

falls upon witnesses, who are compellable to attend and serve, though daily wage-earners, but who must do so without fees. The taking of depositions in shorthand in examinations is authorized by statute, and is often almost an absolute necessity, but there is no means of paying the stenographer. The sheriff is not a salaried officer, but is payable by fees. But under the existing law he must perform all his duties in criminal cases without pay, and pay his expenses in so doing. All of which has the natural tendency to make witnesses, jurors, sheriffs, constables and, I may add, magistrates reluctant to perform duty in this class of cases. The only case in which the fees may be recovered is where the payment of the costs is included in a sentence against a defendant who is able to pay and who does not successfully appeal. This is grossly wrong and impolitic.

I cannot too strongly emphasize the necessity for some adequate provision—probably to be accomplished by making the county treasuries sub-treasuries of the Territory for this purpose—for the payment of these costs and expenses. The question of detailed method would easily be solved by the Legislature.

The revenue laws of the Territory are, to my mind, greatly in need of revision. Among the existing defects I may mention briefly the following:

The statute provides that a party whose property has been sold for the non-payment of taxes may redeem it by paying to the county treasurer the amount of the

#### DELINQUENT TAXES AND COSTS

for which it was sold, with interest. But there is no provision in the statute by which the fact of redemption may be evidenced of record so as to appear in the chain of title. To accomplish this result the redemptioner must solicit a deed from the purchaser at the sale, and if for any reason it should be refused, he is driven to a law-suit in order to obtain a cloudless record title. A law should authorize the County Treasurer to acknowledge his certificate on redemption and entitle it thereupon to be recorded, with the usual effect, as notice, accorded to other recordable and recorded instruments.

The subject of the partial redemption of real estate sold for non-payment of taxes is one upon which there is much conflict of authority. Our statute is silent upon the subject. Provision should be made enabling the owners of undivided interests, and persons becoming, subsequently to assessment and without notice, owners of specific lots or parcels out of a larger number assessed in a mass to make redemption in some manner to protect themselves, under such terms and conditions as the Legislature shall deem it just.

Again, the power of the county court, after its sittings as a board of equalization of taxes have ended, to make any changes or corrections in the assessment roll is limited to two cases—where the property has been assessed to the wrong person as owner, or has been assessed twice in the same year. Many very important cases where changes (not in valuation) should be made are not reached by this. It frequently happens that parties whose notices of the sitting of the board of equalization have failed to reach them,

and who have had no opportunity to appear before the board, have been assessed for property which is non-taxable. This they should be permitted to show and obtain an abatement, rather than to be driven (as under the existing law) to resistance of collection in the courts, or to induce the collector to take their view of the non-taxable character of the property and to refrain from enforcing the tax and to report it as "uncollectable" at his own risk. On the other hand, after the roll has been delivered to the collector, it frequently happens that taxable property is discovered which has not been assessed. The present provision for adding it to the assessment roll is, in my opinion, unconstitutional, because it makes no provision by which the supposed owners can be heard, either upon the question of taxability or value. This should be remedied by a provision for notice by citation to such person to appear before the County Court to show cause why the proposed assessment should not be made.

The foregoing are but examples of the great imperfections in the present revenue act. It is characterized at many points by the worst fault possible in the machinery of a tax system, viz., incompleteness and inexactness in details of the procedure, and a vagueness in general which sometimes amounts to incomprehensibility. Especially is this true of the act for the taxation of "transient stock" (laws of 1890, chapter 42). It will be found almost impossible to apply it satisfactorily and logically to any specific case, and when carefully examined it seems to me to give rise to so many absurdities and to admit of so many cases of double or even treble taxation that I am well-nigh persuaded the greater part of it is void. It should be replaced by a clearer and simpler law of more directness in its operation. The entire revenue system of the Territory, it seems to me, should be thoroughly revised and remodeled, and above all made full, clear and exact.

Counties being quasi-municipal corporations and having governmental and administrative functions to perform which are in many respects similar to those performed by cities and towns, it seems to me that the same reasons which have so widely led to the classification of cities according to population and to their differentiation in powers, duties, liabilities and administration framework, should lead logically to a similar classification and differentiation of the counties. Salt Lake County needs a different kind of county government in many particulars from San Juan County, just as Salt Lake City needs a different kind of government from Parowan. Such a classification of the counties of the Territory and the construction of a (so to speak) graded system of county governments would be well worthy the attention of the Legislature. For instance, such a county as Salt Lake County needs, while many counties may not need a single chief administrator or executive head, paid by salary, engaged solely and daily in executing the orders of the County court and in

limited discretion in matters of detail during the intervals between the sessions of the County court. Such an officer, payable by annual salary, was attempted to be created some years ago, by the County court of Salt Lake county, with the title of "Superintendent of County Affairs." This action and the payment of such salary have been held by the Supreme court of the Territory to be illegal. But it would undoubtedly be competent for the Legislature to make a law establishing the office and defining its duties. The Probate judges of the more sparsely settled counties might well be vested, possibly, with this executive headship, though this is a union of the executive and judicial offices which is not calculated to increase the efficiency of either; but in the more populous counties the day will probably soon come, if it has not already arrived, when the volume of business in the Probate courts will not admit of additional burdens being laid upon the judges.

It would seem that more complete systematization and therefore greater economy and efficiency in the work of constructing and repairing highways would be secured by constituting such executive officer a general superintendent of all county roads, with a supervisory power over the whole subject, subject of course to the ultimate control and direction of the County court. It is not for me, however, to attempt to elaborate the details of a revised road system, although I am of opinion that in the more populous counties such a revision is needed.

In this connection I would suggest the passage of a law authorizing the counties, under proper restrictions, to lay out highways over or along the outside lines of the "School Sections" of the Territory.

My general criticism of the laws relating to counties is that the powers of the counties are

#### TOO STRICTLY LIMITED

and need a moderate enlargement. It should be recollected that counties have practically no inherent powers. They have such only as are expressly enumerated in the statutes and such are implied by necessity from those expressed. These, under our statutes, are exceedingly few.

As an instance. Several cases have occurred in which land sold for non-payment of taxes and deeded to the Probate Judge for the benefit of the county in pursuance of the revenue law has been subsequently sold in the statutory manner, and a quit claim deed by the county passed to the purchaser, and there has subsequently appeared a defect in, or a total failure of title due to, the invalidity of the tax or of the tax proceedings. In such case it is, to say the least, extremely doubtful whether the county has power to refund to the purchaser the money paid. This should be remedied by a statute authorizing the County Court upon demand and proof made within a limited time to refund the amount paid, less the amount equally due the county for the original tax, with interest and expenses.

This instance serves to illustrate a class of powers which under the existing laws seem to me to be withheld, but which within proper limits should be conferred.

Another power now lacking which

#### ADMINISTERING THE AFFAIRS

of the county, and vested with a