

state treasury that the claim must be examined, audited and allowed by the auditor and approved by the secretary of state; and before Mr. Balch, trustee for The American Chicory Company, shall receive a warrant on the treasury of the state for \$17,840.23 he should, in my judgment, establish to the satisfaction of the auditor not only the constitutionality of the act under which the bounty is sought to be given but that that part of the act pertaining to chicory has been in all respects complied with by The American Chicory Company.

Section 6 of that act provides that "No money shall be paid upon chicory not containing at least ninety-nine (99) per cent of pure chicory, nor upon chicory produced from beets from which as much as \$10.50 per ton shall not have been paid to the producer."

The act further provides that "the quantity and quality of chicory upon which money is to be paid shall be determined by the secretary of state, with whom all claimants shall from time to time file verified statements showing the quantity and quality of chicory manufactured by them, the price paid the producer of beets, and upon which said money is claimed."

This last clause certainly does not exonerate the auditor from making an examination and adjustment of all claims presented to him for allowance, for the constitutional section that we have cited, viz: Sec. 9, Art. 9, says that the legislature shall provide by law that all claims upon the treasury shall be examined and adjusted by the auditor and approved by the secretary of state. And any provision made in conflict with this plain requirement of the constitution is of no force whatever.

Section 8 of the chicory act provides that "when any claim arising under this act is filed, verified and approved by the secretary of state, as herein provided, he shall certify the same to the auditor of the state, who shall draw a warrant upon the state treasurer for the amount due thereon, payable to the party or parties to whom said sum or sums are due."

This is clearly an attempt upon the part of the legislature to overturn Section 9, Article 9, of the constitution and to substitute the secretary of state for the auditor of state in so far as examining and adjusting of the claims are concerned. We think there is only one way by which these chicory gentlemen can approach the treasury, if at all, and that is by the methods pointed out by the provision of law that we have quoted made in pursuance of Section 9, Article 9 of the constitution. Section 6 supra says: "All persons having claims against the state shall present the same with the evidence and support thereof to the auditor to be audited, settled and allowed within two years after such

claim shall accrue," etc. When evidence is thus presented to the auditor he may then inquire why it was that on February 20, 1899, The American Chicory Co. filed its sworn claim with the auditor for \$19,090.12 and then in April, 1899, The American Chicory Company filed another and a different claim with the auditor for \$17,840.23.

It is respectfully suggested that so far as proofs before the auditor are concerned there is no legal evidence whatever that any chicory has ever been manufactured in the state of Nebraska, much less that it was 99% pure chicory or that it was produced from beets for which the American Chicory Company paid as much as \$10.50 per ton to the raisers thereof. But it may be said that since the legislature has made a specific appropriation for the above amount that the auditor has only a ministerial act to perform, simply to draw his warrant. *State vs. Babcock*, 22 Neb., 38, we think sheds a flood of light upon this important question.

"The legislature of 1883 passed an act appropriating \$6,824.14 to pay the expenses incurred in the trial of I. P. Olive and others for murder, which act named the persons and the amount of money each should receive, and authorized the auditor to draw a warrant for the several amounts due the parties named in the act. The relator applied for a mandamus to compel the auditor to audit his claim and to draw a warrant upon the treasury for the same. The court denied the writ. It was insisted in that case that the duties of the auditor were ministerial, and that he had no discretion in the premises. The court, after quoting section 9 of article 9 of the constitution says: 'This language clearly implies a limitation upon the power of the legislature in the matter of auditing claims against the state. The provision is imperative. The legislature shall provide that all claims upon the treasury shall be examined and adjusted by the auditor and approved by the secretary of state, before any warrant shall be drawn or the money paid. These officers are, by the fundamental law of the state, made the examining board through whose hands all claims must pass, and it is not within the power of the legislature to change this tribunal. It cannot review the decision of these officers, for the section clearly points out the reviewing court. The party aggrieved may appeal to the district court. The fact that the appropriation is specific can have no weight whatever, for section 22 of article 3 of the constitution provides that no money shall be drawn from the treasury except in pursuance of a specific appropriation made by law, etc. All appropriations of money from the treasury are specific, and all claims upon the treasury shall be examined and adjusted by the auditor,' etc. There is no distinction in appropriations. It is true that in the section (22, art. 3) above re-

ferred to it is provided that no allowance shall be made for the incidental expenses of any state officer except the same be made by general appropriation, etc., but this provision can in no way change the fact that each appropriation contained in the general appropriation bill must be a specific appropriation for the purposes of offices named, and even then an account must be rendered 'specifying each item.' Nothing could be more specific than such an appropriation. No warrant can be drawn except in pursuance of an appropriation, but the auditor may examine and adjust claims in the absence of such action by the legislature. While it is the duty of the legislature to see that no appropriations are made except for meritorious claims, yet such is the character of the safeguards thrown around the state treasury that such appropriation is by no means a final adjustment or auditing of the claim. It simply places so much of the funds in a position to be used by the auditor and secretary when the claim is examined and adjusted by the auditor, and his action is approved by the secretary. While the legislature may set apart money to pay a claim, it cannot pay it out, nor order it to be done, except in the manner provided by law. It has no jurisdiction to audit claims, and it is powerless to apply the money thereon without the quasi-judicial concurrence of the officers named. If money is appropriated by that body to pay a claim, such action is not an adjudication upon its validity to such an extent as to relieve the auditor and secretary from responsibility, for their duties remain as fixed by the constitution. This construction of the constitution has been adopted by the legislature as well as by the supreme court in its former decisions."

The above decision was cited with approval and followed in *State vs. Moore*, 37 Neb., 507.

If these decisions are of any force as law in this state, then the auditor as well as the secretary of state has a responsibility resting upon him when claims of this character are presented for his consideration. He sits as a quasi-judicial officer to hear and weigh the evidence and to exercise his judgment and discretion in the premises, and from his judgment an appeal lies to the district court.

As one in common with many others interested in preventing the treasury from being looted in the manner proposed, I would respectfully ask your attention to the above suggestions, and if they meet with your views I trust that you will not draw your warrant in this case upon the treasury, or mail it as requested to do, until you are ordered so to do by the proper authority.

With respect and consideration, I remain,
Very respectfully,

A. J. SAWYER.