



SENATE....

....No. 3.

THE

ATTORNEY GENERAL'S

ANNUAL REPORT.

1839.

COMMONWEALTH OF MASSACHUSETTS,
STATE HOUSE, BOSTON.

FEB 27 1888

Commonwealth of Massachusetts.

To the Honorable Legislature :

THE official business done by the Attorney General for the year ending on 31st October, 1838; "the suits and prosecutions to which he has attended; the number of persons prosecuted; the crimes for which, and the counties where had; the results thereof, and the punishments awarded therefor," are presented in the following

R E P O R T :

1837. November 2. Commencement of proceedings in relation to a claim on the part of the Commonwealth, for the effects of the late Dr. Dyres, supposed to have died in the county of Norfolk, intestate and without legal heirs.

Nov. 4. Commonwealth vs. Edwin H. Blanchard, indicted in the County of Suffolk for the crime of fraud in obtaining property by false pretences, and with having fled beyond the jurisdiction of this Commonwealth. Case examined according to the provisions of the Revised Statutes, chap. 142, sec. 6, on an application made to the Governor, for a requisition on the Governor of New York to deliver the said Blanchard as a fugitive from justice.

An abstract of the evidence, and all material circumstances prepared and reported to the Governor, with "an

opinion as to the expediency of making such demand," as the statute requires.

Nov. 7. Supreme Judicial Court for the County of Essex. Commonwealth vs. Benjamin Kimball, indicted for violating the victuallers' licence law; convicted at the Common Pleas. The case brought before this court by the defendant on a Bill of Exceptions to the charge of the Judge in the court below, declaring the said law to be conformable to the constitution of the United States and of this Commonwealth. Questions of law argued.

Commonwealth vs. Oliver Blackington. Indictment and Bill of Exceptions as above, with certain other questions on the form of indictment, admissibility of testimony and amount of proof. Argument opened.

Nov. 8. Arguments in the above continued and closed.

Commonwealth vs. Samuel Thurlow. Indictment and Bill of Exceptions on the constitutional questions as above, and other questions of form and of testimony. Argued.

Nov. 9. Commonwealth vs. Samuel Thurlow. Indictment and Bill of Exceptions as above, with other questions in relation to the proceedings below. Argued.

Commonwealth vs. Benjamin Kimball. As above, with variation in the technical questions reserved. Argued.

Commonwealth vs. Benjamin Kimball. As above, to abide the decision in the case first mentioned.

These cases, after argument before the full bench were continued for advisement, and at the term of the Court holden in May last, an opinion was pronounced, affirming in the fullest extent, the constitutionality of the license laws, and thus putting at rest a question which had been the subject of much litigation in various parts of the Commonwealth.

Nov. 13. Consultation with the District Attorney of the Middle District, on the proceedings in regard to a person arrested for Robbery. R. S. ch. 13, s. 31.

Nov. 15. Case of Samuel Sears Moore, charged in New Hampshire with having knowingly passed counterfeit money, on application from the governor of New Hampshire for an Executive process against the said Moore as a fugitive from justice Examined.

Nov. 16. Report and opinion prepared and transmitted.

Nov. 16. Further proceedings in claim vs. Administrator of the estate of Dr. Dyres.

Nov. 17. Attended the taking of the deposition of the Hon. William Parmenter, to be used in the case of Commonwealth vs. Town of Cambridge.

Nov. 18. Examination of the case of Henry Bliss on a requisition made by the Governor of New York, for the Executive process of this Commonwealth to arrest and deliver the said Bliss as a fugitive from justice.

Nov. 19. Facts and opinion reported. Process postponed.

Nov. 20 Examination of the Books, &c. reproduced by a summons issued on the 18th, to the Overseers of the Poor, Town Clerk, and Keeper of the Alms-house, of the town of Cambridge.

Nov. 24. Trial of the issue between the Commonwealth and the town of Cambridge in the Supreme Court. Verdict for the Commonwealth, subject to the opinion of the Court on questions of law.

Nov. 25. Report of the questions reserved, prepared for examination of the Court.

Nov. 26. Report of the adverse party presented and considered.

Nov. 29. Consultation with, and written opinion given to the District Attorney of the Middle District, at his request, R. S. ch. 13, s. 31, on the construction of the R. S. ch. 136, s. 27.

Dec. 1. Supreme Judicial Court held by the Judges informally for considering an application made by the counsel of Samuel S. Maynard indicted for murder, for a postponement of the case. Discussed. Postponement ordered.

Dec. 2. Claim filed with the Judge of Probate for the County of Norfolk, for a Decree in favor of the Com-

monwealth, for the assets in the hands of the administrator of Gerard Dyres.

Dec. 5, 6, 7. Writs made against several Banks, Auctioneers, and their bondsmen.

Dec. 12. Supreme Judicial Court, Middlesex, Commonwealth vs. Samuel S. Maynard. The case had been postponed to this day. Motion for continuance on the part of defendant. Granted by Court. Witnesses recognized for their appearance at the next term in Lowell.

Dec. 18. Supreme Judicial Court, Hampden County, Commonwealth vs. Charles Woodford for Murder. Trial commenced and continued through the day.

Dec. 20. Trial proceeded. Verdict guilty.

Dec. 20. The Judges opened a special Court, according to the Statute, for the trial of Jesse Hall, Jr., for Murder. Jury impannelled, and trial commenced.

Dec. 21. Trial proceeded.

Dec. 22. Trial proceeded.

Dec. 23. Trial proceeded.

Dec. 24. Trial proceeded.

Dec. 25. Trial proceeded.

Dec. 26. Verdict, Guilty. Motion in arrest of judgment: Argued. Overruled.

Sentence of death pronounced upon Charles Whitford.

Same upon Jesse Hall, Jr.

Dec. 28. Commonwealth vs. Asa Hayden. Indicted for Larceny ; and charged as a fugitive from justice. Examined on application for an Executive requisition to the Governor of New York, and facts and opinion certified.

Dec. 29. Examined the case of John Campbell, charged in Maine with arson, and demanded by the Executive authority of that state as a fugitive from justice. Facts stated, and an opinion in writing sent to the Governor in favor of a conditional warrant of arrest.

Memorandum. The Attorney General was absent from the Commonwealth from the 8th January to 9th February, on the business of the Commonwealth in the case pending in the Supreme Court of the U. S. by Rhode Island vs. Massachusetts.

1838. February 19. Received an order from the Governor to examine the circumstances connected with Henry A. Atkins, charged with fraud, and with having fled from justice, on an application for an executive requisition to the Governor of the State of Maine, for his arrest and surrender for trial in this Commonwealth. Examination commenced.

February 21. Examination closed. The party accused was a citizen of Maine. Opinion given to the Governor in favor of issuing the requisition.

Feb. 21. Received an order from the Honorable Senate to inquire into the title of the Commonwealth to the Province lands, so called, in Provincetown, and whether its right to any portion is lost by the undisputed occupancy of any of the inhabitants.

Feb. 24. Received an order, passed by both branches of the Legislature, to attend any committee thereof who were appointed for the examination of any bank, in the Commonwealth, whenever required by such committee, accompanied by an order of the committee on the Kilby Bank to attend its session on 27th instant, and an order of the committee on the Middlesex Bank to attend its session on 1st March.

Feb. 24. An opinion in writing concerning the Province lands having been prepared, was delivered to the Honorable Senate.

Feb. 27th. Attended the committee on the affairs of the Kilby Bank.

Feb. 28. In pursuance of an order of the committee on the affairs of the Commonwealth Bank, attended the session of the committee. Session adjourned to 12th March.

March 1. Attended the committee on the affairs of the Middlesex Bank.

March 6. Probate Court for Norfolk County, Commonwealth vs. Milton Durand, Administrator of G. Dyres, the case postponed to 10th inst.

March 7. Attended the committee on the affairs of the Kilby Bank. Hearing further postponed.

March 8. Received an order from His Excellency the Governor to examine two communications from the Governor of the State of Maine in relation to the former requisition from this Commonwealth for a supposed fugitive from justice, and to report thereon.

March 9. Communication from a committee of the Executive Council as to the state of the Commonwealth's liabilities to the Norwich and Worcester Rail-road, with directions to prepare an opinion in regard to the same. Conference with the agent of that company, correspondence with the Register of Deeds in county of Worcester.

March 10. Probate Court, Norfolk. On application in behalf of the Commonwealth for the decree in the case of Dr. Dyres' estate in hands of administrator. Examination of administrator's account. Balance ascertained. Hearing of evidence on claim of Commonwealth. Claim allowed, and decree made accordingly.

March 12. Opinion in writing delivered to the chairman of the council on the matter of the Norwich and Worcester Rail Road.

March 12. Supreme Judicial Court, Suffolk. Commonwealth vs. James Tuck, appellant. Motion to dismiss the appeal, &c., argued.

Same vs. Charles Watson, same—same.

March 12. Attended the committee of the Legislature on the Commonwealth bank.

March 13. Consultation with the District Attorney of the Northern District, concerning the question of process *de novo* before the Grand Jury, in case of an indictment for murder.

March 13. Attended the committee of the Legislature on the subject of Charlestown and Warren Bridges, by their order.

March 14. Attended the above committee at their meeting this day.

March 15. Attended the same committee.

March 16. By order of a committee of the Executive Council, attended them with the agent of the Norwich and Worcester Rail-road.

March 19. Settled the Commonwealth's claim against Milton Durand, administrator of Gerald Dyres, and received, according to the decree of the Judge of Probate, the sum of \$5260 76.

March 19. Received an order from the Hon. House of Representatives, to make report, concerning certain matters in relation to charitable institutions, &c.

March 20. Received an order from His Excellency

the Governor, to examine and report on the case of James Day, a fugitive from justice.

Examination and report subsequently made as required.

March 23. Attended the committee on the affairs of the Roxbury bank, by their order. Further testimony produced by the bank, and the case adjourned to 27th instant.

March 29. Question in regard to the legal claim of the Commonwealth to offset the demand for a tax upon an insolvent bank, against so much of a note given for money borrowed, as would pay the tax; the note not being payable to order, but in fact having been negotiated in good faith.

The subject was presented by the Treasurer of the Commonwealth, and an opinion of the law given at his request.

April 2. Supreme Judicial Court. Commonwealth vs. Abner Kneeland, indicted for blasphemy. Opinion of the court on the questions reserved at the trial, delivered by the Chief Justice, and the exceptions taken by defendant overruled. Sentence postponed at defendant's motion.

April 4. Consultation with the District Attorney of the Middle District on a series of cases under the license laws.

Paid to the Treasurer of the Commonwealth the sum of five thousand two hundred and sixty dollars and seventy-six cents, being the whole amount of the judgment

and decree of the Probate Court in the case of Commonwealth vs. Milton Durand.

April 5. Consultation with the District Attorney of the Northern District on questions arising in the prosecution of a person absconding, and presumed to be in Canada.

April 6. In Supreme Court, the argument in the case of Commonwealth vs. Cambridge, commenced.

April 7. In relation to sentence on Abner Kneeland, the defendant was heard, and the Attorney General in reply.

The argument in Commonwealth vs. Cambridge was concluded.

April 11. Supreme Judicial Court for Middlesex, at Lowell. Commonwealth vs. Wm. Graves, for murder. Defendant arraigned. Counsel assigned by the court. Trial appointed for 4th June.

April 13. Received from the Treasurer of the Commonwealth a list of twenty-eight banks delinquent in the payment of the semi-annual tax, to be proceeded against for the recovery of the sum due,—and suitable measures from time to time taken thereon for this purpose.

April 16. The case of the Commonwealth vs. Henry Atkins, as a fugitive from justice, having been for some time under consideration, and sundry communications between the Executive departments of Massachusetts and

Maine having been placed in the hands of the Attorney General, with directions from the Governor to report on the construction of constitutional law involved in the case ; and on the proceeding of the agent of the State charged with the requisition formerly issued, a report was prepared, and was this day delivered to His Excellency.

April 17. Received for examination the draft of a bond in the penal sum of two million one hundred thousand dollars, and the instrument of conveyance as collateral thereto, made by the Western Rail-road Corporation.

April 23. Probate Court, Suffolk. Commonwealth, applicant for a decree in the case of John Wilson alias Peterson, an alien, supposed to have died without heirs. Hearing in part.

April 28. The bond and conveyances of the Western Rail-road approved and delivered to the agent of the corporation.

May 3. Order received from the Governor to examine the case of Josiah Gilmore demanded as a fugitive from justice by the Governor of New York, and under arrest in Hampden county, for passing counterfeit bills in this Commonwealth.

May 4. Received the plan of proceedings intended to be adopted by the Nashua and Lowell Rail-road Corporation, as preparatory to the execution by them of such legal instruments as might be required, to entitle them to obtain the advance of money under the law recently enacted,—for examination and advice.

May 7. Received from the Treasurer a list of ninety persons, debtors to the Commonwealth, as promissors or guarantors, or co-sureties on promissory notes in his office on which principal or interest remained due—to be proceeded with according to the Revised Statutes, chap. 13, section 25.

Such measures were accordingly pursued. But for the circumstances connected with these demands, and the means of proceeding in them for the greater security of the Commonwealth's rights, I respectfully ask leave to refer to the same subject in my last annual report at pages 11 and 12, as printed in the documents of the Senate.

May 9. The case of Josiah Gilmore having been investigated, an opinion was prepared and sent to the Governor, according to his direction on 2d.

May 12. Consultation with the District Attorney of the Northern District, on the cases for trial before the Supreme Court at Lowell, on 4th proximo, and especially with regard to measures for procuring the attendance of absent and absconding witnesses.

May 14. Probate Court, Suffolk County. Further hearing in case of John Wilson, deceased.

May 16. Received the draft of a bond in the penal sum of one hundred and eighty thousand dollars, and conveyances collateral thereto, prepared by the Eastern Rail-road Corporation, for advice and direction in order to obtain an advance of money from the Commonwealth under the law recently enacted in their favor.

May 17. Further consultation with the District Attorney of the Northern District, to make arrangements for the trial of Wm. Graves in the absence of the absconding witnesses. New witnesses to be sent for, and other efforts to supply the deficient testimony.

May 21. Probate Court, Suffolk County. Further proceedings on the claim of the Commonwealth in the case of the administrator of Wilson, deceased.

May 25. Commonwealth vs. John G. Copp, charged with larceny, and being a fugitive from justice. Case examined on an application for an Executive requisition to the Governor of New York, and report and opinion certified accordingly.

May 26. The bond and mortgage of the Eastern Rail-road Corporation finally approved and certified.

June 2. Commonwealth vs. Frederic G. Williams, prosecuted in Suffolk for forgery. Application for an executive warrant to the Governor of the State of Alabama for his arrest and surrender as a fugitive from justice. Case examined and report made.

June 4. Supreme Judicial Court, by special adjournment at Lowell. Commonwealth vs. Wm. Graves, for murder. Motion to postpone on account of absent witnesses made by the counsel of the Commonwealth. Granted by the court—9th July assigned for trial.

Commonwealth vs. Samuel S. Maynard, for murder. Trial commenced and continued through the day.

June 4. Trial proceeded.

June 6. Trial proceeded, and was finished. Verdict, guilty of manslaughter. Sentence, three days solitary imprisonment, and three years hard labor—in the State Prison.

June 7. Commonwealth vs. Isaac Pollard, charged before the Police Court at Lowell, with being accessory to murder, and with being a fugitive from justice. Application to the Governor for Executive requisitions to the Governors of Pennsylvania and New York, for his arrest and surrender; and a state of facts and opinion certified accordingly.

June 11. Supreme Judicial Court, by adjournment in Suffolk. Commonwealth vs. Richard Hildreth, indicted for libel. Special plea in abatement and appeal from the judgment of the Municipal Court thereon. At the motion of the Attorney General, the appeal dismissed as having been improvidently taken.

Commonwealth vs. Asahel B. Mott, appellant, from a judgment of the Municipal Court, for second sentence to State Prison. Submitted without argument. Prisoner remanded. Continued for advisement.

12. Instructions prepared by direction of the Governor, to the Agent of the Commonwealth entrusted with the Executive requisition to the Governor of Alabama, for T. G. Williams.

June 13. Received from the Treasurer a list of fifty-three delinquent Auctioneers, for process against themselves or their Bondsmen, as provided by law. Measures

were accordingly taken, for this purpose, first in all cases by letter, and where that was ineffectual and the case required it, by action at law. In the course of the year, most of these cases have been adjusted at the Treasury.

June 15. Received for examination the Record of the proceedings of the Nashua and Lowell Rail-Road Corporation, and the draft of a Bond, and other instruments prepared under directions given by me to the Agent of the Company for the purpose of receiving the money to be advanced by the Commonwealth.

June 18. In Supreme Judicial Court, Suffolk. Commonwealth vs. Abner Kneeland. Defendant sentenced to sixty days imprisonment in the common jail.

June 19. The Bond Mortgage and Records of the Nashua and Lowell Rail-Road Corporation having been examined, were approved, certified, and delivered to the Treasurer.

June 19. Supreme Judicial Court, Suffolk. Commonwealth vs. James B. Tuck, Appellant. Motion in arrest of judgment, after conviction of aggravated larceny. Argued. On the 25th, the opinion of the Court was pronounced. Further proceedings had. Sentence postponed, on defendant's motion, to 27th. Further argument on the construction of the law in regard to punishment. On 29th, the opinion of the Court was pronounced on this part of the case, and the prisoner was sentenced to 3 days solitary confinement, and 5 years hard labor in the State Prison, as a common and notorious thief.

It will illustrate the remarks in a subsequent part of this report, to advert to the fact, that, in the progress of this case, the prisoner was brought from the jail, to the Court House, thirteen several times.

June 25. Case of Gilmore, in Hampden County, further attended to, by request of the Sheriff having him in custody.

June 25. The opinion of the Supreme Court in the case of Commonwealth vs. The Town of Cambridge, on the questions reserved, was this day delivered. The verdict was set aside, and the rules for estimating the accounts between the town and the Commonwealth were defined.

The case stands for a new trial, on principles favorable to the claim of the Commonwealth, for a considerable part of the sum supposed to have been over paid to the Town.

June 26 and 27th. The proceedings of the Agent of the Commonwealth, sent with an executive requisition, to the state of Maine, in the case of Atkins having been the subject of complaint, by the Governor of that State, were referred to the Attorney General, for examination, and such measures as the circumstances rendered proper. Examination, thereof, was accordingly had. The explanations of the Agent received, and communicated with the Attorney General's opinion, to His Excellency the Governor of this Commonwealth.

July 2. Received from the Chairman of a Committee of the Executive Council, a request to examine and prepare an opinion on the legality of a certain military elec-

tion, and the petition and remonstrances thereon; which opinion was subsequently sent to the Committee.

July 3. The Treasurer of the Commonwealth represented the necessity he was under of obtaining further legal advice in regard to certain measures connected with his official duties, and the public interest, and stated certain questions on which he desired an opinion, in regard to the law. The same were considered, and at a subsequent day, an opinion was submitted.

On this matter, and the general subject of which it is a part, reference is respectfully made to the Attorney General's last annual Report, pages 23 and 24.

July 6. Case of Commonwealth vs. J. C. Brodhead, indicted for embezzlement, and charged with being a fugitive from justice. Proceedings had, on an application for an Executive requisition, to the Governor of New York.

July 7. Proceedings had in consequence of a communication from the Agent of the Commonwealth, at Mobile, charged with an Executive requisition for Williams.

July 9. Supreme Judicial Court, at Lowell. Commonwealth vs. Wm Graves. Motion made on part of the Commonwealth, for a continuance by reason of the absence of a material witness, and the efforts to prevent his attendance made by some unknown person. Witnesses examined to this point, and the motion sustained.

July 11. Arrangements made in New York, Pennsylvania, and New Hampshire in regard to the above.

July 14. Commonwealth vs. Asa A. Brown, charged with fraud, and as a fugitive from justice, on application for an Executive requisition, to the Governor of North Carolina.

Interrogations in writing to Applicant. Answers obtained. Facts and opinion, certified.

July 18. Case of Josiah Gilman, at Hampden, indicted for passing counterfeit money, and demanded as a fugitive from justice by the Governor of New York, further considered at the request of the Sheriff of that county.

July 26. Further correspondence as above. Suspended as to final action by his subsequent escape from prison.

August 7. Examination of the bill of costs presented by counsel of Maynard to be taxed and paid by Commonwealth.

Aug. 9. Commonwealth vs. Brazillai Perkins, charged with larceny, and as a fugitive from justice. Application for an Executive requisition to the Governor of N. York.

Aug 10. Facts and opinion reported to the Governor on the above case.

Aug. 26. Commonwealth vs. Moses B. Goodwin. Larceny. Fugitive from justice. Application for Executive requisition to the Governor of Maine. Facts examined. Opinion given against the application.

September 3. Consultation with the District Attorney

of the Middle District, on the case of Davis, in custody on a charge of murder.

Sept. 11. Supreme Judicial Court, Hampden County. Commonwealth vs. William F. Reed, appellant, for perjury. Commonwealth vs. Lydia Ann Reed, appellant, for same. Jury empannelled and trials commenced before same pannel.

Sept. 12. Trials proceeded.

Sept. 13. Trials proceeded. Verdict, not guilty.

Sept. 25. Examination of the cases of Edward Salzman and Geoffrey Leeford, charged with store breaking and larceny at New Orleans, and claimed by the Governor of the State of Louisiana, as fugitives from justice.

Sept. 26. Examination continued. Report and opinion delivered to the Governor.

October 9. Supreme Judicial Court, Worcester. Commonwealth vs. Townsend Willard, license law. Exceptions from Common Pleas. Argued. Continued.

Commonwealth vs. Squire Shove. Exceptions, &c. Argued. Continued.

Oct. 15. Received from the Treasurer a list of six banks, delinquent in the payment of the tax, to be proceeded with according to the statute.

Oct. 16. Supreme Judicial Court, Middlesex. Com-

Commonwealth vs. William Graves. The witnesses who attended according to recognizance or summons, further recognized to appear on 4th December, and trial assigned for that day.

Oct. 29. Supreme Judicial Court, Bristol County. Commonwealth vs. Joseph Silvia, murder. Trial commenced.

Oct. 30. Trial proceeded. Verdict, manslaughter. Sentence, three days and three years in State Prison.

Commonwealth vs. Jason P. Lord, assault and battery. Exceptions from Common Pleas, as to character of a Sheriff's aid; submitted and continued for advisement.

Commonwealth vs. same, license law. Exceptions, &c. Submitted and continued.

In explanation of the foregoing details, I beg leave respectfully to state, that the duties of the Attorney General extend to causes civil as well as criminal, in which the Commonwealth is a party, under the limitations provided by the terms of the law. This connection with the civil causes of the Commonwealth was first established as a part of his regular duty, by the statute of 1832. Before that time, civil causes in which the Commonwealth was a party, were of rare occurrence; and when they arose, provision was generally made by special resolve. The ordinary demands in favor of the Commonwealth were few, except for the collection of its taxes, and these by a very plain and summary process then in use, were enforced without any reference to the judicial tribunals.

The reception and distribution of the Surplus Revenue, the investment of the State's funds in rail-road corporations, and the extensive sale of its public lands on credit, have greatly multiplied the occasions for civil process in the ordinary course of law.

The statute which abolished the ancient proceedings by warrant of distress, leaves the Commonwealth to proceed in the courts of law in the manner of a private corporation, *as well for its auction and bank taxes as for its other demands*, with no priority or privilege over common suitors, whenever there is any delinquency by any one of its debtors. Hence it is, that new and pressing occasions arise for judicial proceedings by the State, not only in its character of a great owner, proprietor, and creditor, but on the part also of its principal agents, who are entrusted with the management of its property, or the preservation of its credit. It is in consequence of this new state of things that this department of the Attorney General's duty has greatly extended, as will be seen by the fact, that during the past year, one hundred and eighty-five separate causes of civil actions have been sent to him from the Treasurer or other source, to be proceeded with by suit at law, or such other manner as in his discretion should be deemed expedient; and that during this, and the preceding year, many occasions have arisen for consultation and legal advice on the part of officers of the government, growing out of the complicated relations in which the public business has been placed.

I submit this matter to the attention of the Honorable Legislature only to make known the defect in the existing provisions of law, and the need of further provisions to meet and accompany so great a change in the business of the Commonwealth.

In one class of cases, the Attorney General is directed to proceed "with due regard to the situation of the debtors," but the means of obtaining a knowledge of that situation is not at his command. In some cases, suits at law are peremptorily enjoined; but the expenses of such suits are no where provided for. By a recent statute, a defendant, prevailing in a suit against the Commonwealth, is entitled to be paid his taxable costs; yet for a preliminary examination of the case, which is always necessary to prevent such a result, no means are allowed.

The great change which was made in the form of proceeding by the Commonwealth, for the recovery of its taxes and debts, by the abrogation of the ancient Writ of Warrant of Distress, and the substitution of the ordinary process of a suit at law, was for some years hardly realized by the community.

It is now beginning to be better understood. Debtors may be expected to take advantage of it. Suits will, of course, be multiplied, and emergencies will arise in which more means may be required than are at present placed at the disposal of any officer of the government.

I had the honor of including this subject in my last annual Report, and the experience of another year induces me respectfully to repeat it on the present occasion.

In this connection it may be proper to notice the subject of FUGITIVES FROM JUSTICE, first assigned to the Attorney General, as a branch of public duty, in 1834; when it was perceived to be a growing cause of interest to the Commonwealth. More cases have probably occurred since that period, than in all the previous time since the adoption of the Constitution of the United States.

The number is thus increased by the facility of inter-

course between the States, and the policy of criminals to change their residence as soon as possible, after the commission of great crimes.

In these cases, promptness of action, when a messenger is to be sent *from* this State, and a ready attention to the business when the messenger of another state is deputed *to* the Executive of this Commonwealth, are indispensably requisite. But the process is of a high and extraordinary character, and the haste that is demanded, may not safely be permitted to supercede a due deliberation and inquiry.

The process is peculiarly liable to be abused. The security of our own citizens from harrassing and vexatious arrest, when the law does not authorize their surrender, and the power of obtaining or delivering culprits, who ought to be subjected to judicial trial, are the true objects of this process, and these cases should be carefully distinguished from those, where individual advantage and private claims for debt or contract, are the real objects of the application. In the recent very free use of this constitutional provision through most of the United States, questions have arisen within this Commonwealth that involve the most complicated and nicest points of constitutional and public law.

The duty assigned to the Attorney General, in these cases, extends very much into detail, by the Revised Statutes, ch. 142, sec. 6 and 7; but the means of obtaining the necessary information on the spur of the occasion, are not at his command.

During the last and preceding years, the Legislature has been pleased to direct the advance of large sums of money to certain rail-road corporations, on the execution of a bond, "in such form as the Attorney General shall

prescribe," and on the conveyance of the entire road with its income, and all the franchise and property to the corporations respectively belonging, as a pledge or mortgage to secure the performance of all the conditions of such bond, "by a suitable instrument to be prepared for that purpose, under the direction of the Attorney General."

Without stopping to inquire whether this new and highly responsible trust was a part of the regular official duty of the Attorney General, or might properly be considered as an extraordinary service specially required by the Legislature, I have in all the cases which have been presented, attended to the business without expense to these corporations or any of them, and with the deliberation and care which the amount involved and the circumstances of the conveyance would admit.

But the immense interest which the Commonwealth has in these securities, the imperfect state of the general law necessarily applied, and yet hardly applicable to conveyances of this novel character, where much of the property intended to be conveyed had no actual existence at the time the conveyance was made; the uncertainty which, to some extent and for a period of time, must exist as to the titles of pieces of real estate taken by corporations by force of law, without the owners consent, and yet conveyed by these legal instruments from those corporations to the Commonwealth, with other circumstances, varying indeed in each case, but more or less applicable to them all, induce me very respectfully to express a wish, that the Legislature would be pleased to revise the several instruments which have been prepared for this purpose.

These legal instruments are intended to be securities for millions of dollars. They are put on file in the Treas-

urer's office, and may not, perhaps, be disturbed for half a century. Their value can be tested only when judicial action may be required. In the mean time, laws and lawgivers change. New views may be taken of individual and corporate liabilities and rights. A present acceptance of these securities may, at some future time, be deemed to have been necessary to their validity. At any rate, such a revision would remove all doubts, and correct all errors, if either one or the other should be found to exist.

It is respectfully submitted, that in case any one of these corporations should neglect to pay the annual interest, as provided for in these contracts, the State might be placed in a very disagreeable position, and the Treasurer be unable to maintain the public faith; and that for this possible emergency, no sufficient security is, or could be provided in these legal instruments.

It is further respectfully submitted, that the possession of the personal property intended to be conveyed by them, is to be kept by the corporation until a breach in the condition of the bond, and that there is no security by force of these instruments, and by the express provision of the law none could be made by them, that at the time of the breach of the bond, if any occurs, the personal property will be forthcoming to answer the Commonwealth's demand.

In the hands of the high-minded and honorable men who now control these great properties no danger can be apprehended. But bonds and legal instruments are made for posterity, and are of value only as they are prepared for all possible emergency.

After the passing the Act to aid the construction of the Western Rail-Road, ch. 9, 1838; and when, in prepara-

tion for the duties it enjoined upon me, I necessarily studied its conditions, I informed the President of that Corporation, that in the then condition of their property, and of the general laws of the Commonwealth, I should not be able to approve any instrument that could be drawn; as none would, in my opinion, be adequate to the purposes contemplated by the Legislature.

The law agent of that Corporation, assenting to the difficulties suggested, prepared the 4th and 5th sections which were added to a Bill, then pending, and are now part of the 99th ch. of 1838.

These provisions were not, in every respect, such as would have been desirable, according to my view of the case; but when the conveyances were prepared and presented to me for examination, after the passing of this law in express reference to the subject, and after the Legislature had adjourned, there was no other alternative than by refusing to accept the instruments, to stop for a year the magnificent work in progress, or to accede to construction which the Legislature might be supposed to have given to the whole subject.

It was not without some solicitude that I adopted the later course, being induced to it by the consideration that there would be security enough for the money which was to be advanced within the year, and that the good faith of the Corporation would direct its application in a manner to prevent any considerable hazard, which might have otherwise occurred from the terms of the law, but more especially because the Corporation had in fact tendered all the security which the existing law required.

It is understood that the money has been expended in a manner which thus far relieves all anxiety, in this respect.

The provision in the 4th section of the Act aforesaid, makes the conveyance of full force, "without any record thereof," whereby the evidence of the State's interest consists, in each case, of a single piece of paper, exposed to the hazard of fire, or other accident by which it may be lost or destroyed.

The 5th section contains a proviso, which, in case of any embarrassment in the affairs of these corporations, might bring the Commonwealth into litigation with other creditors, and materially affect the security.

In the case of the Norwich and Worcester Rail Road, other difficulties were presented, by reason of the line of Road being, in part, within the jurisdiction of another state, and of the condition of the property, both as to its then and future availability, by reason of this position.

This being known to the Legislature, at the time of the grant of aid for its construction, is adverted to now only to strenghten the wish above expressed, that the present condition of the securities prepared under my direction, may be examined by the Legislature.

In discharge of another branch of the requisition made upon the Attorney General, by the Revised Statutes, I have the honor to submit the following statement:

The sums of money called, in the Treasurer's accounts, "Balances paid by the Commonwealth to the County Treasurers, for the expenses of criminal prosecutions," amounted, for the year 1825, to the sum of \$17,247 61. In 1831, they had more than doubled,—amounting, for that year, to \$38,723 98. With a knowledge of this increase, the Legislature of 1832 revised the system of criminal jurisprudence to a certain extent, and established one in many respects new, which, with the modifications partially made, since that time, has been, and now is, in force.

The operation of this system was, that in the year 1832, the expenditure was reduced to \$28,156 69, and was, in 1831, kept at the sum of \$31,591 15. A careful examination of the results of the two systems, will show, on the same amount of business, a reduction by means of the present one, in the annual expenditure of not less than \$10,000, in the balances of the County Treasurers' accounts, and a further saving to the Commonwealth of about two thousand dollars per annum, by reducing the number of prosecuting officers from sixteen, as formerly, to six, as at present.

It is found, however, that there is in these expenses a constant tendency to increase. The amount for 1838 is nearly or quite \$70,000, being more than four times what it was in 1825, and more than double the amount in 1831. There is little reason to expect that the aggregate of these balances for the current year will not, in like or even greater proportion, exceed that of the last, unless the Legislature shall be pleased to devise and adopt some measures to counteract this progressive accumulation.

These balances are made up principally of two classes of expense. One is *costs*, properly so called, taxed by law in the prosecution of accused parties in the judicial tribunals up to the time of their conviction or discharge. The other is for the *expenses* of maintaining such parties before sentence, in the county jails, or after sentence, in such jails, or in a house of correction. Of the costs above mentioned, it is to be observed, that one portion occurs before Police Courts or examining magistrates, which are not under the control of the prosecuting officers of the government, and that only the residue is caused by proceedings in the courts of record, under their direction.

It is believed, that if these accounts should be analysed, it would be found that the part belonging to the

latter description, has not increased as rapidly as the other part, nor beyond the proportion fairly arising from the increase of crime, the natural results of the system under which crime is prosecuted, and the present elaborate mode of trying causes, which accords with the deliberation, intelligence, and growing humanity of the age.

Nevertheless, the whole subject may, in a certain sense, be deemed to belong to the department of criminal justice, and the alarming tendency to a constant increase of expenditure, which is seen by a comparison of the accounts of former years with those of more recent date, and especially of the last year, justify an inquiry into the subject. The immediate causes of this increased expense, and the means of reducing it by amendments of the existing laws may unquestionably give rise to a difference of opinion, and the different interests which might be affected by a curtailment of existing causes of expense would no doubt increase the difficulty of establishing a more economical system.

My observation in the practical discharge of my official duties, satisfies me that something may be done to arrest the progress of the evil, without diminishing the efficiency of public justice or impairing the protection of individual rights; but I venture in an annual report, to do no more than state the facts, without attempting to enumerate the supposed causes, or their probable remedy.

Abstracts of the reports made by the several District Attornies, are hereunto annexed, and the whole

Respectfully submitted, by

JAMES T. AUSTIN,

Attorney General.

January 3d, 1839.

ABSTRACT OF THE REPORT

OF

ASAHEL HUNTINGTON, ESQ.

ATTORNEY FOR THE COMMONWEALTH FOR THE

NORTHERN DISTRICT.

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals. No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi. Continued.		
On the License Laws,	39	28	211	80	*3	53	1	12	*Judgment arrested by operation of the new license law.
Larceny,	5	50	13	68	*3	47	1	4	*Acquitted in two cases by reason of Insanity.
Nuisance,	19	16	9	44	3	21	1	10	*One case of a complaint to a magistrate—quashed on motion.
Assault and Battery,	5	15	9	10	*5	18	1	5	*Defendant not arrested in three cases.
Forgery and Counterfeiting,	5	3	2	10		4		4	
Perjury,	1	2	6	9			1	2	
Subornation of Perjury,		1		1				1	
Conspiracy,	1	2		3	1		1	1	
Adultery,	2	5	1	8	2	4		1	
Fraud,	1	9	3	13		6		4	*Defendant not arrested in two cases.
Libel,	1	1	1	3		1		1	
Trespass and Malicious Mischief,	2			2		2			
Lewdness and Lascivious Co-habitation,	3	3	1	7		2	1	*3	*Defendant not arrested in one case.
On the Gaming Act,	3	3	3	9		5		1	
Rescue,	2			2	1		1		
On the Sunday Law,	3	12	1	4		20	7	9	
Murder,	1	1		2	*1			1	*Convicted of manslaughter.
Illegal Voting,	1		2	3				1	
Riot,	3	4		7		3	1	*3	*Defendant not arrested in one case.
Extortion,	1			1				1	

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.	
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.		Continued.
Peddling,	1	2		1	4		3			
Robbery,	1	2			3		3			
Disturbing Public Worship,		2	1		3	*1	2			*Case of a complaint to a magistrate, quashed on motion.
Burglary in 2d Degree,		8			8		8			
Felonious Assault,		5			5	*1	3		1	*Acquitted by reason of Insanity.
Escape from House of Correction,		13			13		11	1	1	
Rape,		1			1				1	
Accessory to a Felony,		5			5	1	1		3	
Blasphemy,		1			1				1	
Sodomy,		1			1	1				
Procuring Abortion,		1			1	1				
Total,	100	196	13	67	376	23	205	11	70	
Attachments,					5					
Actions of Debt on Recognizance,					10					
Total Cases on this Abstract,					391					
Deduct Cases pending at date of last Report,					100					
Total NEW Cases since last Report,					291					

Of the foregoing persons convicted, there were sentenced to confinement to hard labor in the State Prison :

No. of Individuals.		Term of Sentence.	No. of Sentences.
1	for	6 years.	1
7	“	5 “	7
3	“	4 “	3
7	“	3 “	7
2	“	2 “	3
13	“	1 “	13
1	“	18 months.	1
<hr style="width: 10%; margin: 0 auto;"/>			<hr style="width: 10%; margin: 0 auto;"/>
34	{	individuals	}
	{	sentenced.	}
		sentences	35
		passed.	

ABSTRACT OF THE REPORT

OF

SAMUEL D. PARKER, ESQ.

ATTORNEY FOR THE COMMONWEALTH FOR THE

COUNTY OF SUFFOLK.

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals. No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	Continued.	
Adultery,	2	2	1	5		1		3	
Sodomy,		1		1		1			
Lewdness,		3	1	4		2		1	
Houses of Ill Fame,	1	27	2	30	2	21	2	3	
Bigamy,		2		2		1		1	
Violating License Law,		3	2	6	2	3			
Ditto Law against Gaming,		3	1	5	2	2			
Ditto Lottery Law,		3	2	5		3			
Ditto Wooden Building Law,		1	1	2				1	
Frauds,	5	12	7	24	4	3	3	7	
Forgery and Passing Counterfeit Bills,	2	28	1	31	4	25		1	
Riot,	1	1		2		1		1	
Perjury and Subornation of Perjury,		13	17	30	2	7		4	
Kidnapping,		2		2		2			
Libel,		2	1	3			1	1	
Larceny,	2	190	9	201	12	151	1	27	1 abated by death of defendant.
Receiving Stolen Goods,		9	1	10		8		1	
Embezzlement,		4	13	17	1		1	2	
Burglary,		3		3		2	1		
Assault and Battery,	2	47	5	54	4	44		1	
Felonious Assault,		2		2		2			

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	
Official Misdemeanors,		3	10	13	1	2			
Other Misdemeanors,			3	3					
Administering Unlawful Oaths,			2	2					
Escapes from House of Correction,		4	1	5		4			
Escape from Jail,		1		1		1			
State Prison Convicts for Additional Sentence,		12		12		12			
Violating Conditional Pardon,		3		3		2			1 Dismissed by M. C. for want of Jurisdiction.
Attempt to commit Crime,		8		8	5	3			
Total,	15	389	379	486	39	303	9	54	2
Actions in Supreme Court,				*3					
Appeals in Supreme Court,				17					
Actions in Common Pleas,				*47					*On recognizances.
Total Cases on this Abstract,				553					
Deduct pending at date of last Report,				15					
				538					

Of the foregoing persons convicted, there were passed sentences of confinement in the State Prison, by order of the Municipal Court :

Sentences.

6	for	7 years each.
2	“	6 “
3	“	5 “
1	“	4 “
7	“	3 “
1	“	2 ys. 9 ms. 25 ds.
19	“	2 years.
6	“	1 year.

And for periods in addition to existing sentences :

1	for	8 years.
1	“	7 “
9	“	1 “
2	“	6 months.
1	“	2 “

In regard to some of the individuals appealing to the Supreme Court, these sentences were varied.

ABSTRACT OF THE REPORT

OF

CHARLES H. WARREN, ESQ.

ATTORNEY FOR THE COMMONWEALTH FOR THE

SOUTHERN DISTRICT.

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.	
	Pending at date of the last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.		Continued.
Manslaughter,		1		1	2		1			
Burglary,		1		1	2		1			
Forgery,		2		1	3		2			
Perjury,		2		3	5	2				
Arson,				1	1					
Larceny,		27		12	40	1	24	2		
Adultery,		4			4		4			
Lascivious Cohabitation,		1			1		1			
On the License Law,	42	71	12	57	182	1	86	15	23	
Nuisance,	17	20		15	52		15	6	16	
Fornication,		4		1	5		4			
Law of the Road,	1				1				1	
Selling Unwholesome Provisions,	1				1			1		
On the Gaming Law,		1			1		1			
Malicious Mischief,		3	2	1	6		3	2		
Open Gross Lewdness,		3			3		3			
Riot,		1			1		1			
Cruelty to Animals,		1			1		1			
Assault and Battery,		8	5	3	16		11	2		
Escape from Prison,				1	1					
Drunkenness,			3		3			1	2	

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	
Embezzling,				1	1				
Extortion,	1				1	1			
Libel,	1	1			2			2	
Profane Cursing and Swearing,	1				1		1		
Breach of Sabbath,	1				1		1		
Peddling,				1	1				
Disturbance of Religious Meeting,		1			1				1
Official Misdemeanor,	1				1			1	
Refusing to aid an Officer,		1			1		1		
On School Law,		1			1			1	
On Laws regulating Fisheries,		2			2				2
Writs of Scire Facias,	66	156	22	100	344	5	161	*33	45
					14				
					358				
Deduct Cases pending at date of last Report,					66				
Total NEW Cases since last Report,					292				

* This column includes many cases where costs of prosecution were paid by defendants, and all cases in which the proceedings before Justices were quashed, after appeal.

Of the foregoing persons convicted, there were sentenced to confinement to hard labor in the State Prison :

1	for	5 years.
2	“	4 “
2	“	2 “
3	“	1½ “
7	“	1 “
<hr/>		
15		

ABSTRACT OF THE REPORT

OF

DANIEL WELLS, ESQ.

ATTORNEY FOR THE COMMONWEALTH FOR THE

WESTERN DISTRICT.

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.	
	Pending at the date of last Report	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.		Continued.
Assault and Battery,	1	22	1	6	30		20	2	2	
Larceny,	4	20	3	3	30	1	13	4	9	
Receiving Stolen Goods,		1			1			1		
Nuisance,	6	10		14	30	3	3		10	
License Law,	4	16	3	1	24		9	*4	10	*3 paying costs.
Perjury,	2				2		2			Reversed in S. J. C.
Adultery,		4			4	1	1		2	
Felonious Assault,		4			4		1		3	
Cruelty to Animals,		1			1		1			
Breaking Jail,		2			2		1		1	
Lord's Day Act,		1			1				1	
Illegal Voting,		1		2	3		1			
Malicious Mischief,		1		2	3			1		
Official Misdemeanors,		3	1		4		1		3	1 Trial—Jury did not agree.
Peddling,		2			2		2			
Embezzlement,		1			1	1				
Extortion,				1	1					
Riot,		2			2		2			
Drunkenness,		2			2		2			
Forgery,		2			2				2	1 Defendant broke jail.
Lascivious Cohabitation,		1			1		1			

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.	
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.		Continued.
Rape,		1			1					Capital case : carried to S. C.—Not yet tried there.
Trespass,		1			1	1				
	17	98	8	29	152	6	61	12	43	
Laid on File,	18									
On last Report,	35									
Old Cases,					17					
New Cases,					135					

*Of the foregoing persons convicted, there were sent to the
State Prison :*

1	for	6 years.
1	“	5 “
3	“	3 “
1	“	2 “
4	“	1 “

ABSTRACT OF THE REPORT

OF

PLINY MERRICK, ESQ.

ATTORNEY FOR THE COMMONWEALTH FOR THE

MIDDLE DISTRICT.

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.	
	Pending at the date of last Report.	Bills.	Appeals.	No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.		Continued.
Murder,				1	1					
Manslaughter,				1	1					
Nuisance,	15	9	16	40		13		11		
Bigamy,			1	1						
Violation of Lord's Day,			2	2						
Disturbing Public Worship,			2	2						
Riot,			1	1						
Selling Unproved Fire Arms,	1			1				1		
Larceny,	2	38	112	53	1	32	1	7		
Forgery and Counterfeiting,	3	9	1	13	1	6	2	3		
Malicious Mischief,	1	3	1	5	1	1	1	1		
Lewdness and Lascivious Co-habitation,	1	1	2	4		1		1		
Violation of License Law,	6	45	1128	90	4	45	2	11		
Assault and Battery,	5	7	4	16	1	7		4		
Perjury,	1	2	3	6			2	1		
Blasphemy,	1			1			1			
Common Drunkenness,	1		3	4		2	1	1		
Adultery and Fornication,		4	3	7		3		1		
Escape,		3	1	4		3				
Arson, 2d degree,		1		1		1				
Robbery, 2d degree,		1		1		1				

CAUSES OF COMPLAINT.	Cases to be disposed of.				How disposed of.				REMARKS.
	Pending at the date of last Report.	Bills.	Appeals. No Bills.	Total.	Acquittals.	Convictions.	Nolle Prosequi.	Continued.	
Burglary,		1		1		1			
Cheating,	1	8	8	17	1	3	1	4	
Official Misdemeanor,		1	5	6		1			
Embezzlement,		3	1	4				3	
Illegal Voting,		1		1				1	
Concealing Death of Bastard Child,		1		1		1			
Conspiracy,		1		1				1	
Extortion,		1		1		1			
Writs of Scire Facias,	38	140	1593	286	9	122	12	50	
Total Cases on this Abstract,				25				11	Cases where- in defendants have absconded, and will probably not be arrested.
Deduct Cases pending at last Report,				311				39	
Total NEW Cases since last Report,				38					
				273					

Of the foregoing persons convicted, there were sentenced to hard labor in the State Prison :

2	for	Life.
2	“	7 years.
1	“	5 “
2	“	4 “
5	“	3 “
4	“	2 “
2	“	1½ “
6	“	1 “

24 persons sentenced to }
the State Prison. }

