

BACK STORY

NEVADA HISTORY THROUGH ITS CASE LAW

BY HEIDI PARRY STERN, ESQ.

One way to study Nevada history is through an examination of the decisions of its Supreme Court. To this end, a few years ago the Nevada Judicial Historical Society compiled an audio book collection of “Ten Famous Cases of the Nevada Supreme Court, 1865-1937.”¹ The summaries of these cases provided by the Historical Society shed light not only on historic Nevada legal precedents, but also on the social and cultural circumstances out of which the cases arose. Some of Nevada’s most interesting and notable public figures also have their place in the stories these cases tell.

The Historical Society’s “Ten Famous Cases” deserves a listen by every Nevada lawyer, particularly those with a desire to connect with the state’s past. There is a little something for everyone here, in an entertaining and engaging format, as the stories are read by some of today’s well-known Nevadans.

The cases include *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 342 (1872), in which the attorney general’s office argued for the right of seven-year-old David Stoutmeyer, as a black boy, to attend public school. The court held that the law purporting to deny nonwhite children the right to attend public school was unconstitutional. Chief Justice James F. Lewis, the first chief justice of the Nevada Supreme Court, wrote that an indispensable element of the state and federal constitutions was that every citizen is equal before the law. The law at issue violated this maxim.

Ten Famous Cases also reveals that the justices of the court worked to protect their own interests as well as those of the public. In 1867, Justice Beatty, realizing that his guaranteed salary was worth less in greenbacks than in gold coin, sued the state treasurer to receive his pay in gold. Beatty argued his own case before the court of which he was a member, but ultimately to no avail. Beatty lost his appeal, and retired from the court shortly thereafter, no doubt receiving his last paycheck in greenbacks. *State ex rel. Beatty v. Rhodes*, 3 Nev. 240 (1867). In *State v. Davis*, 26 Nev. 373 (1902), the court provided itself with an opportunity to uphold its inherent power to determine its budget and to purchase those things necessary for conducting its business. The case arose from an attempt by Justice Sam Davis to order chairs for the court, only to have the state refuse to pay the bill. Fortunately for the court, it was able to have the last word on that controversy.

The Nevada Supreme Court did not always have the last word, however. In *Ex Parte Crandall*, 1 Nev. 294 (1865), a case in which the court upheld a Nevada tax law that levied a tax on stagecoach companies for each person transported out of the state. The United States Supreme Court disagreed and overturned the court’s decision, establishing freedom to travel across state lines and furthering an expansive view of the new union.

For those Nevada lawyers with a taste for the dramatic and the quintessentially western, Ten Famous Cases contain tales of gambling, Indian battles, stagecoach robberies, murder and public executions. These cases support the notion that Nevada was no easy place to live during its early years of statehood. One tale of murder, where a man was found dismembered in the cellar of a house where he had sought lodging, resulted in the first and only execution of a woman in the state of Nevada. *State v. Potts*, 20 Nev. 389 (1889). In another, arising out of a bathhouse purposely burnt to the ground, the court ruled that the accused could be compelled to reveal a distinctive tattoo despite the presumption of innocence and his Fifth Amendment right not to incriminate himself. See *State v. Ah Chuey*, 14 Nev. 79 (1879).

Two of the 10 cases, again involving murder, are the last of their kind. In a case arising out of the last stagecoach robbery in the United States, the court affirmed the admission of a bloody palm-print as evidence used to convict the murderer. See *State v. Kuhl*, 42 Nev. 185 (1918). In a case arising out of the last Indian battle in America, which occurred in early 1911, the court upheld the right of the posse who captured and killed a small band of Shoshone Indians led by Shoshone Mike to collect a state-offered reward for their efforts, despite the fact that the men had not known about the reward until their return. See *Smith v. State*, 38 Nev. 477 (1915). The court found that every citizen is presumed to know the law.

Gambling and prostitution also have their moments in the 10 famous cases. The cases include the story of the trial and execution of the murderer of Julia Bullette, one of Virginia City’s most notorious prostitutes. See *State v. Millain*, 3 Nev. 409 (1867). This case resulted in public execution, in this case attended by Mark Twain. And finally, the court struck down an attempt by the wife of a frequent gambler to sue a gaming establishment for tempting a person, in this case her husband, to partake in illicit or illegal activity. See *Anderson v. McGill Club*, 51 Nev. 16 (1928). At the time, gambling where the house keeps a percentage of the proceeds was illegal in Nevada. Just a few years later, in 1931, Nevada legalized gambling, and was well on its way to becoming the state we know – and love – today. ■

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1 The Nevada Judicial Historical Society is a non-profit organization dedicated to the preservation and better understanding of the history of Nevada courts.