University, is to be commended, and it is to be hoped that the school will receive sufficient financial aid, in order that its purposes may be carried out. Mining is the great industry of this and adjoining states, and its wonderful development during the past descade along scientific lines has demonstrated the necessity for a systematic educational development of the operator, expert and miner.

MUNICIPAL STREETS.

For the safeguard of our municipal streets and highways, a very salutary law provides that no person shall acquire title by adverse possession to "the streets, lanes, avenues, alleys, parks and public squares," or other lands held for public purposes, by towns or cities.

BOARD OF PARDONS.

Sections 2046 to 2053, both inclusive, of the Revised Statutes, vesting power to parol prisoners in a board of correction created by statute, have been repealed, and such powers vested in the board of pardons. This change in the law was made necessary by the decision of the Supreme court, holding that the subject matter of pardons was committed by the constitution to the board of pardons. Under the existing law, the board of pardons may parol convicts upon conditions to be prescibed by it, rovoking such parol at pleasure. Its purpose is to extend to the unfortunate criminal substantial aid in his struggle to reform, and to hold out the hope of ultimate restoration to his place in the citizenship of life. It is abreast of the advanced penological thought of the times, and should receive the cordial sympathy and support of all citizens. Such being the public policy of the state, as indicated by this statute, every individual is in duty bound to afford aid and sympathy to these unfortunates striving to recover their lost opportunities.

NEGOTIABLE INSTRUMENTS.

In enacting the "negotiable instruments law," it is believed our legislature has answered a necessity which has become more apparent every year. This law is the result of national conferences of state boards of commissioners for promoting uniformity of legislation in the United States, held annually by representatives of thirty-three states. It has been, with some slight changes here and there, adopted by the states of New York, Massachusetts, Connecticut, Rhode Island, Maryland, Tennessee, Virginia, North Carolina, Florida, Wisconsin, Colorado, Washington, Oregon, North Dakota and Utah, and in the District of Columbia. It does not purport to cover all the law governing negotiable instruments, but provides that cases not included within the act shall be governed by the rules of the law merchant. The plain tendency of professional thought throughout the country toward uniformity of legislation by the states and territories upon questions of general law, may be expected in the near future to result in further development along such lines.

MARRIAGE AND DIVORCE.

The argument for a uniformity of laws regluating marriage and divorce and for the prevention of solicitation and advertising for divorce business by professional fakirs, is very persuasive, and an effort is being made to have the several states enact uniform statutes in relation thereto. A statute regulating proceedings in divorce cases is proposed as follows:

"(1) No divorce shall be granted for any cause arising prior to the residence of the petitioner or defendant in this state, which was not ground for divorce in the state where the cause arose.

"(2) No person shall be entitled to a divorce for any cause in this state, who has not had actual residence therein for at least one year next before suit brought, with bona fide intention of making the state his or her permanent home.

"(3) No person shall be entitled to a divorce for any cause arising out of this state, unless such person shall have resided therein for at least two years next before bringing suit, with bona fide intent, as aforesaid, to make this state his or her permanent home.

"(4) No person shall be entitled to a divorce, unless the defendant shall have been personally served with process, if within this state, or with personal notice duly authenticated, if out of this state, or, unless the defendant shall have entered an appearance in the case; but, if it shall appear to the satisfaction of the court that the petitioner does not know the address nor the residence of the defendant and has not been able to ascertain either, after reasonable and due inquiry and search, continued for one year, the court or judge in vacation, may authorize notice of publication of the pendency of the petition for divorce to be given in manner provided by law.

"(5) No divorce shall be granted solely upon default, nor solely upon admissions by the pleadings, nor except upon trial before the court in open session.

"(6) After divorce, either party may marry again, but in no case where notices have been given by publication only, and the defendant has not appeared, shall a decree for divorce become final or operative until six months after trial and decision.

"(7) Wherever the word 'divorce' occurs in this act, it shall be deemed to mean from the bond of marriage."

Such a law, it seems to me, should be enacted in every state of the Union.

THE EIGHT HOUR LAW.

The constitution provides that, "eight hours shall constitute a day's work on all works or undertakings carried on or aided by the state, county or municipal governments." (Art. 16, sec. 6.)

In pursuance of this declaration, the legislature has enacted that eight hours shall constitute a day's work on all works or undertakings carried on or aided by the state, county or municipal governments. By the statute it is also provided, that any person, corporation, firm, contractor, agent, manager, foreman, or any officer of the state, or of any county or municipal government thereof, who shall "request or contract with any person to work upon such works or undertakings longer than eight hours in the calendar day, except in cases of emergency, etc.," shall be deemed guilty of a misdemeanor.

This enactment seems to present the old question of a violation of the constitutional right of liberty to contract, upon which there is an apparent conflict of authority. More than this, there seems to be a clear discrimination in favor of one party to the forbidden contract with the employes for work longer than eight hours in one calendar day. The public works of the cities are required by law to be constructed by contract, and this statute apparently proceeds upon the assumption, that the contractor and his managers and foremen are agents or officers of the state, and consequently subject to the limitations imposed by the state upon its officers. However this may be the statute presents a question by the Supreme Court of the United States.

VESTIBULING OF CARS.

The legislation requiring the vestibuling of cars of the street railways, providing for an inheritance tax, and creating a board of labor, conciliation and arbitration with defined powers, may be noted as indicating the progress of the state. Not much may be said in commendation of a statute making it a misdemeanor "for any person to wear the insignia or rosette of the military order of the Loyal Legion of the United States, or the order of the Grand Army of the Republic, or the medals presented by this state to the Utah volunteers, or to use the same to obtain aid or assistance thereby from any person, unless he shall be entitled to use the same under the constitution, by-laws, rules and regulations of such orders, or by the laws of the state." So far as the prohibition is against the use of credentials to which a person is not entitled, for the purpose of obtaining property is concerned, it would seem to be directed against the procuring of property by means of false pretenses, a crime defined and prohibited by the criminal code. As to the wearing of decorations or medals, indicating membership of military societies, the subject is one that ought to be beyond the domain of legislation, and which can safely be left to be settled by public opinion. The statute was probably enacted to meet an apparent necessity created by an individual case. It certainly is indicative of a paternal spirit in government, which may serve society best by being suppressed.

CORPORATE EXISTENCE.

Another statute attracts attention because probably enacted in response to the cry from some law suit, jeopardized or lost by the failure of one of the parties to prove the corporate existence of a party. It provides that, "in an action by or against a corporation, the plaintiff need not prove upon the trial, the existence of the corporation, unless the answer is verified and contains an affirmative allegation that the plaintiff or defendant, as the case may be, is not a corporation." Thus, step by step, the practice of the law is sought to be made easy by legislation, and by and by, a beginners or lazy-man's code will be relied upon to cure all defects or omissions.

THE NEW CITY COURT.

Among the most important legislation of the last two years, is what is popularly known as the "City Court" acts. These laws are applicable only to the cities of Salt Lake and Ogden, and create a city court for each place. In Salt Lake City there are two judges of this court, who, having been elected at the last election, took their seats on the first Monday of the present year, to hold office for the term of three years, thence next ensuing, when their successors will enter upon terms of four years each. This court is designed to take the place of the several justices' courts of the city, all of which, but one, by this and accompanying legislation, are abolished. The justices of the peace now in office may hold their offices until the expiration of their official terms; in the meantime, however, their jurisdiction is greatly restricted. These provisions apply to Ogden city also, except that there but one city judge is provided for. The city court is a court of record, with a clerk and seal, and the judges thereof have fixed salaries. The constitutional authority for this legislation is supposed to be found in the provision of section 1, article 8, that:

"The judicial power of the state shall be vested in a supreme court, in district courts, in justices of the peace and such other courts, inferior to the supreme court, as may be established by law." The design of these laws is to insure a better administration of justice in the larger cities, by withdrawing judicial power from incompetent hands and vesting it with competent and learned judges. To this end, fixed terms of office, with adequate salaries, are provided. The scheme of these statutes would seem to be a wise one, and to give promise of beneficial results to the people. But there is a question made as to their constitutionality and a suit has already been brought at Ogden City to determine it.

ADMISION TO THE BAR.

In my opinion, the time has arrived for a change in the law governing admission of attorneys to the bar. Our statute (R. S., sections 106-07-08), authorizes an examination of applicants by the Supreme Court, or by a committee appointed by the justices thereof. In fact, the court never makes such an examination itself, but the entire matter is committed to an examining committee appointed by the court, whose report is laways confirmed. The duty of examining candidates for the bar should be imposed upon the Supreme Court. The examinations should be public, and upon questions propounded in writing and framed with care and method within the lines of a prescribed course of study, and held under such restrictions as would prevent faking or favoritism. The law should either require the graduation of the candidate at a regular law school having a prescribed course of at least four years, or a certain course of study of not less than four years, which course should include defined branches of the law and prescribed text-books. The examination of applicants should be searching and thorough, and made in open court by the judges themselves, or under their watchful supervision. Since the law commits the matter to the wisdom and discretion of the judges, the bar has the right to demand of them a strict and conscientious performance of their duties. Our law also authorizes the admission, without examination, of any attroney and counselor who has been admitted in the highest court of any other state or territory, upon production of his license from said court, or, upon his affidavit of such admission. An examination of the laws of some of the adjoining states, discloses the fact that Utah is much more liberal in this respect than those of Nevada, Idaho, California, Oregon and Wyoming. In all of these jurisdictions admissions to the bar are limited to citizens of the state. No member of the bar of Utah, while a resident thereof, can be admitted to the bar of either of these states, except that of Oregon. In Oregon, there is a statute authorizing the admission to the bar of citizens of other states whose laws will permit admission of members of the bar of Oregon while citizens of that state. It would seem that the rule of reciprocity demands an amendment to our law, so as to put the profession and the courts here upon an equal footing with that of the other states, and this not for the purpose of protecting our lawyers against the invasion of outside attorneys, but in the main for the purpose of guarding the courts in their administration of justice and safeguarding our own people against the acts or omissions of those not subject to our jurisdiction. The underlying principle of such legislation is found in the obligation of the courts to maintain and exercise a wholesome regulation and control of attorneys and counselors appearing before them. Such regulation and control cannot be properly exercised over those who only casually and for temporary purposes, come within the state. It is not contended that no member of the bar of another state should be prohibited from tiying his law suit in our courts. For such a purpose, as the cases arise, he may be and would be always admitted to appear for the time being.

I recommend your careful consideration of this subject, with a view to presenting the matter to the legislature.

CONSTITUTIONAL AMENDMENTS.

At the last general election, five amendments to the constitution, as proposed by the legislature of 1899, were adopted. Section 1 of article 6 was amended so as to read as follows:

"The legislative power of the state shall be vested: (1) In a senate and house of representatives, which shall be designated the Legislature of the State of Utah. (2) In the people of the State of Utah, as hereinafter stated: The legal voters or such fractional part thereof of the State of Utah, as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the legislature (except those laws passed by a two-thirds' vote of the members elected to each house of the legislature) to be submitted to the voters of the state before such law shall take effect. The legal voters, or such fractional part thereof, as may be provided by law, of any legal subdivision of the state, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law-making body of said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect."

Section 22 of the same article, was likewise amended, by adding a provision that laws enacted by the vote of the electors, under the initiative and referendum clause of section 1, shall begin with an enacting clause, "Be it enacted by the people of the State of Utah."

The legislature of A. D. 1901, failed to provide, by law, for the execution of these amendments, and, consequently, an opportunity of attesting the utility of the initiative and referendum will not be presented to our people for some time, if at all.

Section 6 of article 10, was amended by omitting the words: "maintain and," in the second line. The original section provided that: "In cities of the first and second class, the public school system shall be maintained and controlled by the board of education of such cities, separate and apart from the counties in which said cities are located."

In Merrill vs Spencer, the Supreme court, in construing this section, interpreted the word "maintained" to mean "to bear the expense of;" and held that the boards of education in the designated cities were entitled to maintain and control the public school system in the municipalities separate and apart from the counties in which the cities were located; and it decided that a statute directing the county authorities to set aside from the county school fund, before its distribution according to the number of school children, the money required for various county school purposes, was in violation of the above section of the constitution. The amendment adopted was designed to re-impose the burdens upon city property in favor of the outlying county which had been removed by this decision, and doubtless has accomplished its purpose.

Section 3 of article 13 was amended to authorize the remission of taxes of the indegent poor.

In this connection, I call attention to the fact that there seems to be no means provided by law, for publishing and distributing the permanent form amendments to the constitution. They are not published in the session laws, but are kept by the secretary of state, in the form of printed slips, which can be obtained upon application. I think all amendments to the constitution, as well as all amendments proposed by the legislature, which are not adopted, should be published in each book of the statutes. There should be a standing committee of the association, to investigate and report upon the state of the law with the necessary recommendations. Thus, a field for intelligent discussion and action would be opened at each annual meeting.

SUPREME COURT DECISION.

There is one decision of our Supreme Court which particularly invites attention. In Thoreson vs State Board of Examiners, (19 Utah, 18), the Supreme Court decided that public officers in mandamus proceedings against them, could not plead in justification of a non-performance of a ministerial duty imposed by statute, that the statute was in violation of the constitution of the state. The court lays down an apparently hard and fast rule which admits of no exception, and cites cases supposed to support its conclusions, from the states of Illinois, Maine, Utah, Nebraska, Idaho, Massachusetts, West Virginia, New York and California.

Assuming that this case was fully and fairly reported in the official reports, it appears that this question was not considered or discussed in the briefs, and it is unfortunate that the court was obliged to raise and decide the question without the aid of counsel, and, as it seems, upon a somewhat limited and hasty examination of the authorities. The rule as laid down by the court is comprehensive in its scope, and includes all public officers. If it is to stand as the law of the state, the financial officers of the state and county and municipal governments, charged by law with the collection, keeping and disbursement of the public money, are prohibited from in anywise questioning the validity of any act of the legislature directing the auditing of accounts, and the disbursement of moneys in payment thereof; for the court distinctly holds, that in the performance of ministerial duties enjoined by statute, public officers must obey the statute. Moreover, if the court shall adhere to its opinion, the supreme court itself will not, and the other courts in the state cannot, determine a plea made by such an officer in such a case upon a return to a writ of mandate, and pass upon the constitutionality of the question, for it is distinctly ruled that the courts will not pass upon the validity of a statute in such a proceeding. If the court had looked further into the very cases cited to sustain its judgment, it would have ascertained that in some of them it was expressly, and in others impliedly, admitted that there were exceptions to the rule announced in particular cases, most of which arose under the revenue and election laws.

It may be conceded as contended in the opinion, that the court will not pass upon the constitutionality of a statute in a mandamus proceeding at the instance alone of a private person, where the rights of others or of the state are necessarily involved. But, this is simply in accordance with another general rule of law, which vests the court with a wise discretion in the matter of awarding the writ. Unless the right of the relator is clear, and the relief can be granted without prejudice to the rights of others not before the court, the writ will be denied. But, to go farther and say, as the court does say here, that the officers of government will not be permitted to look to the constitution for restraints upon their official actions, and are in all cases blindly to follow the legislative command, is, to say the least, startling. It will not do to say that such officers have no interest in the question. In a late case, the Supreme Court of California said:

"We see no force in the point that the respondent (county auditor) has no interest in the question here involved. The act under which petitioner claims being unconstitutional and void, there is no law authorizing respondent to draw the warrant; and to do the act demanded of him would be to violate his official duty and oath, and subject himself to liabilities and penalties."

Denman v. Broderick, 111 Cal., 96.

And the Supreme Court of Nebraska, in a later case than the one cited in the Thoreson case, adjudged that officers may assert the unconstitutionality of a statute as a defense in mandamus proceedings, saying:

"We had thought it settled, at least since the decision of Marburg v. Madison, 1 Cranch, that the constitution is the supreme law, binding upon the legislature as well as upon every citizen, and that no act of the legislature repugnant to the constitution can become a law for any purpose. A different doctrine has of late been revived, and it would even seem has received acceptance, in such a modified form, by some courts. There can, however, in our mind, be no escape from these propositions: That the constitution is the fundamental law; that an act of the legislature repugnant thereto is not merely voidable by the courts, but is absolutely void, and of no effect whatever. It is no law, and binds no one to observe it. The officers of this state are sworn to support the constitution. Where a supposed act of the legislature and the constitution conflict, the constitution must be obeyed, and the statute disregarded. Ministerial officers are therefore not bound to obey an unconstitutional statute, and the courts, sworn to support the constitution, will not, by mandamus, compel them to do so. It is therefore a complete answer to an application for such a writ, that the statute seeking to impose a duty is violative of the constitution."

And the court proceeds to say, that the case of State vs Douglas county, cited by our own court in the Thoreson case, was not authority in opposition to its present decision, and that the question had not been there determined.

Van Horn vs State, 64 N. W., 366.

The courts of Illinois, West Virginia and New York, also declare against the rule of law as laid down in the Thoreson case. Thus it appears that the courts of five of the states, whose decisions are cited in the Thoreson case in support of the rule there announced, have distinctly held to the contrary. Indeed, the courts of twenty-two of the states, with those of the federal government, have, by solemn decision, recognized not only the right but the obligation of all public officers to obey the mandates of the constitution.

But the court has not rigidly adhered to the rule of the Thoreson case.

WEBER COUNTY MANDAMUS.

The State, ex rel., J. A. Wright, vs Joseph Stanford, et als., which was a proceeding in mandamus to compel the defendants, as county commissioners of Weber county, to appoint a tree inspector from one of three nominated by a member of the state board of horticulture for that district, pursuant to section 1176 of the Revised Statutes, as amended in chapter 47 of the laws of 1899, the commissioners defended on the ground of the unconstitutionality of the statute, and the court sustained their contention, declining to consider the question whether county commissioners were ministerial officers, because the parties to the proceeding so requested. The justice who delivered the opinion in the Thoreson case dissents.

STATE SALARY OPINION.

In the later case of the State ex rel. Heber M. Wells, Governor, vs Charles S. Tingey, state auditor, also in mandamus, the court passed upon the constitutional question presented by the respondent, and awarded a peremptory writ without making any reference, in the opinion to the Thoreson case. We are not advised as to the reason, if any, for distinguishing this case. It is true the issue was solely between the state and its officers, and all parties were before the court. But, in the Thoreson case, the state was also before the court defending its school fund against an alleged unconstitutional statute.

The last legislature enacted a statute, whereby the salaries of the governor, secretary of state, auditor, attorney general and superintendent of public instruction were increased, and made its provisions applicable to the present officers. The auditor refused to draw and deliver his warrants for the increased salaries, and thereupon, the governor applied to the court for a writ of mandate. Upon the hearing, had upon the return to the writ, it was contended on behalf of the respondent that the statute, in so far as it was made applicable to the present incumbents, was in violation of section 20, article 7 of the constitution. The court, however, without dissent, upheld the statute in its entirety, and awarded the peremptory writ. Evidently, the court considered this case as within an exception to the rule laid down in the Thoreson case. An admission that there is any exception to the rule there announced, in some degree modifies the effect of that decision. If a public officer, charged with the collection and safe keeping of public money, who is sworn to uphold and defend the constitution of the state, may not disobey an unconstitutional demand made by the legislature upon public money in his charge, who is responsible to the government for the moneys he shall pay out in pursuance of an unconstitutional act? In such a case, could he and the sureties on his official bond defend against an action to recover the moneys so paid with a plea, that he, as a ministerial officer, had no right to question the legislative act? It is generally supposed to be the law, that every officer of the government is bound to obey the constitution as the supreme law of the state. And where a ministerial officer has a well-founded doubt as to the constitutionality of an act of the legislature requiring him to perform a ministerial duty, it ought to be the law that he is justified in resisting performance until the matter is settled by the courts.

There is no reason why such a question may not be determined as well and satisfactorily in mandamus proceedings, as in any other form of action. The right of the relator, whether it depends upon the construction or constitutionality of the statute, should certainly be passed upon, and in most cases mandamus is the proper if not the only remedy. Apparently, the Thoreson case was ruled against principle and the great weight of authority.

INSUFFICIENCY OF JUDICIAL SALARIES.

The question of the sufficiency of the judicial salaries has received much attention during the past two years. At its last session the legislature had under consideration bills providing for the increase of the salaries of the justices of the supreme court and the judges of the district courts. The bill raising the salaries of the justices of the supreme court to $4,000 per annum, passed the House of Representatives, but was lost in the Senate.

No just reason can be found for longer delaying action in this matter. The insufficiency of the compensation given to our judges is so apparent, that there should be no further delay in providing for an increase. The state is rapidly growing in wealth and material resources, and is abundantly able to deal fairly with its judicial officers. A judge has just as much a right to live well and to put by money for the future as any other citizen, and his compensation should be adequate for the purpose. His entire time and energy should be given to the performance of the duties of his high station. He has no right to engage in business, since, by doing so, in more or less degree, he disqualifies himself in the administration of the great trust reposed in him. No suitor before a judge who has engaged in business transactions, can ever be fully assured that the interest or preconceived opinion of the judge may not unconsciously bias his judgment. Indeed, such are the infirmities of men, that no judge in such situation can be certain of himself. It is the duty of the state to provide a proper compen-

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