PUBLIC DOCUMENT . . . . No. 12.

Commonwealth of Massachusetts.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE

YEAR ENDING JANUARY 16, 1895.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
18 POST OFFICE SQUARE.
1895.

d.

Commonwealth of Massachusetts.

COMMONWEALTH BUILDING, BOSTON, Jan. 16, 1895.

To the Honorable the President of the Senate.

I have the honor to transmit herewith my report for the year ending this day.

Very respectfully,

HOSEA M. KNOWLTON,
Attorney-General.

TABLE OF CONTENTS.

	PAGE
Cases attended to by this Department,	7
Indictments for Murder,	7
The Oleomargarine Cases,	13
The Direct Tax Claim,	14
Returns by Foreign Corporations,	15
Inheritance Tax Cases,	16
Appeals, Exceptions and Reports,	18
Conduct of Capital Cases,	19
Delays in Criminal Cases,	20
Right of Challenging Jurors,	26
Corrupt Practices at Elections,	26
The Lobby Law,	29
The Public Statutes,	29
Public Officers entitled to consult Attorney-General,	31
Assistants,	32
Opinions,	34
Opinions upon Applications for Informations,	107
Informations,	124
Grade Crossings,	129
Voluntary Dissolution of Corporations,	130
Corporations required to make Insurance Returns,	130
Foreign Corporations required to make Returns, without Suit,	131
Corporations required without Suit to file Certificate of Condition,	132
Corporations required without Suit to file Tax Returns,	132
Cases arising under the Collateral Inheritance Tax Act,	136
Public Charitable Trusts,	138
Miscellaneous Cases,	139
Cases in Supreme Judicial Court placed on File,	142
Collections,	145
Extradition and Interstate Rendition,	150
Rules of Practice in Interstate Rendition,	155

Commonwealth of Massachusetts.

ATTORNEY-GENERAL'S DEPARTMENT,
COMMONWEALTH BUILDING, BOSTON, January 16, 1895.

To the Honorable Senate and House of Representatives.

In compliance with section 9 of chapter 17 of the Public Statutes, I submit my report for the year ending this day.

Cases requiring the attention of the department during the year to the number of 549 are tabulated below: —

Indictments for murder,	18
Extradition and interstate rendition,	64
Informations at the relation of the treasurer and receiver-general.	90
Informations at the relation of the commissioner of corporations,	6
Informations at the relation of the insurance commissioner,	1
Informations at the relation of private persons,	7
Informations ex-officio,	1
Applications for informations considered and refused,	4
Petitions for abolition of grade crossings,	11
Voluntary proceedings for dissolution of corporations,	15
Public charitable trusts,	14
Collateral legacy tax cases,	24
Miscellaneous cases,	31
Returns of insurance companies enforced without suit,	29
Returns of foreign corporations enforced without suit,	40
Corporate certificates of condition required to be filed without suit,	7
Tax returns of corporations enforced without suit,	99
Collections made without suit,	88
	549

INDICTMENTS FOR MURDER.

Indictments for murder pending at the date of the last annual report have been disposed of as follows: —

THOMAS A. BROWN of Boston, indicted in Suffolk, May 6, 1893, for the murder of Catherine Brown, otherwise called Catherine O'Mealley, at Boston, April 4, 1893, was arraigned May 22, 1893, and pleaded not guilty, and Messrs. Horace G. Allen and Michael J. Creed were assigned as counsel. Afterward, on June 23, 1893, a second indictment was found. On Feb. 5, 1894, the prisoner was discharged on his personal recognizance in the sum of five hundred dollars. In charge of District Attorney Oliver Stevens.

Amos L. Morse of Boston, indicted in Suffolk, July 8, 1893, for the murder of William T. S. Wardwell, at Boston, June 24, 1893. The prisoner having been proved to be insane, he was ordered to be committed to the State Lunatic Hospital at Taunton, there to be kept to await the further order of the court. The order of commitment is still in force, and no further action has been taken. In charge of District Attorney Oliver Stevens.

Richard Haley of West Stockbridge was indicted in Berkshire, July 12, 1893, for the murder of Thomas O'Brien, at West Stockbridge, March 19, 1893. He was never arraigned. At the January term, 1894, he was indicted for manslaughter, pleaded guilty, and was sentenced and committed for eighteen months to the House of Correction. Charles E. Hibbard, Esq., appeared as counsel for the defendant. In charge of District Attorney Charles L. Gardner.

Edward Cunningham of Holden was indicted in Worcester, Aug. 17, 1893, for the murder of William Baxter, at Holden, July 6, 1893. He was arraigned Nov. 4, 1893, and pleaded not guilty, and on Dec. 11, 1893, he retracted his former plea, and pleaded guilty of manslaughter. The plea was accepted, and on Feb. 7, 1894, he was sentenced, and on Feb. 9 committed to imprisonment for ten years in the State Prison, one day to be in solitary confinement. John R. Thayer and Arthur P. Rugg appeared as counsel for the defendant. In charge of District Attorney Francis A. Gaskill.

Daniel M. Robertson of New Bedford was indicted in Bristol, Nov. 11, 1893, for the murder of Mary Robertson, at New Bedford, Sept. 9, 1893. He was arraigned Nov. 22, 1893, and pleaded not guilty; was tried March 5–8, 1894, before Mason, C. J., and Dunbar and Sheldon, J. J.; and a verdict was returned of guilty of murder in the first degree. Exceptions were filed by counsel for the defendant and argued before the supreme judicial court. On Sept. 6, 1894, the exceptions were overruled, and Sept. 22, 1894, the prisoner was sentenced to death, and sentence was executed on Dec. 14, 1894. Timothy W. Coakley was assigned as counsel for the

defendant, but withdrew Jan. 24, 1894, Edwin L. Barney and Lemuel L. Le B. Holmes being assigned in his place. In charge of the Attorney-General, assisted by District Attorney Lloyd E. White.

The opinion of the supreme judicial court, overruling the exceptions taken by the defendant to the form of the indictment, is of importance, inasmuch as the indictment was concisely drawn, and omitted some of the averments which have commonly been regarded as essential. I have long been of the opinion that criminal proceedings, which, as customarily drawn, are often not only prolix and obscure, but sometimes even misleading, could be greatly simplified. In no department of law is there a more conservative, not to say superstitious, adherence to antiquated forms; arising in part, probably, from fear of violating the requirements of the constitution, which provides that offences shall be "formally and substantially" described. The opinion of the court makes it certain, at least, that the word "formally" does not necessarily mean that the forms in use at the time of the adoption of the constitution shall be adhered to; and it is very doubtful whether it means anything more than that indictments shall comply with the requirements as to form prescribed from time to time by the Legislature.

Jose Vieira Sarmento of New Bedford was indicted in Bristol, Nov. 11, 1893, for the murder of Maria das Candeias, otherwise called Maria das Candeias de Mello, at New Bedford, June 9, 1893. He was arraigned Nov. 22, 1893, and pleaded not guilty. On March 21, 1894, he retracted his plea, and pleaded guilty of murder in the second degree. The plea was accepted, and March 21, 1894, he was sentenced and committed to the State Prison for life, with one day in solitary confinement. Walter Clifford and James L. Gillingham were assigned as counsel for the defence. The case was in charge of the Attorney-General, assisted by District Attorney Lloyd E. White.

The defendant was a man who had been of good reputation, of mild and peaceable disposition, and whose character up to the time of the tragedy for which he was indicted had been above reproach. The victim of his crime was a young woman

to whom he had been engaged to be married. They had quarrelled in consequence of his claim that she was receiving the attentions of other men. He shot her in a fit of jealousy, and attempted and nearly succeeded in killing himself with the same weapon. An examination of medical experts disclosed that, while he could not be said to be mentally irresponsible, his mind was much affected; and it was at least doubtful how far he was responsible for his acts at the time of the shooting. Under all the circumstances, it was thought that the plea offered was equivalent to what would be the verdict of the jury if the case was tried.

John Mackie was indicted in Suffolk, Jan. 6, 1894, for the murder of Mercy L. Randall, at Boston, Nov. 21, 1893. He was arraigned Jan. 15, 1894, and pleaded not guilty. Subsequently he retracted his former plea, and pleaded guilty of murder in the second degree. The plea was accepted, and on April 23, 1894, he was sentenced and committed to State Prison for life, the first day in solitary confinement. T. W. Coakley and J. E. Hannigan were assigned as counsel for defendant. In charge of District Attorney Oliver Stevens.

Indictments for murder found since the date of the last annual report have been disposed of as follows: —

Michael Carey of Southbridge was indicted in Worcester, Jan. 19, 1894, for the murder of Mary Carey, at Southbridge, Oct. 12, 1893. He was arraigned Feb. 8, 1894, and pleaded guilty of murder in the second degree. The plea was accepted, and on Feb. 8, 1894, he was sentenced and committed to the State Prison for life, with one day solitary confinement. W. S. B. Hopkins appeared for defendant. In charge of District Attorney Francis A. Gaskill.

Vincenzo Corchiedi of Boston was indicted in Suffolk, Feb. 5, 1894, for the murder of Pasquale Sacco, at Boston, on Jan. 7, 1894. He was arraigned Feb. 15, 1894, and pleaded not guilty; was tried May 21, 1894, before Sherman and Fessenden, J. J. The trial resulted in an acquittal. Thos. Riley and Jas. R. Murphy were assigned as counsel for the defendant. They subsequently withdrew, and T. W. Proctor and

Jos. N. Pastine conducted the defence. In charge of District Attorney Oliver Stevens.

Kate Hinds was indicted May 16, 1894, at Worcester, for the murder of a male child, unnamed, at Hardwick, March 26, 1894. She was arraigned June 5, 1894, and pleaded misnomer. On Oct. 25, 1894, being found insane, she was committed to the State Lunatic Hospital at Worcester, to await the further order of the court. J. R. Thayer appeared for the defendant. In charge of District Attorney Francis A. Gaskill.

Edward Beauregard and Mitchel Bougeron, both of Oxford, were indicted May 16, 1894, for the murder of Maria Davis, at Oxford, Dec. 1, 1893. They were arraigned June 5, 1894, and pleaded not guilty. The indictment was placed on file October, 1894, the defendants both having pleaded guilty to another indictment for manslaughter of said Maria Davis, and having been sentenced thereon and committed to imprisonment in the State Prison for eight years each, with one day in solitary confinement. W. S. B. Hopkins and F. A. Bellish were assigned as counsel for Beauregard, and J. R. Thayer and F. E. Deon for Bougeron. In charge of District Attorney Francis A. Gaskill.

William Barrett was indicted in Middlesex, June 4, 1894, for the murder of James H Farrar, at Weston, May 17, 1894. He was arraigned June 15, 1894, and pleaded not guilty; was tried Nov. 23–28, before Aldrich and Sheldon, J. J. The prisoner was convicted of murder in the second degree, and on Nov. 28, 1894, was sentenced and committed to the State Prison for life, the first day of imprisonment to be in solitary confinement. John B. Goodrich and Arthur J. Selfridge appeared as counsel for the defendant. The trial of the case was conducted by the Attorney-General, assisted by District Attorney Fred N. Wier.

The defendant had burglariously entered the house of the murdered man, who was aroused and started in pursuit of the burglar. The deceased was a constable of the town where the burglary was committed. He did not succeed, however, in overtaking the defendant until he had escaped to an adjoining

town. He attempted to arrest the defendant, and was shot by him in the attempt. There was no denial by the defendant of the fact of the shooting, but it was claimed by him at the trial that the deceased had no authority to arrest him, not being a constable of the town where the arrest was attempted; and that he had no reason to suppose, from the acts of the deceased, that he was attempting to arrest him for the crime he had committed. The case excited much interest in the county, in view of the fact that numerous burglaries had recently been committed in the vicinity, and it was believed that for some of them the defendant was responsible.

FILIPPO PINATELLO of Boston was indicted in Suffolk, Aug. 6, 1894, for the murder of John McEleney, at Boston, July 7, 1894. He was arraigned Aug. 23, 1894, and pleaded not guilty. On Nov. 12, 1894, he was discharged on his own recognizance in the sum of five hundred dollars. A. De Fillipo appeared as counsel for defendant. In charge of District Attorney Oliver Stevens.

The following indictments for murder are pending: —

EDWARD JOHN CARROLL of Great Barrington was indicted at Pittsfield, July 9, 1894, for the murder of George Duvernoy, at Great Barrington, May 19, 1894.

JOHN McMANUS of Boston was indicted in Suffolk, Aug. 6, 1894, for the murder of Margaret McManus, at Boston, July 26, 1894. He was arraigned August 23, and pleaded not guilty. William Schofield and Charles B. Barnes, Jr., were assigned for the defence. In charge of District Attorney Oliver Stevens.

PATRICK SULLIVAN, PATRICK J. FOLEY and CORNELIUS NAGLE were indicted in Middlesex, Oct. 15, 1894, for the murder of Duroy S. Foster, at Billerica, Sept. 11, 1894. They were arraigned Nov. 1, and pleaded severally not guilty. S. K. Hamilton and Francis P. Curran were assigned as counsel for the defence. In charge of District Attorney Fred N. Wier.

WILLIAM G. CARR of Worcester was indicted at Worcester, Oct. 17, 1894, for the murder of Ellen T. Lucier, at Worces-

ter, Sept. 29, 1894. He was arraigned Oct. 25, 1894, and pleaded not guilty. John R. Thayer and Arthur P. Rugg were assigned as counsel for the defendant. In charge of District Attorney Francis A. Gaskill.

Josiah L. Johnson, Frank Little and Frank C. Hunt were indicted in Essex, October, 1894, for the murder of Henry Edmund Crosby, at Merrimac, on Aug. 17, 1894. They were arraigned on Oct. 11, 1894, and each pleaded not guilty. The court assigned Henry F. Hurlburt and Horace I. Bartlett as counsel for Johnson, Winfield S. Peters as counsel for Little, and Benjamin F. Brickett and Boyd B. Jones as counsel for Hunt. In charge of District Attorney William H. Moody.

The Oleomargarine Cases.

The cases of Huntley, in error, against the Commonwealth, and Plumley, in error, against the Commonwealth, involving the constitutionality of our statute, chapter 58 of the Acts of 1891, relating to the manufacture and sale of imitation butter, have been disposed of in the supreme court of the United States since the last annual report of this department. Huntley's case was voluntarily dismissed by the plaintiff in error. Plumley's case, which raised the important question whether the Massachusetts statute is in conflict with the commerce clause of the constitution of the United States, was argued before the supreme court of the United States in April last, and a decision has recently been rendered, in which the court, by a majority of six out of the nine justices, sustains the constitutionality of the statute. This decision is of great and far-reaching importance. It was claimed by the plaintiff in error, and has been generally understood, that the decision of the court in Leisy *v.* Hardin, 135 U. S. 100, substantially settled the law that the States are powerless to prevent the sale within their limits of any article of whatsoever character which may be a subject of trade or commerce, if brought from another State, while in the original package in the hands of the importer. The present decision disclaims this doctrine, and holds that it is within the power of the States to exclude from their markets an article of food of deceptive or fraudulent character, which is likely or liable to be sold or taken for

something else than what it really is; and that such articles, even though subjects of interstate commerce, are within the operation of the police regulations of the States at all times. The immediate effect of the decision is to exclude from our markets oleomargarine which comes from other States if made in imitation of butter, in the sense of the statute, and to put an end to its sale even in the original package in the hands of the importer. This must largely reduce, if it does not entirely prevent, the sale of oleomargarine in Massachusetts, as in its natural condition and without artificial coloring it is not ordinarily marketable. It is publicly stated that the manufacturers of oleomargarine in the western States are already giving up business in consequence of this decision, but it is not improbable that they will seek further legislation by the States to permit the sale of their products.

This case was begun during the term of office of my distinguished predecessor, Attorney-General Albert E. Pillsbury. Upon retiring from office, Mr. Pillsbury, at my request, continued the management of the case for the Commonwealth, appeared before the supreme court at Washington, and personally conducted the litigation until its successful termination.

The Direct Tax Claim.

On the thirty-first day of March, Theodore E. Davis brought suit against the Commonwealth for alleged services in procuring the passage of the Act of Congress approved March 2, 1891, refunding to the Commonwealth the direct war tax paid by it to the national government during the progress of the war of the Rebellion.

The case was brought to an issue by a demurrer filed by this department on the seventeenth day of May, the ground of demurrer being that the alleged contract between the plaintiff and the Commonwealth was void, as being contrary to public policy and good morals. The case was argued in the superior court in October, before Aldrich, Bishop and Dunbar, J. J., and on the fourth day of December, the court handed down a decision overruling the Commonwealth's demurrer. From the decision of the superior court I have appealed to the supreme judicial court, where the case is now pending.

Returns by Foreign Corporations.

The returns required by Statutes 1891, chapter 341, were seasonably filed by the foreign corporations doing business in this State, excepting the American Sugar Refining Company. This corporation, although notified first by the Commissioner of Corporations and afterwards by this office, refused to comply with the law. An information, under the provisions of section 2, was thereupon filed against the corporation, to compel it to file its returns; and application was made to the court for an injunction restraining the prosecution of its business until the returns should be filed. The court, however, was of opinion that section 2 did not contemplate nor authorize an injunction during the pendency of the suit, but only as a part of the final decree, and refused to grant a preliminary injunction.

The case was heard before Mr. Justice Barker, in July. It was then urged by the defendant corporation that the statute requiring the returns was unconstitutional, as being an interference with the commerce clause of the constitution of the United States. This objection was not sustained, and a final decree was entered on the nineteenth day of July, directing the corporation to file its return forthwith, and enjoining it from the further prosecution of its business until the decree should be complied with. The statutory fine of two hundred dollars and costs was also imposed. An appeal was taken by the defendant corporation from this decree to the full bench of the supreme judicial court. Subsequently, however, and before the case was set down for argument, the defendant corporation withdrew its appeal, filed its return and paid the fine and costs imposed by the decree.

In response to an inquiry by the Honorable House of Representatives, asking me to report what action had been taken in the case, and authorizing me to embody in my report a recommendation of any changes in the law, which, in my judgment, would tend to increase its efficiency, and compel the making of returns by foreign corporations, I had the honor to point out what seemed to me to be the inadequacy of the penalty imposed. A corporation which desired, for any reason, to withhold its returns, could continue to carry on business without

interruption until the termination of legal proceedings brought to compel compliance with the law, and at the end incur a penalty not exceeding two hundred dollars, and the costs of litigation: a penalty which, in many cases, would be of little consequence, as compared with the undue advantage which might be gained by the corporation in withholding its returns. I recommended that the law be so amended as to authorize the issuing of a restraining injunction upon the filing of the information against the corporation, and making the penalty proportionate to the time during which the returns should be withheld.

This recommendation was adopted in the enactment of Statutes 1894, chapter 541; and I apprehend that there will be no further difficulty in compelling such corporations to comply with the laws of the Commonwealth.

The Inheritance Tax Cases.

The act imposing a tax upon collateral inheritances and legacies, enacted June 11, 1891, introduced a scheme for raising revenue, which in many respects was a radical departure from the methods of taxation before known to the Commonwealth. But, although new here, it was by no means novel. The taxing of legacies and successions has long been practised, not only in England and in other European nations, but also in many of the States of the Union.

Inasmuch, however, as the right of taxation granted to the Legislature by the Constitution of Massachusetts is restrictive, and can only be exercised within the limits defined by that instrument, the question at once arose whether the tax on legacies and successions was within the authority of the Legislature. That authority under the Constitution is limited (1) to proportional and reasonable taxes upon all inhabitants and estates within the Commonwealth; and (2) to duties and excises upon any "produce, goods, wares, merchandise and *commodities*."

The constitutionality of this tax was brought before the supreme judicial court in three cases, which were heard together in May, 1894. It was there claimed against the position of the Commonwealth that the tax in question could not be supported under the first clause of the constitutional provision

as a property tax. This was conceded by the Commonwealth. It was further claimed that it could not be supported as a duty upon commodities, upon the ground that the privilege of inheritance and legacy is a natural right, and as such cannot be regarded as a commodity within the meaning of the Constitution, nor taxable as such. It was further claimed that the act in its terms purported to levy a tax upon property, and not an excise, and must be construed to be a property tax.

The contention on behalf of the Commonwealth was: first, that the succession to property by inheritance or legacy is not a natural right but a privilege of the law; second, that this privilege of succession by inheritance or legacy under the law is a commodity, within the meaning of that word as used in the Constitution; third, that, inasmuch as the tax cannot be sustained as a property tax, the statute is to be construed as intending to impose an excise.

The importance of the questions presented was recognized by the presence of all the judges at the argument. So far as I am informed, this has not before occurred at an original argument since the court has been composed of seven judges. The decision of the court, which was concurred in by all the judges excepting Mr. Justice Lathrop, who filed a dissenting opinion, sustained all the positions taken by the Commonwealth. It was suggested by the Attorney-General at the argument that there is no such thing as a natural right of inheritance; and that the right of the individual to property ceases at the death of the owner, and may not be transmitted except by permission of the sovereign. This doctrine, that the State is the "universal legatee," appears to be well founded upon principle, and is supported by many authorities, although by others it is as strenuously denied.

The court refused to go to the extent thus claimed; but held that, although the State may not succeed to the ownership of the property of decedents, it has full and unlimited power to determine who shall inherit or succeed, and upon what conditions and in what proportions; and that, therefore, all right of inheritance or transmission is a privilege of the law, which is taxable as a "commodity," within the meaning of that word as used in the Constitution.

This decision is of great importance. Although the tax in question applies only to collateral inheritances and successions, the clear doctrine of the decision applies with equal force to direct inheritances. The court further declared that the reasonableness of the amount of the tax to be imposed and of the exemptions to be allowed are for the consideration of the Legislature, unless it is manifest that they are wholly and unreasonably disproportionate.

A bill was introduced into the Legislature of 1894, providing for the taxing of direct inheritances and successions; but in view of the uncertainty prevailing as to the constitutionality of the law, it was referred to the present Legislature. The decision of the court in effect disposes of all questions as to the constitutionality of the bill so postponed.

There is, however, a principle of exemption established in the act of 1891, and also contained in the act referred to the present Legislature, which, although sustained by the court, appears to me to be objectionable. The law exempts from the operation of the tax all estates of less than $10,000. Under this exemption, as was well stated by the learned counsel opposed to the tax, a legacy or inheritance of $9,000, accruing to a single legatee or heir, would be exempt from taxation, while, on the other hand, if an estate were valued at $11,000, and were distributed among eleven legatees, each legacy would be subject to the tax; so that in some cases a single legacy of $9,000 might be exempt, while in other cases legacies of much less amount would be taxable. It would be more reasonable, in my opinion, to make the exemption apply to legacies rather than to estates, so that all legacies and inheritances below a certain figure should be exempt, and all above should be taxable.

Appeals, Exceptions and Reports.

Previous to the passage of chapter 345 of the Acts of 1893, it was one of the duties of the Attorney-General to appear for the Commonwealth in the supreme judicial court in the trial and argument of all causes, criminal or civil, in which the Commonwealth was a party or interested; and, in order to assist this department in the argument of appeals and exceptions brought up from the superior court, by chapter 374 of the Acts of 1890

it was made the duty of clerks of courts to cause to be printed and forwarded to the Attorney-General copies of all bills of exceptions and reports of cases in which the Commonwealth was a party or interested.

Under the authority of chapter 345 of the Acts of 1893, the district attorneys within their respective districts now appear for the Commonwealth in the supreme judicial court in the hearing of all questions of law arising in the cases of which they respectively have charge in the superior court. The passage of this act entirely removed, in all cases where it was the duty of the district attorney to appear, the necessity of having the clerks of courts forward to the Attorney-General copies of bills of exceptions, etc., as ordered by chapter 374 of the Acts of 1890.

This act, however, has neither been amended nor repealed, and it still remains the duty of the clerks of courts to send such copies to this department. The mode of procedure, therefore, in cases managed by the district attorneys in both the superior and the supreme judicial courts, is, upon exceptions being taken or a report made, for the clerk of the superior court to forward copies of such exceptions or report to the Attorney-General; the case is entered upon the latter's docket, and, with the copies, is immediately referred back to the district attorney.

I recommend, therefore, that such legislation be adopted, amending chapter 374 of the Acts of 1890, as will enable the clerks of courts to deliver to the district attorneys, without the medium of the Attorney-General, all bills of exceptions and reports of cases where the district attorneys are authorized to represent the Commonwealth in the supreme judicial court.

In compiling my report for the present year, I have omitted to report the cases of this nature now encumbering the docket of this department, for the reason that such a list, if reported, would be incomplete and misleading, and would therefore furnish no information of any value.

Conduct of Capital Cases.

The act transferring the trial of capital cases to the superior court contained a provision that the Attorney-General should appear in the trial of all such indictments. Subsequently, however, by Statutes 1893, chapter 324, the law was amended so

as to require the Attorney-General to appear in capital cases "when the public interest requires." Experience has convinced me that this amendment is not a wise one. It devolves upon the Attorney-General the difficult and sometimes embarrassing duty of determining when the public interest requires him to appear in capital cases, and divides the responsibility of their conduct and disposition. I have no hesitation in saying that these cases should either be wholly entrusted to the district attorneys, or that the Attorney-General should again have the entire charge of them.

There is no sufficient reason why district attorneys may not properly be entrusted with the responsibility of capital cases. I recommend that the law be so amended.

Delays in Criminal Cases.

The declaration of rights asserts that every subject ought to obtain justice "promptly and without delay." As a suitor in its own courts, the Commonwealth should have, at least the same rights that belong to its subjects. Yet, as the law now stands, the moral effect of criminal prosecutions, not only upon the community but upon the criminal as well, is very much impaired by the delays which too often intervene between the crime and its punishment.

The trial of criminal prosecutions by the jury is usually had with reasonable despatch. The delays that are harmful occur after the verdict. If an appeal is taken to the law term of the supreme judicial court, all proceedings in the superior court are suspended until the determination of the question raised by the appeal. The law term, in most of the counties, is held but once a year; and it therefore happens that the imposition of sentence is delayed for many months after the verdict. By that time the circumstances of the crime have so far passed out of the public mind that what should be the salutary effect of the sentence is greatly weakened, if not destroyed. Indeed, in misdemeanors, and especially in liquor cases, a sentence of imprisonment, which, following promptly after the verdict, would have seemed adequate and proper, if imposed after a delay of a year or more often has the appearance of persecution rather than punishment.

The extent of the delays which may occur in criminal cases, and the demoralizing effect of them, may not be fully understood even by those engaged in the practice of law, unless their attention has been especially directed to the matter. They can perhaps be better appreciated by reference to an actual case. A man received a license to sell intoxicating liquors on the first day of May, 1891. In June of the same year he was complained of for violating his license by selling to minors, the penalty for which is imprisonment and forfeiture of his license. He was tried in the police court; and, upon his appeal, the case went to the next term of the superior court, held in November, when he was found guilty by the jury. He took an appeal upon questions of law to the supreme judicial court. His appeal was heard at the annual law term of that court, held in October, 1892; and a rescript was sent down in November of the same year. He was sentenced at the next term of the superior court, held in February, 1893, fifteen months after the jury had found him guilty, and twenty months after the commission of the offence. Meanwhile his license, which he should have forfeited, remained in force until its expiration in May, 1892. The municipal administration which caused his prosecution had come to an end, and even its successor had also gone out of office; so that no one in authority knew anything of the circumstances of his case at the time of sentence. The defendant, at the expiration of his license, had gone into other business, in which he had been engaged for nearly a year when summoned to receive his sentence of imprisonment. It is scarcely necessary to say that the imposition of sentence at a time so remote from the offence was, to say the least, of very doubtful utility to the defendant, or as an example to others. Such a case, though perhaps extreme, is by no means uncommon. It illustrates how the purpose of the administration of criminal law, which is to secure prompt punishment of offences, to the end that the community be encouraged in good works and the commission of crime be deterred, is too often nullified and destroyed by unseemly delays.

The obvious remedy for these evils is to provide that exceptions and appeals shall be promptly heard. This cannot be done under the present arrangements of the law terms of the

supreme judicial court. For ten counties law terms are held but once a year, as follows: —

County.	Time of Law Term.
Berkshire,	Second Tuesday of September.
Hampshire and Franklin,	Third Tuesday of September.
Hampden,	Second Monday after second Tuesday of September.
Worcester,	Third Monday after second Tuesday of September.
Plymouth,	Third Tuesday of October.
Bristol, Nantucket and Dukes,	Fourth Monday of October.
Essex,	First Tuesday of November.

In addition to the foregoing, a "law term of the court for the Commonwealth" is held at Boston on the first Wednesday of January, at which are heard cases arising in the counties of Suffolk, Middlesex, Norfolk and Barnstable, and also such as may be transferred from other counties. Sessions of this term are held in January, by adjournment in March and November, and occasionally at other times. In the last-named counties, therefore, the hearing of criminal appeals may be delayed from April to November; and in other counties for eleven months.

It is the view, I think, of those of the profession whose opinions are not influenced by local considerations, that the system of holding law terms in so many places throughout the State — a system which necessarily delays the administration of justice in civil as well as in criminal cases — should not be perpetuated. It may have been useful at the time of its establishment, when the full bench consisted of but three judges, and when the methods of travel were slow and primitive; but in these days, when it takes less time and costs no more to traverse the State than it once did to go from Worcester to Boston, it is unnecessary. In most of the other States such a system of county terms is no longer in force. No other New England State sends its appellate court travelling over the State from county to county. In New York all law cases are heard at Albany, or in the summer at Saratoga. The supreme court of the United States sits only in Washington.

Indeed, the States where the full bench holds county sessions are rare exceptions to what may be stated as the general rule, not only in this country but elsewhere; to wit, that the court of last resort sits only at the capital, or at the principal centres of population.

It will be asserted, however, that it is for the convenience of defendants and their attorneys that the law terms should be held in the counties where the cases arise. An analysis of the work of the court, however, shows how little real foundation exists for this position, at least so far as the criminal sessions are concerned. I append a statement, kindly furnished me by the chief justice, of the criminal appeals during the last three years, arising in the various counties of the Commonwealth. The statement may not be entirely, though it is substantially, correct: —

Criminal Appeals in Supreme Judicial Court from January 1, 1892, to January 1, 1895.

WHERE HEARD.	Number of Cases.	Waived or Defaulted.	Submitted on Brief.	Argued.
Berkshire,	2	–	1	1
Hampshire and Franklin,	2	1	1	–
Hampden,	10	7	2	1
Worcester,	15	2	3	10
Plymouth,	9	1	7	1
Bristol, Nantucket and Dukes,	13	3	5	5
Essex,	22	11	9	2
Total,	73	25	28	20
Add to the above the cases heard in Boston for the same time in the law term held for Suffolk, Norfolk, Middlesex and Barnstable, to wit,	133	31	62	40
Total for three years,	206	56	90	60

From this table it appears that in twenty-one law terms of the supreme judicial court held outside of Boston, covering a period of three years, there have been but twenty criminal cases in which parties appeared and were heard, or less than one for each term. It can scarcely be claimed that serious hardship would result from transferring these cases to the term

held in Boston for the Commonwealth, provided arrangements were made for their hearing at stated and convenient times.

What I have said of criminal appeals applies with equal force to cases on the civil side. There is no remaining good reason why civil appeals should not be heard at the general term in Boston, and there are many reasons why it is far better that they should be so heard. The county law terms of the supreme judicial court should be abolished; and in place thereof the court should hold a continuous session in Boston, with adjournments from time to time during the year as business requires, where exceptions and appeals may be entered as soon as they arise, and may be heard as soon as possible thereafter. No difficulty, I apprehend, would be found in arranging stated and convenient times for the hearing of cases from each county. In this way not only criminal but civil appeals as well would be heard and disposed of without unreasonable delay.

But if this be considered too radical a departure from the established system, or too great a hardship for the western counties, it would still be a long step in the direction of reform to provide at least that cases from the eastern counties be so heard in Boston, with provision for additional sessions in the long interval now existing between March and November; and that two or more sessions be established in Springfield for hearing cases from the western counties. Such an arrangement would bring the court sufficiently within reach of all parties; and it would also tend largely to do away with the mischievous delays in criminal cases, which at present are little short of a reproach upon the orderly course of justice.

There are also too many frivolous and dilatory appeals in criminal cases. An examination of the foregoing table makes it apparent that many appeals were taken solely for delay. Out of two hundred and six appeals, fifty-six were abandoned as soon as reached by the court, ninety were "submitted on brief," and only sixty were actually argued. They make no better showing in the reports. The last five volumes of our Massachusetts reports contain one hundred criminal cases, in only twelve of which the defendants prevailed. Most of the exceptions appear upon perusal to be utterly groundless, if not frivolous, and the larger portion of them are taken in

cases under the liquor law. They encumber the reports, and even detract from their standing and value.

I am convinced, and this conviction is shared by all those who have had to do with the administration of criminal law, that a change in the law in respect to the time of sentence would largely diminish the number of dilatory appeals. It is obvious that the question of sentence in criminal cases ought to be passed upon by the judge who presides at the trial, and has thereby become acquainted with its merits. As the law now stands, when exceptions are taken sentence is deferred, and is imposed after they are disposed of, and usually by a judge who did not hear the case. If the judge who tries the case sees fit to adjudge the exceptions frivolous, he may, indeed, upon motion, pass sentence at once, notwithstanding the exceptions. Few judges, however, are willing thus to anticipate the judgment of the appellate court; and the law authorizing sentence notwithstanding exceptions is practically a dead letter. It is the opinion, I think, of those who have given the subject attention, that the interests of justice are better promoted by the practice established in many other States, notably New York, under which it is the duty of the judge who presides at the trial, upon motion, to impose sentence after the verdict, as of course, during the term in which the verdict was rendered, regardless of the question whether exceptions are taken or not. Having imposed sentence, he may, if he regards the exceptions as worthy of consideration, enter a stay of judgment till they are heard; and if he unreasonably refuses to grant a stay, application may be made to the appellate court therefor. The advantages of this course of proceeding are twofold. First, the important question of what the sentence shall be is adjudicated while the facts of the case are fresh, and by a judge who knows them and has heard the testimony; secondly, under it only meritorious appeals go to the higher court, and the taking of exceptions for the purpose of delay only is effectually discouraged. There is no danger of oppression or injustice, for ample provision may be made for application for stay of judgment till all genuine law questions are heard. On the other hand, if the question of what the sentence shall be has been determined before the appeal goes up, it may often happen that the defendant will waive his right of exceptions, and accept his sentence.

I do not hesitate to recommend that the law be so amended. I am aware that it involves a radical change in the established practice in criminal cases. But the proposition is by no means novel. It has been repeatedly suggested by the district attorneys, whose experience entitles their judgment to much weight; and I have reason to believe that it is looked upon with favor by the judges who have occasion to administer the criminal law.

The Right of Challenging Jurors.

I assume it to be the intention of the law to give to the Commonwealth the same right of challenge in criminal cases as is enjoyed by the defendant. It often happens, however, that several defendants are jointly tried, either upon the same indictment, or upon different indictments which are tried together. When this happens, each defendant may separately exercise his full right of challenge, while the Commonwealth is restricted to the right of challenge which one defendant would have.

I recommend that the law be so amended that the Commonwealth shall have the right to challenge as many jurors as may be challenged on the part of all the defendants who are being tried together.

Corrupt Practices in Elections.

It can hardly be said that the act in relation to corrupt practices at elections, enacted in 1892, has in all respects fulfilled the expectations of those who promoted its passage. It was apparently intended to prevent the spending of money by candidates for any purpose except personal expenses, etc., and contributions to party committees. It is generally believed, however, that in many cases the so-called personal expenses of candidates have included many items not allowed by the act, and that the purchasing of votes in closely contested elections, especially in municipal elections, is not entirely a lost art.

The difficulty seems to be that there is no adequate provision for the enforcement of the law. No officer is directly charged with the responsibility of prosecuting violations of its provisions, and there is no effective way of securing evidence of such violations. For obvious reasons, the obtaining of evidence of corrupt practices in elections is not easy; and few

persons, officials or others, are willing, unless it is made their duty so to do, to take the responsibility of initiating prosecutions for corrupt practices in elections.

During the last session of the Legislature it was proposed by some members of the committee on elections to authorize an inquest to be held by the Attorney-General into the conduct of certain elections which were then under consideration by the committee; but, as grave doubts were entertained as to the constitutionality of such a proceeding, the proposition was not pressed. There can be, however, no constitutional objection to a general law authorizing courts of record to hold inquests concerning the conduct of elections held within their several judicial districts. In cases of violent death and of fires the Legislature has thought it wise to provide that inquests may and in some cases shall be held by district courts having jurisdiction of the supposed offences, for the purpose of ascertaining, first, whether a crime has been committed, and, second, by whom it has been committed. There can be no doubt that such proceedings, which are summary in their nature and are not limited in the scope of their investigations, are of great service in the detection and punishment of such crimes. Election frauds are usually quite petty in respect to individual cases, and only become serious by reason of the large number which occur in any given election. It is for this reason, among others, that the detection and prosecution of them by the ordinary instrumentalities are so ineffective.

I recommend that a law be enacted authorizing district courts upon proper complaint to hold an inquest upon the conduct of any election, convention or caucus, with the powers and duties usually appertaining to such proceedings; and that the Attorney-General or the district attorneys be authorized to take charge of such inquests.

Another obstacle in the way of the detection of corrupt practices is the fact that under the law as it stands both the person offering the bribe and the person receiving the same may be guilty of an offence under the law; and if either of the parties to the offence is summoned to give testimony, he may avail himself, on the ground that it may tend to criminate him, of his constitutional right to refuse to testify. This difficulty may be overcome in either one of two ways: first, by provid-

ing that it shall not be an offence for a person to receive money in an election for the purpose of influencing his or any vote; thus confining the criminality of the act to the person who pays the money. Both the payer and the receiver are, it is true, equally guilty of corrupt acts. But the one who pays is the one whom the law principally endeavors to reach; and if those whom he bribes were compelled to testify, and all constitutional objections against their testifying were removed, it would make bribery more dangerous and therefore more difficult. Or, secondly, provision might be made that no person should be permitted to refuse to testify on the ground that his evidence would tend to criminate him, with the further provision that the testimony so given should not be used against the person giving it. It is of little use to establish machinery for the enforcement of any law against corrupt practices in elections unless some such provision is also adopted.

The statute is also apparently defective in respect to its provisions prohibiting the expenditure by persons other than candidates, especially in contests for nominations. It purports to prohibit disbursements by candidates for other than personal expenses, and to a political committee. It apparently does not purport to limit or abridge the expenses of any other person, or of a committee. It is notorious that in some cases, objectionable expenses, claimed to be permissible under the statute, have been incurred to an unconscionable extent.

In England, where the statutes against corrupt practices are much more stringent than are ours, no person, whether a candidate or not, may spend any money in providing meat or drink, entertainment for the purpose of influencing voters or for the conveyance of voters to or from the polls; and no person may be legally employed for hire for any service whatever excepting a limited number of agents, clerks and canvassers, the number depending upon the size of the district. It may be well to consider whether some or all of these provisions should not be included in the provisions of the statutes of this Commonwealth. No provision can be regarded as too stringent or drastic which tends to purify elections and increases the efficiency of election courts. There is no good reason why money should be spent in securing nominations or elections, excepting for such public purposes as the distribution of cam-

paign literature, public meetings, etc. It is a strange anomaly that under our form of government it should have come to be considered not only proper but necessary to expend money for the purpose of inducing voters to come to the polls, or to secure their favor by personal appeals; especially when the money is spent and the appeals are made by paid agents and servants. It is not democratic. If both candidates were forbidden to make such expenditures, neither could properly complain. I commend the subject to the consideration of the Legislature.

The Lobby Law.

I have examined into the circumstances of all the failures to comply with chapter 456 of the Acts of 1890, as amended by chapter 223 of the Acts of 1891, referred to me by the secretary of the Commonwealth, and in every instance except one I find that such failures were caused by accident or inadvertence, and not through any purpose to violate the law. The circumstances attending the exceptional case were such as led me to think that there might have been an intent to disregard the law. I therefore referred the case, with the papers relating thereto, and such additional information as came to my knowledge, to the district attorney for the county of Suffolk, that the matter might be laid before the grand jury.

In several cases persons have registered as being employed; and, no return having been made, inquiry has resulted in a denial by the alleged employers that they employed such persons, either directly or indirectly. The persons registering claim, however, that they were so employed, and rendered services; and in some instances threaten to bring suit to recover compensation for such services.

It appears that some additional legislation is needed to prevent registration by unauthorized agents or counsel.

The Public Statutes.

In 1888, by chapter 383, provision was made for the printing of a supplement to the Public Statutes. In accordance with this statute, a supplement was prepared containing the general laws enacted during the years 1882 to 1888 inclusive, with a suitable index and marginal references to the statutes affected by such general laws and to the decisions of the

supreme judicial court relating to them. No such work has been done or attempted since that time, and the general laws for the years from 1889 to 1894 inclusive are only to be obtained from the Blue Books. There should be a second supplement, in form and with an index and marginal references substantially similar to the supplement already published. Such a work is much needed by those who have occasion to consult the statutes frequently, and I recommend that provision be made at once for its publication.

The first general revision of the statutes of the Commonwealth was in 1836, when the Revised Statutes were published; the next was the General Statutes, published in 1860; the last was the Public Statutes, published in 1882. The interval since the adoption of the Public Statutes is not so long as that between the former revisions. The changes in legislation, however, have been far more numerous and radical, and there is much greater need for another revision of the Statutes to-day than existed at the time of the adoption of any of the former revisions. Upon examination, I find that, of the two hundred and twenty-four chapters of the Public Statutes, only thirty-seven have not been repealed or amended. Many of those that have been left untouched are chapters upon subjects of little public importance, such as, for example, the chapters on watch and ward; teachers' institutes; ferries; measuring of upper leather; the metric system; masters, apprentices, and servants; and the chapter on treason. On the other hand, the amendments adopted since 1882 affect very largely many of the most important and vital portions of the statutes. Among others, the chapters upon the following subjects have been entirely revised or repealed, so that in respect to them the Public Statutes have become obsolete: elections and ballots; the militia; attendance of children at schools; school districts; employment of children; inspection of provisions and animals; the employment of labor; birds and game; savings banks; insurance companies. Among the chapters which have been radically amended are those relating to the assessment of taxes; town officers; cities; gas and electric light; public health; fisheries; intoxicating liquors; railroad corporations; the courts, including courts of probate and insolvency; offences against property and offences against chastity.

Some of the foregoing have been affected by more than fifty amendments.

Nor have the statutes passed since the adoption of the Public Statutes fared any better. During the years 1882 to 1888, eleven hundred and ninety-five chapters of general legislation were enacted; of those, seven hundred and twenty-two have been affected by subsequent legislation, and three hundred and forty-four have been repealed entirely; in other words, more than half of the legislation of the first seven years has been amended, and one-third of it has been repealed entirely. Such examination as I have been able to give the matter satisfies me that the changes in the statutes are much greater, more extensive, and more radical than had been made in prior revisions at the time of the adoption of the General Statutes and of the Public Statutes.

It is not practicable to prepare a general revision of the statutes in less than two or three years; but I recommend that legislation be had at once, looking to another revision of the statutes, and that a suitable commission be appointed, charged with the duty of making such revision.

Public Officers Entitled to Consult the Attorney-General.

Under the provisions of the Public Statutes and of sundry amendments thereto, it is the duty of the Attorney-General to consult and advise with the following departments on questions of law relating to their official business, to wit: —

Governor and Council.
Legislature.
District attorneys.
Secretary.
Treasurer.
Adjutant-General.
Auditor.
Insurance Commissioner.
Harbor and Land Commissioners.
Board of Lunacy and Charity.
Board of Health.
Civil Service Commissioners.
Commissioner of Corporations.
Commissioner of Foreign Mortgage Corporations.
Gas and Electric Light Commissioners.
Commissioners of Savings Banks.
Commissioners of Pilots for the Harbor of Boston.

There are, however, other boards, commissioners and departments who have not the right to consult and advise

with the Attorney-General; among others are the following: —

Board of Agriculture.
Board of Education.
Controller of Accounts of County Officers.
Commissioners of Arbitration and Conciliation.
State Fire Marshal.
Cattle Commissioners.
Board of Registration in Dentistry.
Commissioners of Highways.
Commissioners of Inland Fisheries and Game.
Bureau of Statistics of Labor.
Board of Registration in Pharmacy.
Prison Commissioners.
Railroad Commissioners.
The Chief of the District Police.
Commissioners of Topographical Survey.
Commissioners of Wrecks and Shipwrecked Goods.
Commissioners of State Aid.
Commissioner of Public Records.
Commissioners of Public Libraries.
Commissioners of Nautical Training School.
Metropolitan Park Commissioners.
Commissioners of Metropolitan Sewerage.
Board of Registration in Medicine.

There appears to be no good reason for the distinction thus made between such departments as have and those which have not the right to consult the Attorney-General. I recommend that the law be so amended that all departments of the State, and all State boards or commissioners having jurisdiction throughout the Commonwealth, have the right of consulting and advising with this department.

Opinions.

In accordance with the practice adopted by my predecessors, I append to this report copies of such opinions given during the year as may be useful for future reference. Included among them are three opinions given upon applications for leave to file informations in the name of the Attorney-General, where I refused to authorize the proceeding.

Assistants.

Mr. George C. Travis has continued during the year in the position of First Assistant Attorney-General, to which office he was originally appointed in March, 1891. Mr. Charles N. Harris retired from the position of Second Assistant Attorney-General on the first day of February, and Mr. James Mott Hallowell of Medford was on the same day appointed in his place, and has since continued in the position. Messrs. Travis

and Hallowell have performed the duties of their respective positions with fidelity and efficiency; and I am much indebted to them for their valuable assistance.

The work of the department is increasing year by year, not only in amount, but also in importance. The civil business of the Commonwealth, to which the assistants are called upon to give attention, requires, by reason of its extent, variety and character, a high degree of legal ability, and is practically exclusive of private law practice. It is my opinion that their salaries are not adequate to the importance and value of their services, and I recommend that they be substantially increased.

HOSEA M. KNOWLTON,
Attorney-General.

OPINIONS.

The building committee of the trustees of the Medfield Insane Asylum may at its discretion alter the construction of the buildings, provided that no substantial departure is made from the plans furnished by the commissioners appointed under chapter 445, Acts of 1890. It may use any money available that is not needed for contracts already made; and the method of expenditure is a question for its judgment. It cannot avoid contracts for materials made by the previous building committee.

JAN. 31, 1894.

To His Excellency the Governor and the Honorable Executive Council.

I have considered the matters contained in the letter of the building committee of the trustees of the Medfield Insane Asylum to the Governor, dated Jan. 17, 1894. Deeming the statements contained in the letter to be insufficient to enable me to answer the questions satisfactorily, I have conferred personally with the committee, and have examined its contracts and plans so far as was necessary to understand the questions submitted.

By Statutes of 1890, chapter 445, it was provided that commissioners should be appointed to obtain a tract of land for an asylum, and to procure plans, specifications and estimates for the erection of buildings thereon; and the act further provided that "the cost of said land, buildings and all the appurtenances thereto shall not exceed the sum of five hundred dollars per inmate." I am informed that under this act commissioners were appointed who purchased the tract of land in Medfield upon which the buildings are now being erected, and who caused to be prepared certain plans and specifications therefor.

The act authorizing the construction of the asylum is in the Statutes of 1892, chapter 425. By the provisions of this chapter the building committee "shall have the entire charge of the construction of said hospital buildings." It further provides, in section 2, among other things, that the building committee "shall cause to be erected . . . suitable buildings for an asylum for the chronic insane . . . *substantially* in accordance with the plans, specifications and estimates submitted by the commissioners appointed under" the act above referred to. "Said building committee of the trustees shall have power to

make all contracts and to employ all agents necessary for carrying into effect the provisions of this act." The only limitations upon its authority, in addition to the requirement above quoted, that it is to follow the commissioners' plans "substantially," are a proviso that "all contracts for the erection of buildings and the completion thereof and the equipment of the same . . . shall be approved by the governor and council;" and a further proviso that "the aggregate expenses and liabilities incurred by virtue thereof shall not exceed the sum of $500,000, exclusive of the compensation provided for the building committee."

The act appropriates a sum not exceeding $500,000 for the expenses incurred by the building committee in the erection of the hospital, with a proviso that the appropriation shall be divided so that no more than $150,000 shall be appropriated during the year 1892, $200,000 during the year 1893, and $100,000 during the year 1894. By the Statutes of 1893, chapter 395, the committee is authorized to expend for the purposes of said act (Statutes of 1892, chapter 495), and under the conditions prescribed by said act, the further sum of $200,000, provided that no portion of this sum shall be "expended" during the years 1893 and 1894.

In view of the provisions above quoted, which include all those relating to the authority of the committee, and the limitations imposed upon it as to the construction of the buildings and the expenditure of the appropriation, it is plain that it has full authority to make any changes in the construction of the buildings from time to time which in its judgment will be for the interests of the Commonwealth and the safety and convenience of the patients for whom the institution is erected; provided such changes are not substantially a departure from the plans and specifications furnished by the commissioners appointed under Statutes of 1890, chapter 445; and provided, further, that it does not incur contracts which call for the expenditure of more money than has been appropriated by the various acts authorizing the construction of the asylum.

But the building committee informs me that the plans and specifications prepared by the commissioners were quite general in their nature, and did not purport to furnish sufficient details for the work. The committee further informs me that the "radical changes in the construction," which it states in its letter of inquiry to the governor and council as desirable to be made, are not changes from the plans and specifications furnished by the commissioners, for the reason that the matters as to which it desires to make changes are not detailed at all in those plans, but are changes from the specifications in the existing contracts. That being so, it follows that the committee has the right to make the changes it desires, and to contract therefor,

or cause modifications, for that purpose, to be made in existing contracts, with the approval of the Governor and Council, provided it does not contract in excess of its appropriation.

Replying to the second and third inquiries of the committee, I have to say that there is no specified designation of the purpose for which any of the money appropriated is to be expended, but only provisions as to when it shall be expended. The committee, therefore, has power to use any money available that is not needed in payment for contracts already made. There is nothing in the law which prevents it from making changes that it deems essential, even though such changes will make it probable that the six buildings not yet contracted for cannot be erected for the balance of the whole appropriation not covered by contracts already made and by such changes. The question with which it is confronted is not one of law, but one which addresses itself to the judgment of the committee as commissioners. They are bound to see that suitable buildings are erected substantially in accordance with the plans prepared by the commissioners above referred to. But they cannot exceed their appropriation. If that appropriation is not enough for the purpose, it is for them to decide at what part of the work they will stop. It becomes, therefore, a question for the exercise of their judgment as commissioners whether they shall proceed to contract for the erection of the remaining buildings, if they find that they can do so with the balance of the appropriation remaining uncontracted for, and then go to the Legislature for an additional appropriation to make the changes which they deem necessary; or whether they shall make said changes now, and then go to the Legislature for an additional appropriation for the erection of the remaining buildings. They are limited in their expenditure to the sum named in the acts above referred to, and are bound to use their best judgment to secure, if possible, the erection of the buildings for that sum. If the work cannot be done for that money, they are not responsible. As to when it is their duty to call the attention of the Legislature to the fact that the existing appropriation will be insufficient, is not for me to express an opinion. Perhaps they may, with the approval of the honorable council, deem it best to proceed to make the changes desired as a matter of economy at the present time, and ask later for an additional appropriation to complete the buildings. But, inasmuch as the present committee is not responsible for the existing situation of affairs, but is still charged with the duty of seeing that the appropriations are not exceeded, it would seem to be the more desirable course for it at once, through the governor and council, to call the attention of the Legislature to the facts, and discharge itself of the responsibility of determining in which way the balance of the appropriation available shall be expended. This,

however, is not a matter as to which it is incumbent upon me to give advice.

As to the fourth inquiry propounded by the committee, I have to say that I have examined the contracts in reference to the material to which it refers in its letter, and I am of the opinion that, as to material to which it refers in said inquiry, the former building committee, having had the right of acceptance or rejection of such material, and having clearly elected, with full knowledge of the facts, to accept the material offered, and the contractors having acted upon such action by the committee in the purchase of said material, the present committee cannot reverse said action of its predecessors, so far as the same relates to material already purchased or contracted for by the contractors, without giving the contractors the right to recover damages therefor, as for a breach of contract on the part of the Commonwealth.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

The Boston Marine Insurance Company may avail itself of the provisions of chapter 102, Acts of 1886, authorizing it to transact fire insurance business. Section 28, chapter 214, Acts of 1887, neither limits nor controls the power conferred upon it by this chapter.

FEB. 1, 1894.

Hon. GEORGE S. MERRILL, *Insurance Commissioner.*

DEAR SIR: — Replying to your favor of Feb. 1, 1894, relating to the Boston Marine Insurance Company, I have to say: —

The Boston Marine Insurance Company, having long prior to 1886 been incorporated and carrying on business as an insurance company, may at any time avail itself of the provisions of the Statutes of 1886, chapter 102, authorizing it to do fire insurance business.

Statutes of 1887, chapter 214, section 28, providing that if any domestic company shall not commence to issue policies within one year after the date of its incorporation, or if, after it has commenced to issue policies, it shall cease for a period of one year to make new insurances, its corporate power shall expire, do not limit or control the powers conferred upon this company by the Statutes of 1886 above referred to. This section is obviously intended to apply, in the first place, to failure of new companies to commence business within one year; and, in the second place, to a complete cessation of insurance business on the part of existing companies.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

There is no existing legislation authorizing an appropriation to pay for the services of an agent appointed by the trustees of the State Primary and Reform Schools to visit the children transferred to families from the Lyman School for Boys.

FEB. 8, 1894.

Hon. HENRY Y. SIMPSON, *Chairman.*

DEAR SIR: — I am in receipt of your letter asking me if "the statutes authorize and require the trustees of the State Primary and Reform Schools to visit the children placed in families from the Lyman School for Boys, and to inquire into the condition of such children, and make such investigation in relation thereto as they may think best."

It would be a sufficient answer to this inquiry to quote the opinion of my learned predecessor, printed on pages 38 and 39 of his report for the year 1893, in which he says, in the concluding paragraph: —

"On the whole, I am of opinion that it is the duty of the trustees of the State Primary and Reform Schools to exercise a general oversight and supervision of all children committed to these schools during their minority, or until their discharge in some manner provided by law."

This opinion I see no occasion at present to re-examine or modify.

I understand, however, that the precise question before the committee is, whether there is any existing legislation which will authorize an appropriation to pay for the services of an agent to be appointed by the trustees to make such visitations. I have been unable to find any such legislation. Whatever duty of supervision is entrusted to the trustees of boys placed on probation is general in its nature, and must be exercised by them as a Board, and not by a paid agent. In this connection it will be observed that the statutes establishing the State Board of Health, Lunacy and Charity expressly provide that it "may assign any of its powers and duties to agents appointed for the purpose, and may execute any of its functions by such agents." No such authority for agency, at least in respect to visitation, is delegated to the trustees of the various Primary and Reform Schools. I am of opinion, therefore, that there is no authority in existing legislation for such an appropriation.

In the consideration of this question, it has been stated to me that the usual way of placing out boys from the Lyman School is not under the provisions of General Statutes, chapter 89, section 38, but by sending them back to their homes or elsewhere on probation, without any formal contracts of service or apprenticeship. Whether there is any authority for such a course, I do not deem it necessary at this time to consider or determine.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

The trustees of the State Farm have no authority to recommit to the State Prison a prisoner who, having become insane, has been removed from the State Prison to the Worcester Lunatic Hospital, and thence transferred to the State Farm. The right to adjudge when he shall be recommitted remains with the officers of the Worcester Lunatic Hospital.

FEB. 10, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

I have the honor to acknowledge the receipt of your letter, enclosing the communication of J. White Belcher, and H. M. Blackstone, superintendent of the State Farm, dated Feb. 7, 1894, and to reply to the inquiry contained therein as follows: —

William Allison, who had been sentenced to the State Prison in 1890 for a term of seventeen years, was, while adjudged insane under the provisions of Public Statutes, chapter 222, section 10, and by warrant of the governor, removed to the Worcester Lunatic Hospital. The language of the warrant was as follows: "You are hereby authorized to cause the said convict to be removed to the Worcester Lunatic Hospital, there to be kept until, in the judgment of the superintendent and trustees thereof, he should be returned to prison." This warrant issued Feb. 26, 1892, and he was thereupon removed to the Worcester Lunatic Hospital.

Subsequently, to wit, Aug. 22, 1892, by order of the State Board of Lunacy and Charity, he was transferred from the said Worcester Lunatic Hospital to the State Farm, and placed in charge of the superintendent thereof. This was done under the provisions of Statutes 1887, chapter 367, which authorizes the State Board to transfer from the State Prison to any other State charitable institution convicts who have previously been committed to a State lunatic hospital.

It now appearing that Allison has become sane, the trustees and superintendent of the State Farm are of opinion that he should be returned to prison; and desire to know if, under the provisions of Public Statutes, chapter 222, section 10, they have authority to order his recommitment. I am of opinion, though not without some doubt in the matter, that they have no such authority. I am led to this conclusion in view of two considerations: —

First. — Said section 10 provides that when duly adjudged insane he is "to be removed to one of the State lunatic hospitals, there to be kept until, in the judgment of the superintendent and trustees of the hospital to which he may be committed, he should be returned to prison." By the Statutes of 1887, chapter 367, he may be transferred from the Worcester Hospital to the State Farm; but the power of adjudging that he should be returned to prison does not seem so to be transferred, but must still be exercised by the superintendent and

trustees of the hospital "to which he was committed." It is so expressed in terms in the warrant of commitment, and such is the clear language of the statute. It would undoubtedly be wise to transfer the power of ordering a return to the prison, when the convict himself is transferred from one institution to another; but the Legislature failed so to provide in terms, and I do not think that the statute in question, section 10, can be construed to read in by implication such a delegation and transfer of authority. It is a statute dealing not with an object of the Commonwealth's charity, but with a convict; and it is therefore to be construed strictly, and not to be enlarged or extended as against the convict.

Second. — Even if the power of returning could be transferred from the officers of one State lunatic hospital to another, so that, for example, the convict, having been transferred to the Taunton Lunatic Hospital could have been by the officers of that institution returned to prison, yet it is very doubtful whether the State Farm can be called a State lunatic hospital, under the terms of section 10, chapter 222 of the Public Statutes. The words "State lunatic hospital" seem to be used technically in the section, and as distinguished from a mere asylum or receptacle for the insane. The State Farm has been made by the Legislature a receptacle for pauper insane (see Statutes of 1886, chapter 219, and Resolve of 1888, chapter 91). But, without determining whether this legislation makes it a State lunatic hospital for any purpose, as that term as used in the legislation of the Commonwealth, I certainly do not think the trustees and superintendent of the State Farm can be said to be trustees and superintendent respectively of a State lunatic "hospital," within the meaning of that word as used in section 10 of chapter 222 of the Public Statutes.

It follows, therefore, that the only way in which the convict can be transferred is to retransfer him to the Worcester Lunatic Hospital, and have the judgment of the officers of that institution endorsed upon the order of commitment.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

A foreign insurance company, in every way qualified to do an insurance business in this Commonwealth, is not to be debarred therefrom because by its charter it has a right to transact and is transacting in a foreign State the additional business of a trust company.

MARCH 1, 1894.

HON. GEORGE S. MERRILL, *Insurance Commissioner.*

DEAR SIR: — In reply to your communication of Feb. 17, 1894, inquiring whether a corporation organized under the laws of another State, whose principal business is that of a trust company, but which

also transacts an insurance business, can be admitted under our statute to transact the business of insurance in this Commonwealth, I reply as follows: —

I understand that in answering your inquiry it is to be assumed that the company in question is in a situation to comply with the requirements of law in reference to a foreign insurance company upon its entrance into business in this Commonwealth, and that no question is made about the form of the agreement, or any reference to any other matter except the simple question whether or not a foreign insurance company, in every respect qualified to do an insurance business in this Commonwealth, is to be debarred therefrom because by its charter it has a right to transact, and is transacting, also the additional business of a trust company.

In my opinion, there is nothing in the legislation or decisions of this Commonwealth to prevent such a company from lawfully transacting its insurance business. Of course it is entirely within the power of the Insurance Commissioner to see to it that only the insurance business that a corporation may lawfully do in this Commonwealth is carried on separate and apart from any other business. It seems that under the insurance act the power of the commissioner is ample to give to every person insured, and all parties interested in the insurance business of such a corporation, all the protection which could be had if the company was authorized to do, and did, only an insurance business.

Respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Extradition papers from a foreign State, which comply with the laws of the United States and also with the statutes of the demanding State, are sufficient to authorize the governor to surrender the fugitive demanded; although said papers do not comply with a Massachusetts statute requiring affidavits by persons having actual knowledge of the offence charged.

MARCH 15, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

SIR: — In the matter of the demand made by the governor of the State of Nebraska for the extradition of William Clark, and upon the question of the sufficiency of the papers and documents accompanying the same, I have to say: —

The Revised Statutes of the United States, section 5278, provide as follows: —

"Whenever the executive authority of any State or territory demands any person as a fugitive from justice, of the executive authority of any State or territory to which such person has fled, and produces

a copy of an indictment found, or an affidavit made, before a magistrate of any State or territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or territory from whence the person so charged has fled," it shall be the duty of said executive to cause the person demanded to be arrested, etc.

The demand in question is accompanied by a paper entitled "an information," authorized by the laws of Nebraska; and which is in fact an affidavit made before a magistrate of the State of Nebraska, charging the said William Clark with having committed the crime set forth therein.

The papers, therefore, comply with these provisions of the Revised Statutes of the United States. They are also in compliance with the provisions of the State of Nebraska.

It is suggested, however, that they do not comply with the provisions of Public Statutes, chapter 218, section 1, requiring further that the demand be accompanied by a duly attested copy of an indictment; or of a complaint, accompanied by affidavits of the facts constituting the offence charged, by persons having actual knowledge thereof. Where application is made to the governor of the Commonwealth of Massachusetts to demand from the executive of another State the extradition of a person in that State, these provisions of our statutes, which are supplementary and in addition to the provisions of the Revised Statutes, may well govern the acts of the executive of this Commonwealth. But where they are in conflict with the provisions of the Revised Statutes of the United States, they are inoperative, for the reason that the United States has full jurisdiction of the whole matter. The Legislature of Massachusetts has no power to enact a law interfering with the execution of an interstate right given by the authority of the law of the United States. And if it appears that a demand for extradition made upon the governor of a State is in compliance with the laws of the United States and of the State from which the demand issued, the executive upon whom the demand is made cannot lawfully refuse to grant the extradition because the papers do not comply with the provisions of the statutes of the State upon which the demand is made.

I am of opinion, therefore, that the extradition must be granted.

I have the honor to be, with great respect, your Excellency's obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

Under authority of legislation in Connecticut, and likewise in Massachusetts, the H. & N. H. R. R. Co., a Connecticut corporation, and the H. & S. R. R. Co., a Massachusetts corporation, became united under the name of the H. & N. H. R. R. Co. Subsequently, under authority from both States, the latter company consolidated with the N. Y. & N. H. R. R. Co., a Connecticut corporation, the consolidated body assuming the name of the N. Y., N. H. & H. R. R. Co. This company under authority from Connecticut, acquired the N. Y , P. & B. R. R. Co , a corporation whose tracks connected at Providence with the B. & P., R. R. Co., the latter being leased to the O. C. R. R. Co.

The N. Y., N. H. & H. R. R. Co. then procured a lease of the O. C. R. R. Co., the lease being made under the provisions of a Massachusetts statute, authorizing two railroad corporations created by this Commonwealth, whose roads enter upon or connect with each other, to execute a lease of the one to the other, the two roads being deemed to connect if one connected with a road leased to the other.

The connecting roads at Providence are the roads of two railroad corporations created by the Commonwealth within the meaning of the statute. It is immaterial that the connection is made without the limits of the Commonwealth.

MARCH 16, 1894.

To the Honorable Senate and House of Representatives.

I have the honor to acknowledge the receipt of the order of the Legislature, adopted February 1, requesting my opinion as to the legality of the lease of the Old Colony Railroad to the New York, New Haven & Hartford Railroad Company, and to reply thereto as follows: —

I beg leave to suggest to the honorable Senate and House of Representatives that, under the terms of the order, it is doubtful, to say the least, whether I am required to do more than to examine the lease referred to, and to determine whether its provisions appear to be conformable to law. No statement of facts accompanies the order, nor is my attention called to any special question touching its legality, excepting, perhaps, such as may arise upon inspection of the instrument itself.

But I assume that the order was intended to have a much broader scope, and that I am desired to inquire into all the facts material to the transaction, whether appearing of record or not, and to consider not only whether in its provisions the lease appears to conform to the law, but also its legality in view of all the attendant and antecedent circumstances, and of the history and status of the contracting corporations. In deference, therefore, to what I assume to be the wishes of the honorable Senate and House of Representatives, and in view of the importance of the question and the wide-spread interest felt in it by the public, I have endeavored to ascertain, so far as possible, all the facts touching the transaction, including the legislative history

of the contracting parties, not only in this Commonwealth, but in Rhode Island and Connecticut as well. In so doing, however, I do not yield my contention that the investigation of facts is a matter peculiarly within the province of the Legislature through its committees. and that it cannot be devolved as of right upon the Attorney-General.

No special authority for the lease was granted by the Legislature of this Commonwealth. Its legality, therefore, depends upon whether it is authorized by Public Statutes, chapter 112, sections 220, 221. These sections, so far as they affect this transaction, provide substantially that two railroad corporations created by this Commonwealth, whose roads enter upon or connect with each other, may execute a lease from one to the other; and that they shall be deemed to connect if one of the roads enters upon or connects with a road leased to the other.

The lease purports to be between the Old Colony Railroad Company as lessor, and the New York, New Haven & Hartford Railroad Company as lessee. It describes both corporations as "existing under the laws of the Commonwealth," and recites that their "roads connect with each other." If the recitals in the lease are true, it is within the provisions of the statute. It is necessary, however, to go further, and to ascertain whether in fact the parties to the lease are both railroads "created by the Commonwealth of Massachusetts;" and whether their roads connect, and where; and whether such connection is a connection contemplated by the statute.

There is no claim, as I am informed, that there is any connection between the roads of the contracting parties excepting at two points. One connection is in Providence, in the State of Rhode Island, between the tracks of the Boston & Providence Railroad Company, a railroad company leased to the Old Colony Railroad Company, and the tracks which were constructed by the corporation known as the New York, Providence & Boston Railroad Company, which it is claimed have been acquired and made a part of the road of the New York, New Haven & Hartford Railroad Company. The other connection is at a point in Massachusetts near the Blackstone River, between the tracks of the said Boston & Providence Railroad Company and the tracks of the Providence & Worcester Railroad Corporation, a railroad operated by the New York, New Haven & Hartford Railroad Company under a lease.

I do not deem it important to consider at length the latter connection. It is sufficient to say that it is not within the terms of the statute, which authorizes a lease only when the connection is between the roads of the two parties to the lease, or between the road of one party and a road leased to the other. A connection formed by two leased

lines is not, in my opinion, a sufficient connection to authorize a lease under the statute of Massachusetts.

The legality of the lease, therefore, must stand upon the connection at Providence. This raises two questions: —

First. — Is a connection between the roads of the contracting parties without the limits of the Commonwealth a sufficient connection within the words of the statute authorizing the leasing of railroads?

Second. — Are the connecting roads at Providence the roads of two railroad corporations "created by this Commonwealth," within the meaning of said statute?

Upon the first question it is to be observed that there is nothing in the words of the statute which can be construed to limit the connection required of roads proposing a lease to a connection in this State. It must be presumed to have been within the knowledge of the Legislature, when the law was enacted, that the roads of many of the railroad corporations "created by this Commonwealth" extended into other States. If in view of this fact it had been intended to limit the connection to tracks within the State, the act would doubtless have read "whose roads enter upon or connect with each *within this Commonwealth.*" The omission of the words italicized, or any words of similar import, cannot be regarded as unimportant.

Nor do I find anything in the purpose of the statute which requires such a limitation of the provisions regarding connecting roads. Two restrictions upon the leasing of railroads appear to have been intended by the Legislature in enacting this law. One was, that both railroads should be Massachusetts corporations. This preserved the control by the State of the leased road notwithstanding the lease. Another was, that there should be a physical connection between the roads which were to be jointly operated under a lease. It is to be remembered that all statutes granting privileges to railroad companies are presumed to be enacted with a view to the advantage of the community for whose use and benefit railroads are chartered. The obvious intent of the statute under consideration is to declare it to be for the advantage of the public to permit two railroads to be united under one management whenever they are so connected that they can be operated as one line. It is the fact of physical connection that is of importance, not the place where it happens to exist. A lease between two railroads whose tracks do not connect does not benefit the public. But if they connect, even though the connection be outside the limits of the State, the lease enables them to be operated together as one line, and inasmuch as both derive their existence and franchise from the Legislature of the Commonwealth, they are still under its control, notwithstanding the lease.

Supposing, for example, there were no general laws authorizing a

lease between railroad companies, and it was proposed that the Legislature should authorize a lease to be made between the Providence & Worcester Railroad Company and the New York & New England Railroad Company, whose tracks connect at Blackstone. The point of junction is said to be almost exactly upon the line between Massachusetts and Rhode Island. The question to be considered being whether such a lease would be beneficial to the community served by the two companies, could it be said that, inasmuch as both roads derived their corporate existence from, and were subject to the jurisdiction of Massachusetts, it would make the slightest difference in determining the question as a matter of public policy, whether the physical connection between them happened to be on one side of the line or on the other?

I am not aware that this question has been considered by the courts of this Commonwealth. Such decisions as I have examined in other States turn upon the language of the statutes of those States; none of which are similar in form or substance to the statute now under consideration. But I am clearly of opinion that a sound and consistent interpretation of the statute does not require or justify the interpolation of the words "within this Commonwealth" after the words relating to the physical connection of the roads between which a lease is authorized; that the Legislature, not having in terms so limited the connection prescribed, did not intend so to limit it; and that it is not necessary to the legality of a lease under that statute that the connection between the roads shall be in this Commonwealth.

The second question, to wit, whether the connecting roads at Providence are the "roads" of "two corporations created by this Commonwealth," within the meaning of the statute, requires an examination of the legislative history of the two corporations by whose roads it is claimed the connection is made. These are the Boston & Providence Railroad Company (the lessee of the Old Colony Railroad Company), coming from the north, and the New York, New Haven & Hartford Railroad Company, coming from the south.

The Boston & Providence Railroad Company was incorporated in Massachusetts, by Statutes 1831, chapter 56. By the terms of its charter it was authorized to construct a line from Boston to the line of the Commonwealth in Pawtucket or Seekonk. Statutes Massachusetts, 1846, chapter 158, authorized the corporation to construct a branch from Dodgeville westward to the line of the State of Rhode Island. Section 3 of the same chapter further provided that said corporation was "authorized to expend of their capital stock such sum as the directors may deem expedient for constructing a railroad, which shall be a continuation of the branch railroad hereinbefore authorized to be constructed, with the railroad of the Providence &

Worcester Corporation; for the laying of a track or tracks to the point of junction of said road to the city of Providence; for the purchase of depots and accommodations in Providence, and for the making of other arrangements, etc." What is now known as the main line of the Boston & Providence Railroad Company southerly from the State line was constructed under this statute, and under a contract between the Boston & Providence Railroad Company and the Providence & Worcester Railroad Company, providing for its joint use by both companies.

It is well settled that a railroad corporation chartered under the laws of a State may, under authority from that State, extend its line into another State, if permitted to do so by the other State. It still remains throughout its entire length the corporation of the State from which it derives its charter. It is clear, therefore, that the road of the Boston & Providence Railroad Company in Providence is the road of a railroad corporation "created by this Commonwealth," within the meaning of Public Statutes, chapter 112, section 220.

The history of the New York, New Haven & Hartford Railroad Company is as follows: In 1833 the Hartford & New Haven Railroad Company was incorporated by the Legislature of Connecticut, with authority to construct a railroad from Hartford to New Haven. In 1842 the said company was authorized by the Legislature of Connecticut to extend its railroad to the north line of the State, and, with the consent of Massachusetts, thence to Springfield; and it was further authorized to form a union with the Hartford & Springfield Railroad Company, a Massachusetts corporation.

In 1839, by chapter 101, the Hartford & Springfield Railroad Corporation was incorporated by the Legislature of Massachusetts, with authority to construct a railroad from a point in Springfield to the north line of the State of Connecticut "with a view to unite said railroad with a railroad authorized by the Legislature of Connecticut from Hartford to the line of the State of Massachusetts." In 1844, by chapter 28, section 2, the Legislature of Massachusetts provided as follows: "The persons who now are or may hereafter be stockholders of the Hartford & New Haven Railroad Company, a Connecticut corporation, shall be stockholders of this corporation (the Hartford & Springfield Railroad Company), together with such persons as are now or may hereafter become stockholders of this corporation. And when the stockholders shall by vote have assented thereto, the said corporations shall become united in one corporation by the name of the New Haven & Springfield Railroad Company." The statute of Connecticut of the year 1844 above referred to, enacted substantially similar provisions in respect to the Hartford & New Haven Railroad Company. In each State the charter was conditioned upon the

granting of a similar charter by the other State. By Statutes Massachusetts, 1847, chapter 244, it is provided that when the union thus authorized shall be accomplished, "the united corporation shall be called the Hartford & New Haven Railroad Company." Section 2 of the same chapter further provided "that the said corporation, so far as their railroad is situated in Massachusetts, shall be subject to the general laws of this Commonwealth to the same extent as though their road were wholly therein."

The effect of these statutes was to unite, so far as could be done by concurrent acts of the Legislatures of the two States, the entire railroad from New Haven to Springfield under one corporation, called the Hartford & New Haven Railroad Company.

In 1844 the Legislature of Connecticut incorporated the New York & New Haven Railroad Company, with authority to construct a railroad from the city of New Haven westerly to the west line of the State towards the city of New York. I am informed that in 1870, by indentures duly authorized under the statutes of the State of Connecticut, the New York & New Haven Railroad Company was made lessee by a perpetual lease of the railroad company called the Shore Line Railway, whose line extended from New Haven eastward to the city of New London. The New York & New Haven Railroad Company thereby acquired prior to 1871 a line of railroad from the west line of Connecticut through the city of New Haven eastward to the city of New London.

In the year 1871 an act was passed by the Legislature of Connecticut, approved July 26, which, after reciting that the New York & New Haven Railroad Company and the Hartford & New Haven Railroad Company had on the third day of August, 1870, entered into certain covenants and agreements under authority of and in accordance with the laws of the State, by which covenants and agreements the entire railways and properties of said corporations had been merged into a joint estate, and after further reciting that it would be for the convenience and best interests of said companies and of the travelling and shipping public having dealings with them that said companies should have a single corporate existence, enacted that the Hartford & New Haven Railroad Company might sell, transfer, merge and consolidate its corporate rights, powers and estates to, into and with the New York & New Haven Railroad Company, upon such considerations, terms and conditions as might be agreed upon between said corporations; that the directors might enter into joint articles of agreement for the sale, transfer, purchase, merger and consolidation thus authorized, prescribing the terms thereof, and providing that the number of shares should not exceed "the present authorized capital of said companies;" which agreement should be submitted to the

stockholders of each of said corporations separately; and if approved in the manner directed in said act, and a certified copy of the agreement of the certificate of adoption of the same by the stockholders of the two corporations filed in the office of the secretary of the State of Connecticut, that thereupon the said Hartford & New Haven Railroad Company should be and become merged and consolidated into and with the said New York & New Haven Railroad Company; and that the consolidated corporation should continue a body politic and corporate under the corporate name of the New York, New Haven & Hartford Railroad Company, and should possess, hold and enjoy all the rights, powers, franchises and privileges theretofore vested in either of said corporations; and that thereupon all the property real and personal belonging to either of said corporations should be deemed and taken to be transferred to and vested in the corporation into which such merger was made. It was further provided that the consolidated corporation should be subject to the charter of the corporation into which said merger was made (to wit, the New York & New Haven Railroad Company), with the proviso that when any special duty or liability was imposed, or any special privilege, franchise or immunity was conferred upon the corporation so merged (to wit, the Hartford & New Haven Railroad Company), such duty and liability and such franchise and privilege should attach to the consolidated corporation, "so far as the same were applicable to the right and franchise of said merged corporation." It was further enacted in section 6 that said consolidation should at "all times be subject to the power, control and legislation of the General Assembly of the State."

In the following year (Statutes Massachusetts, 1872, chapter 171), the Legislature of Massachusetts passed an act almost identical in its terms with the statute of Connecticut above recited, authorizing the merger of the Hartford & New Haven Railroad Company into the New York & New Haven Railroad Company; and providing that when such agreement was made, approved and filed in the office of the secretary of the Commonwealth, the two companies should be merged into one corporation under the name of the New York, New Haven & Hartford Railroad Company. The only material difference in the provisions of the two charters is that, instead of section 6 of the Connecticut charter above recited, the Massachusetts charter provided as follows: "Said consolidated corporation shall at all times be subject to the Legislature of this State as to that portion of its road in this State as heretofore; and shall be subject to the general laws of this State as to its whole road, so far as such laws may be applicable thereto."

In pursuance of these charters, an agreement was entered into by the directors of the two railroad companies, which was duly ratified by the stockholders of both companies, and filed in the office of the secretary of this Commonwealth on the sixth day of August, 1872, and in the office of the secretary of the State of Connecticut on the second day of March of the same year. This agreement conformed to the provisions of said charters, and recited that "the Hartford & New Haven Railroad Company doth hereby sell, transfer, merge and consolidate its corporate rights, powers and estate to, into and with the New York & New Haven Railroad Company," under the name of the New York, New Haven & Hartford Railroad Company. It further provided that the capital stock of the consolidated corporation should be $15,500,000, "which is the amount of the present authorized capital of the two companies."

By a statute of Connecticut, approved June 14, 1889, the New York, New Haven & Hartford Railroad Company was authorized to increase its capital stock for the purpose of paying its funded and floating debt, "and to make permanent additions and improvements." It was further authorized to "increase its capital stock up to and during the year 1899 for the shares of the capital stock and for the obligations of any railroad company whose property it may hold by virtue of a lease for a term as long as fifty years; and, in case of roads to be leased hereafter, whose railroad is located in whole or in part within this State." By section 3 it was further provided that "in case the said New York, New Haven & Hartford Railroad shall retire all of the capital stock of any such leased line by purchase or exchange, the officers of said respective companies shall certify the same, by certificate to be filed in the office of the State secretary; and the said stock of said leased line and all its franchises shall thereupon be and be deemed to be forever transferred to and merged in the stock and franchise of said New York, New Haven & Hartford Railroad Company."

I am informed that on the first day of April, 1892, an indenture, purporting to be a lease for the term of sixty years, was executed between the New York, Providence & Boston Railroad Company, "a corporation existing under the laws of the States of Rhode Island and Connecticut," owning and operating a railroad from New London to the city of Providence, and there connecting with the tracks of the Boston & Providence Railroad Company, as lessor, and the New York, New Haven & Hartford Railroad Company, "a corporation existing under the laws of the States of Connecticut and Massachusetts," as lessee, by which the lessor demised to the lessee its railroad, franchise and property. The lease contained a further covenant, as follows: "And the lessee further covenants that, under the provi-

sions of a certain resolution of the General Assembly of Connecticut amending the charter of the New York, New Haven & Hartford Railroad Company, approved June 14, 1889, and the amendment thereto approved June 22, 1889, it will make prompt application to the committee constituted by section 2 of said resolution for the approval of terms of exchange whereby shares of the capital stock of the lessee may be exchanged for shares of the capital stock of the lessor, share for share; and so soon as said terms of exchange shall have been approved by said committee, the lessee will increase its capital stock by the amount of the capital stock of the lessor, and will give notice thereof to each stockholder of the lessor by mail; and thereafter, upon the assignment to the lessee of any share or shares of the capital stock of the lessor, and the surrender of the certificate or certificates therefor, the lessee will, whenever its stock transfer-books are open, issue to the owner of said share or shares, in exchange therefor, a certificate for a like number of shares of the capital stock of the lessee, as provided in said resolution, and will make an equitable adjustment in cash for the difference in the dates upon which the quarterly dividends of the respective companies have been paid." This lease was authorized under the General Statutes of Connecticut, section 3472, which provided that "any railroad company may make lawful contracts with any other railroad company with whose railway its tracks may unite or intersect with relation to its business or property; and may take a lease of the property or franchise of, or lease its property or franchise to, any such railway company."

The Legislature of Rhode Island, on the sixth day of April, 1892, passed an act providing that the New York, Providence & Boston Railroad Company should be authorized and empowered to lease its railroad, property and franchise to the New York, New Haven & Hartford Railroad Company, for a term not exceeding ninety-nine years; and upon such terms and conditions as had been or should be agreed upon by said companies; and "the New York, New Haven & Hartford Railroad Company is hereby authorized and empowered to accept such lease, and to hold and use said demised railroad, property and franchise, and to acquire the same, in accordance with the terms and conditions of said lease; and thereupon shall succeed to and have, use, exercise, and enjoy all the rights, privileges and powers heretofore granted and belonging to the said New York, Providence & Boston Railroad Company."

I am further informed that under the provisions of said lease the stock of the New York, Providence & Boston Railroad Company was all delivered to and retired by the New York, New Haven & Hartford Railroad Company in exchange for stock of that company, prior to the third day of February, 1893. On the last-named date, the New

York, Providence & Boston Railroad Company executed and delivered to the New York, New Haven & Hartford Railroad Company what purported to be a quit-claim deed of its entire property, franchises and privileges. On the twenty-fourth day of February, 1893, the Legislature of Rhode Island passed an act reciting that the New York, New Haven & Hartford Railroad Company had succeeded to the rights, privileges and powers, and become subject to the duties, obligations and liabilities of the New York, Providence & Boston Railroad Company. As a result of these transactions, and by virtue of the legislative acts of the States of Connecticut & Rhode Island, it appears that the New York, New Haven & Hartford Railroad Company acquired and succeeded to all the property, franchises and privileges of the New York, Providence & Boston Railroad Company; and that the tracks in Providence connecting with the tracks of the Boston & Providence Railroad Company became, before the date of the lease now in question, were and are the tracks of the New York, New Haven & Hartford Railroad Company.

None of these proceedings, however, subsequent to the charter of 1872, were authorized or ratified, at least in express terms, by the Legislature of Massachusetts. On the other hand, there were statutes of this State in force when the charter of 1872 was granted, which, it may be claimed, the proceedings above recited are in conflict with, if not in violation of. Massachusetts Statutes, 1871, chapter 392 (now Public Statutes, chapter 112, section 59), provided, in substance, that when a railroad corporation was authorized to increase its capital stock, it should, if the market value of its shares was above par, sell the new stock at auction in the city of Boston. The act contained a further provision as to the methods of advertising and conducting said sale. Massachusetts Statutes, 1868, chapter 310, provided that no railroad corporation should create any additional new stock, or issue certificates thereof, unless the par value of the shares so issued be first paid in cash to the treasurer of said corporation; and that all certificates of stock issued in violation of the foregoing provision should be void, and the directors issuing the same should be liable to a penalty of one thousand dollars each, to be recovered by indictment in any county where any of said directors resided. This act was incorporated into the general railroad law of 1874, and was re-enacted by Public Statutes, chapter 112, section 61; with the additional provision that if a railroad corporation, without authority of the general court, should increase its capital stock beyond the maximum fixed in its act of incorporation, or in conformity with the provisions of the general railroad law of Massachusetts, the certificate so issued should be void. It may be assumed that these provisions of the laws of the Commonwealth were not observed in the

proceedings of the New York, New Haven & Hartford Railroad Company, above recited. There is another statute, first enacted by Massachusetts Statutes, 1871, chapter 389, and now forming the last sentence of Public Statutes, chapter 112, section 61, which provides that: "If a railroad corporation owning a railroad in this Commonwealth and consolidated with a corporation in another State owning a railroad therein increases its capital stock, or the capital stock of such consolidated corporation, except as authorized by this chapter, without authority of the General Court, or without such authority extends its line of road, or consolidates with any other corporation or makes a stock dividend, the charter and franchise of such corporation shall be subject to be forfeited and to become null and void."

This apparent conflict between the legislation of Massachusetts and of Connecticut, so far as the same has reference to a railroad company holding a charter from each, raises important questions, the determination of which involves the exact issue now under consideration, to wit, whether the road constructed by the New York, Providence & Boston Railroad Company and connecting with the road of the Boston & Providence Railroad Company at Providence had become and was on the fifteenth day of February 1893 (the date of the lease in question), the "road" of the New York, New Haven & Hartford Railroad Company, a corporation "created by the Commonwealth of Massachusetts." These questions may be stated to be: —

First. — What is the effect of reciprocal statutes enacted by two or more States, purporting to form one consolidated corporation into which are merged two or more corporations previously existing in each State respectively?

Second. — To what extent does each State retain control over a consolidated corporation so formed?

To state the first question more explicitly in its relation to the present issue, do the two charters create one corporation, which is endowed with the rights granted by each charter, including the power of enlargement, growth and extension in each State under the authority of the Legislature of that State? Or do they create two separate and distinct corporations, in the sense that each holds its property under a separate title, so that a contract made under the authority of one State does not enure to the benefit of both corporations, but only to the corporation of the State authorizing the contract?

These questions are of grave importance. Among other Massachusetts corporations, the Boston & Albany, the Boston & Maine, the Eastern, the New York & New England and the Nashua & Lowell were incorporated by similar concurrent legislation of this and other States; and the same questions are liable to arise at any time affecting the rights and duties of those corporations. I am not aware that

the questions suggested here have been passed upon by our courts. In Attorney-General *v.* The Boston & Maine Railroad Company, 109 Mass. 99, the whole matter was ably discussed by counsel, from whose briefs I have derived much valuable assistance. But in view of certain special legislative provisions applicable to the defendant corporation, the questions raised were not adjudicated. In his opinion in that case Judge Morton says: "If the government of Massachusetts had taken no action upon the subject, the case would present the important questions, ably argued by counsel as to the relative powers of the several States by whose concurrent action a consolidated corporation like this has been created, acting independently of each other, over the corporation, and particularly over that part of its road situated within their limits. But we have not found it necessary to consider these questions, because, etc."

Consolidating statutes similar in form have been enacted in many of the United States. Early in the history of railroads, the advantages of through trunk lines made such legislation obviously necessary to facilitate intercommunication between different parts of the country. The status of such corporations has been elaborately considered in many cases both in the Federal and the State courts; but, as far as I can discover, the precise question involved in the present inquiry, to wit, the power of a corporation to increase its capital stock and extend its road in one State by the authority of that State, but without the sanction or against the prohibition of another State, has not been adjudicated.

There has been, moreover, some apparent conflict among the cases, even before the same tribunal, in discussing the character and scope of such consolidations. For example, in Railroad Company *v.* Harris, 12 Wall. 65, a case in the supreme court of the United States, Mr. Justice Swain, in delivering the opinion of the court, said: "We see no reason why several States cannot, by competent legislation, unite in creating the same corporation, or in combining several pre-existing corporations into a single one." On the other hand, in Nashua & Lowell Railroad Company *v.* Boston & Lowell Railroad Company, 136 U. S. 356, a case before the same tribunal, Mr. Justice Field delivering the opinion of the majority of the court, in speaking of the statutes of Massachusetts and New Hampshire, which purport to consolidate the corporation in each State known as the Nashua and Lowell into one corporation, said: "The new corporation created by Massachusetts, though having the same name, composed of the same stockholders and designed to accomplish the same purpose is not the same corporation with the one in New Hampshire. Identity of names, powers and purposes does not create an identity of origin or existence, any more than any other statutes, alike in language, passed by

different legislative bodies, can properly be said to owe their existence to both. To each statute and to the corporation created by it there can be but one legislative paternity." The chief justice and Judges Gray and Lamar, however, dissented from this opinion. In Railway Co. *v.* Auditor-General, 53 Michigan, 79, Judge Cooley said: "It is impossible to conceive of one joint act, performed simultaneously by two sovereign States, which shall bring a single corporation into being, except it be by compact or treaty." On the other hand, in Horne *v.* Boston & Maine Railroad Company, 62 N. H. 454, the court, speaking of the Boston & Maine Railroad Company, said "the defendants are a single corporation, having its powers from, and existing by the laws of Maine, New Hampshire and Massachusetts." And in Covington Bridge Company *v.* Mayer, 31 Ohio, 317, speaking of the effect of similar consolidating statutes upon the corporation so formed, the court said: "It is in truth a single corporation with the power of two. It acts under two charters, which are in all respects identical, except as to the source from which they emanate. What is authorized by one of these charters is authorized by both. What may be lawfully done under one may be lawfully done under both."

But, notwithstanding the apparent inconsistency of these views, in my opinion they may be largely reconciled by consideration of the true essence of corporations, and of the different but not inconsistent definitions of those bodies which may be given, according to the point of view from which they are regarded. These different aspects of corporations grow out of the nature of the issues before the court in the several cases to which I have alluded; and they go far toward explaining the seeming conflict in the views expressed.

A recurrence to definitions may therefore be of assistance in determining the question now under discussion. Regarded as a creature of the sovereign, a corporation has been defined to be "an artificial being, invisible, intangible and existing only in contemplation of law." As such, it is obvious that there can be no such thing as a corporation which owes its existence to two or more independent sovereigns. Two States cannot unite in one legislative act. As an artificial person, created by an act of legislation, it is the child only of the Legislature by which it was created. It cannot have two parents.

But such a definition, although entirely accurate, and in some respects sufficient, falls far short of describing a corporation in fact. For all purposes, excepting such as relate to its origin, domicile and similar matters, a corporation may be defined as a collection of persons united in one body under a special denomination, having perpetual succession under an artificial form, and capable of taking and granting property, of sueing and being sued, of making contracts, of enjoying privileges and immunities in common, and of exercising the

right conferred upon it by its charter. In other words, as has been well said by an able writer (Morawetz on Corporations, section 1), a corporation is not "in reality a thing distinct from its constituent parts. The word 'corporation' is but a collective name for the corporators or members who compose an incorporated association."

Bearing in mind these different, but by no means inconsistent, definitions, it is not difficult to understand the status of a consolidated corporation, like the New York, New Haven & Hartford Railroad Company. With respect to its origin, creation and domicile, and regarding it as an artificial person or entity created by legislation, it is a distinct corporation in each State. But, as to all the purposes for which it was created, it is, and must have been contemplated by each Legislature to be, one corporation in both States. It is but one body of men, formed into one company. All the property of its constituents (the two domestic corporations and their stockholders) has been merged into one joint and indivisible stock, represented by one set of shares, managed by one set of officers, and in all respects dealt with as one property and business. It may commit torts, and torts may be committed upon it as one corporation. It makes its contracts as one corporation. It grants and acquires property as one corporation. It has no machinery by which it can act in a dual capacity. So far as respects its charter, it is two corporations. As to its property, contracts and business, it is one and indivisible. In short, to quote the words of the Ohio court above cited, it is, in fact, "one corporation with the power of two corporations."

An examination of the case of Attorney-General *v.* Boston & Maine Railroad Company, above cited, goes far to confirm this position. Though it is not so declared in express terms, yet throughout the opinion the Boston & Maine Railroad Company, holding charters from the Legislatures of three States, is regarded and spoken of as one corporation, and not as three corporations acting together.

It follows that whatever property it has acquired by contract, whether upon its joint credit or in exchange for its joint stock or its joint surplus, is added to and becomes a part of its property as one corporation. To hold otherwise would be to destroy at once the unity of action and interest which both Legislatures must have contemplated, and would divide it into two corporations, in fact, where only one was intended and created. Whether it be a locomotive, a station, a bridge, an addition to its track or its location, a new branch, or even the property and franchise of a connecting road, whatever is purchased by the joint assets of the corporation becomes a part of the joint property of the corporation.

The acquiring and retiring of the stock, and the purchase of the property, road and franchise of the New York, Providence & Boston

Railroad Company was a transaction differing not in kind, but only in degree, from the acquisition of any other property. Being acquired, it became and was the property of the corporation; and the road at Providence became and was the road of the corporation. It was no less its property because it was a corporation created by the Commonwealth of Massachusetts and by the State of Connecticut as well.

It remains to consider whether and how far the transactions by which the New York, New Haven & Hartford Railroad Company acquired the road of the New York, Providence & Boston Railroad Company are affected by the provisions of the statutes of this Commonwealth, above recited, relating to the increase of capital stock of railroad companies, it being conceded that they were not observed in those transactions.

Certain general principles, in the light of which these statutes, as well as the statutes of consolidation, must be regarded, underlie the discussion of this question. The States of the Union in respect to the control of persons and property within their borders are as to each other sovereign. No State can be hampered or hindered by another State in the full and effectual control of its subjects and their property within its limits. In the matter of concurrent legislation by two States, creating a consolidated corporation out of two domestic corporations, neither State has precedence over the other. Each retains all the rights it had before within its jurisdiction, and no legislation of the other State can affect or impair them.

The charter by Massachusetts of the New York, New Haven & Hartford Railroad Company (Statutes 1872, chapter 171), must be regarded as concurrent legislation with the charter of Connecticut. The Massachusetts act does not, indeed, refer in terms to the Connecticut act. But it purports to create a new corporation which should succeed to the rights of two existing corporations, one chartered solely by Connecticut, and the other by the two States expressly concurring, and which new corporation should operate and maintain a railroad line in both States. This, obviously, could not be done except by concurrence of Connecticut; and such concurrence must have been in contemplation by the Legislature of Massachusetts when it gave a charter professing to deal with a Connecticut corporation. Moreover, the Massachusetts charter was granted the next year after the Connecticut charter, and was so identical in its terms and provisions that it is inconceivable that the similarity could have been accidental. The agreement for merger filed in the office of the secretary of the Commonwealth, which was a necessary antecedent to the taking effect of the charter, recited that it was executed in pursuance of authority granted by the Legislatures of both States.

Acting, therefore, with full knowledge of and acquiescence in the fact that the railroad company it incorporated had already received a similar charter from Connecticut, the Legislature of Massachusetts must be presumed to have conceded, by implication, the right to the consolidated corporation to have and exercise such powers as the State of Connecticut, acting upon matters within its exclusive jurisdiction, should grant to it by virtue of its sovereignty; and to reserve to itself the right to exercise exclusive control over the corporation only as to such matters as should be within its exclusive jurisdiction. Any other construction of the rights conceded and reserved by the reciprocal charters would tend to cripple, if not to destroy, the power of the corporation to carry on the business for which it was created.

To illustrate these propositions, suppose, when the charters were granted, the road in Connecticut was constructed with a single track; and that subsequently the Legislature of that State had enacted a law requiring all railroads in the State to be equipped with double tracks, and had further authorized an increase of the capital stock of this road to meet the expense of such equipment, prohibiting the payment for it out of surplus earnings, or by incurring a debt therefor. All these matters would be exclusively within the jurisdiction of that State. Such an increase of the capital of the company would be necessary to the continuance of its franchise in Connecticut, and would be obviously valid. Even though Massachusetts were to pass a law prohibiting such an increase under penalty of indictment, and declaring such certificates of new shares void, it would be ineffectual, because it would be an attempt to impair the control by Connecticut over the consolidated road as to matters under the exclusive jurisdiction of that State.

The same principle holds equally true of extensions of the railroad within the limits of either State. Such extensions are authorized by the Legislature because they are presumed to be for the advantage of the State and its citizens. It is for the State within which the railroad is situated to determine when the leasing or acquiring of a connecting road, the building of a branch or the extension of its existing road is required in the interest and for the convenience of its citizens. For either State to pass laws purporting to interfere with or limit the exercise of this prerogative by the other State, is to deny to that State the right to legislate for the benefit of its people as to matters within its own jurisdiction.

To regard the statutes of Massachusetts now under consideration as intended to impair the validity of acts done under the authority of Connecticut, legislating upon matters within its jurisdiction, is inconceivable. It follows, therefore, that those statutes must be regarded as relating only to railroad corporations chartered solely by the Com-

monwealth and under its exclusive control; or, if applicable to consolidated corporations, that they contain the implied exception that they are not intended to prohibit or invalidate acts lawfully done under the authority of another State legislating upon matters over which it has full jurisdiction.

But what remedy, it may be asked, has the Commonwealth, if its consolidated corporations do things under the authority of another State, lawfully exercised, which are contrary to the spirit and policy of its own legislation? Whether there be other remedies, which may be doubtful, there is certainly one which is effectual. It may revoke its charter. It may even go further, and declare that such acts shall be a revocation of its charter. The Legislature of Massachusetts has not proceeded to this extent. It has contented itself with the declaration in Statutes 1871, chapter 389 (now Public Statutes, chapter 112, section 61), that such acts shall render the charter subject to forfeiture. The history of the law sheds much light upon the view taken by the Legislature as to its powers of remedial legislation for evils that might result from the exercise of franchises by a consolidated corporation, granted to it by another State in contravention of the policy of Massachusetts. It originated in an order instructing the railroad committee to consider the effect of the consolidation of the Boston & Albany Railroad Corporation with other corporations in the State of New York. In the report of that committee made to the Legislature the questions now under consideration were fully discussed, and the possibilities growing out of the exercise of a double franchise were clearly set forth. The report closes with these words: "To assert any direct control over the corporations of other States would, of course, be futile; but there seems no objection in law or justice to coupling with a grant of a franchise any reasonable conditions and limitations. No complaint can justly be made by a corporation created by and receiving its privileges from this State, if the State requires that its action and the exercise of its powers under the charter granted by another State shall be subject to all the limitations upon its rights in this State, and that the attempt to exercise greater powers without the assent of this State shall be ground for a forfeiture of its franchise in this State."

With this report was submitted a bill similar to the law as it now stands, excepting that it provided that if such a railroad corporation should increase its capital stock, etc., without the authority of the Legislature of this Commonwealth, "the charter and franchise of such corporation shall be forfeited and become null and void." This bill was amended by the Legislature so that it read "shall be *subject to be* forfeited and become null and void;" and as thus amended it became a law. It is scarcely necessary to say that as amended the

law amounts to nothing more than a declaration of the policy of the State, and that it does not pretend to prohibit, much less to make unlawful, the acts of a consolidated corporation done in another State, and under the lawful authority of the Legislature of that State.

I am, therefore, of the opinion that the railroad which connects with the road of the Boston & Providence Railroad Company at Providence is the "road" of the New York, New Haven & Hartford Railroad Company, a corporation "created by the Commonwealth of Massachusetts." I am not disturbed in this conclusion by the suggestion which has been made that it could not have been intended by the Legislature that a construction should be put upon its statutes, which would permit a lease to be executed, under which extensive railroad systems, like the Old Colony and Boston & Providence, should pass into the control of a corporation largely owned and controlled in another State, and owning but a few miles of track in this Commonwealth. The intent of legislative acts is to be judged by their scope. It will not be seriously questioned, I presume, that, by virtue of its connections at Springfield, the New York, New Haven & Hartford Railroad Company might have acquired a lease of the Boston & Albany railroad system, or even of the Boston & Maine system. And yet the evils, if any, of such a transaction, would be no less than the lease of the Old Colony Railroad.

My attention has been called to some provisions in the lease providing for an exchange of the stock of the lessor for the stock of the lessee. The clause begins with these words: "And the lessee further covenants that *as soon as it lawfully may*, it will prior to Jan. 1, 1900, issue in proportion of nine shares of its own stock for ten shares of the capital stock of the lessor, etc." It is plain that this covenant does not invalidate the lease, because it only provides for a "lawful" issue and exchange. Whether, since the execution of the lease, unlawful acts have been done under this covenant, does not affect the legality of the lease, and is not within the scope of the inquiry submitted to me.

Upon all the facts, therefore, I am of the opinion that the lease is legal.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

The appointment of a justice of the peace is complete when the seal of the Commonwealth is affixed to the commission.

MARCH 29, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

SIR: — I have the honor to acknowledge the communication of your Excellency, dated March 28, 1894, requesting my opinion upon the following question, to wit: a citizen of this Commonwealth has been

appointed justice of the peace, and his commission as such has been duly signed by the governor, and the seal of the Commonwealth affixed by the secretary. The commission has not been delivered to him, but he has paid the fee therefor. Can the commission now be revoked?

The constitution of the Commonwealth appears to provide that the successive steps in the constitution of judicial offices shall be as follows: first, the appointment by the governor; second, confirmation by the council; third, the signature of the governor to the commission; fourth, the affixing of the seal of the Commonwealth by the secretary of State. To these may be added the delivery of the commission.

In my opinion, the appointment is complete when the seal of the Commonwealth is affixed to the commission, if not before. The person named in the commission then holds the office to which he has been appointed, and, the tenure of the office being fixed by the constitution, his commission cannot be revoked. Section 1, chapter 21, Public Statutes.

I am not aware that the question has been decided in this Commonwealth, but under substantially similar provisions of the Federal laws it has been held by the supreme court of the United States that the office is constituted by the signing and sealing of the commission, and that the delivery of the commission is not a necessary precedent.

In United States *v.* Le Baron, 19 How. 73, Mr. Justice Curtis at page 78 says: " When a person has been nominated to an office by the president, confirmed by the senate, and his commission has been signed by the president, and the seal of the United States affixed thereto, his appointment to that office is complete. . . . The transmission of the commission to the officer is not essential to his investure of the office, and if by any interference or accident it should fail to reach him, his possession of the office is as lawful as if it were in his custody. It is the evidence of those acts of appointment and qualification which constitute his title, and which may be proved by other evidence."

To the same effect is Marbury *v.* Madison, 1 Cranch, 137. In this case Chief Justice Marshall in delivering the opinion says (page 157): " Some point of time must be taken when the power of the executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised; and this power has been exercised when the last act required from the person possessing the power has been performed. This last act is the signature of the commission." And again on page 154: " the transmission of the commission is a practise directed by convenience, but not by law. It cannot, therefore, be necessary to constitute the appointment, which must precede it." It may be observed that the case of Marbury *v.* Madison was touching the com-

mission of a justice of the peace for the District of Columbia, as to whose appointment the provisions of the constitution of the United States and of the statutes were substantially similar to those of the Commonwealth of Massachusetts for the like officer.

I have the honor to be your Excellency's most obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

Bills for expenses in attending conventions and travelling without the limits of the Commonwealth cannot be paid out of an appropriation for incidental and contingent expenses of a commission, when such attendance or travel is not included among the official duties of the commission.

MARCH 31, 1894.

To Hon. JOHN W. KIMBALL, *Auditor.*

SIR: — In reply to your letter of March 3, 1894, inquiring whether expenses incurred by boards, commissioners and other officials for travelling outside the limits of the Commonwealth, more particularly to attend conventions, etc., can be properly allowed from existing appropriations, I have to say as follows: —

The expenses to be allowed out of an appropriation depend entirely upon the purpose for which the appropriation is made; and this can be ascertained only by examining each act making such appropriation. In answering your questions, therefore, I confine my opinion to the expenses of the officials whom you mention specifically and to their expenses under the laws of 1893, such being the appropriations concerning which these questions have arisen.

As to the Insurance Commissioner, an appropriation was made "for incidental and contingent expenses in the department of the Insurance Commissioner." A bill for the expenses of the commissioner and deputy in attending an insurance convention outside the Commonwealth cannot be paid from such an appropriation.

The Insurance Commission is established by statute with certain well-defined duties. Attendance at insurance conventions is not among them. The fact that such attendance might have a tendency ultimately to increase the utility of the commission does not authorize the expenses so incurred to be paid out of an appropriation limited by its terms to the expenses of its statute duties.

For the same reason, bills incurred by members of the Board of State Lunacy and Charity in attending the conference of charities cannot be paid out of an appropriation made "for expenses of the Board of Lunacy and Charity, including travelling and other expenses of members." Neither can a bill incurred by a member of the Bureau of Statistics of Labor in attending a statistical convention

outside the limits of this Commonwealth be paid out of an appropriation "for such expenses of the Bureau of Statistics of Labor as may be necessary."

For the same reason, a bill for expenses by the Warden of the State Prison, the Superintendent of the Massachusetts Reformatory and the Superintendent of the Reformatory Prison for Women, incurred in attending prison congresses and other gatherings outside the limits of the Commonwealth, cannot be paid out of an appropriation "for the payment of salaries, etc., and for the current expenses of said institution;" nor can a bill of expenses for travelling outside the limits of the Commonwealth in attending conferences, incurred by officials of the State Almshouse, State Farm, the Lyman School for Boys, State Industrial School for Girls and the State Primary School at Monson, be paid out of an appropriation made "for other current expenses at said institution."

The State Board of Health has an appropriation "for the general work of the State Board of Health, including all necessary travelling expenses." The duties of the Board are defined in chapter 80 of the Public Statutes and the various amendments thereto. Section 1 of this chapter provides that "It shall make sanitary investigations and inquiries in respect to the cause of disease and especially of epidemics, and the source of mortality and the effects of localities, employments, conditions and circumstances on the public health; and shall gather such information in respect to those matters as it may deem proper for diffusion among the people."

By this section the Board is especially granted the power to gather such information in respect to those matters as it may deem proper. Therefore a bill of expenses in attending outside the limits of the Commonwealth a meeting of those interested in the subject of health, drainage, etc., is incurred in the exercise of official duties authorized by statute, and can properly be paid from the appropriation.

You likewise inquire whether "a bill incurred for travelling outside the Commonwealth by the Gas and Electric Light Commissioners can be paid from an appropriation" for travelling and incidental expenses. I cannot answer this question without knowing for what purpose the travelling was done. The mere fact that travelling is without the limits of the Commonwealth is immaterial, if done in the exercise of the official duties of the commissioners.

Respectfully,

HOSEA M. KNOWLTON, *Attorney-General.*

Chapter 273 of the Acts of 1893 does not authorize a county commissioner to charge for the expenses of a hotel bill.

APRIL 4, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor*.

SIR: — I have the honor to acknowledge the communication from your Excellency, dated March 30, 1894, requesting an opinion upon the construction of chapter 273 of the Acts of 1893 relating to the travelling expenses of county commissioners.

The chapter in question provides that "there shall be allowed and paid to each of the county commissioners of the several counties the actual, necessary and proper expenses for transportation paid by him in the discharge of his duties." You inquire whether under the act a county commissioner can charge for a hotel bill.

Whatever distinction may be made between the word "travel," as used in some similar statutes, and the word "transportation," here employed, and whether there is any difference in the meaning, it does not seem necessary now to decide. I am quite clear, however, that the word "transportation" in this statute must be taken to have its ordinary and usual signification, and that the proper expenses of transportation are the expenses of conveyance in going and returning. It cannot include expenses incurred after transportation has ceased.

I am of opinion, therefore, that under the provisions of this act a commissioner is not entitled to charge for the expense of a hotel bill.

I have the honor to be your Excellency's most obedient servant,

HOSEA M. KNOWLTON, *Attorney-General*.

The governor has no authority to commission the officers of the Ancient and Honorable Artillery Company. He may at his discretion issue a certificate to the effect that he has inducted the officers of the Company into office in accordance with ancient custom.

APRIL 4, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor*.

SIR: — I have the honor to acknowledge the communication of your Excellency, dated March 29, 1894, asking my opinion upon two questions submitted by the Adjutant-General, and to reply thereto as follows: —

The questions are: —

First. Can the governor commission, by written commission, the officers of the Ancient and Honorable Artillery Company?

Second. If not, can he issue a certificate saying that he has inducted into office, in accordance with ancient custom, the officers of said Company?

The position of the Ancient and Honorable Artillery Company, and its relations to the Commonwealth, are in many respects unique. It is not a part of "the military forces of the State," as that expression is used in the Constitution (chapter 2, section 1, article 7), and has no standing as such. The governor, therefore, is not its commander-in-chief. As a military body, however, it has been frequently recognized by the Legislature, and granted many privileges. Statutes 1893, chapter 367, concerning the volunteer militia, expressly provide, in section 161, that nothing done in said act "shall be construed as affecting the right of the Ancient and Honorable Artillery Company to maintain its organization as a military company, according to ancient usage, and agreeably to the provisions of its constitution and by-laws, provided the same are not repugnant to the laws of this Commonwealth, or do not restrain the lawful parade or exercise of the active militia." By section 124 of the same chapter this organization is exempt from the general provisions that no body of men, other than the regularly organized militia, shall associate themselves together as a company for drill or parade with firearms, etc. By section 153 of the same chapter it is provided that the Company shall annually furnish rolls of its membership to the mayor and aldermen of the city of Boston. The members of the Company are exempt from jury duty (Public Statutes, chapter 170, section 2). By Resolves of 1859, chapter 106, the thanks of the Legislature were extended to the Company for escort duty tendered to the Legislature. By Resolves of 1888, chapter 77, an appropriation was made to enable the Company to celebrate its two hundred and fiftieth anniversary.

There are also some usages connected with the Company for which no legislative authority exists. Such is that part of the ceremony of the annual installation of officers, in which the governor receives the insignia of office from the retiring officers, and bestows them upon their successors. This custom has existed from time immemorial, but rests for its authority upon usage only.

But, notwithstanding the recognition which has been accorded the Company by legislation and by usage, the fact remains that it has no existence as a part of the State militia. Its officers do not derive their authority from the Commonwealth. It is clear, therefore, that there is no authority in the governor to issue a commission to such officers.

As to the second question, whether he may issue a certificate saying that he has inducted the officers of said Company into office in

accordance with ancient custom, I can only say that it is a proceeding for which there is no legislative sanction, and which is not in accordance with ancient usage. As the representative of the Commonwealth, the governor has nothing to do with the installation of the officers, and his conferring of the insignia of office is an act of courtesy merely. It gives the officers no additional authority, and is not necessary to the validity of their title thereto. Such a certificate, therefore, is not an act which is included in the duties of the office of governor.

Whether as a further act of courtesy your Excellency shall deem it proper or expedient to sign and issue such a certificate, is not a question coming within the province of the Attorney-General to give advice upon, further than to say that I see nothing unlawful in so doing.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

The increase above the limit of two and one-half millions in the valuation of one of the towns of a union formed under the provisions of chapter 431, Acts of 1888, whether before or after the period of three years, does not of itself dissolve the union.

APRIL 4, 1894.

HON. JOHN W. KIMBALL, *Auditor.*

SIR: — Your favor of the second inst., asking for my opinion as to the construction of the Acts of 1893, chapter 200, section 2, was duly received, and I have to reply as follows: —

I understand the facts upon which the inquiry is based to be that three towns formed a union under the provisions of Statutes 1888, chapter 431, all being at that time towns whose valuation did not exceed two and one-half millions. The union has continued three years, and the valuation of one of the towns is now increased to an amount in excess of said limit of two and one-half millions, no other change having taken place. The question submitted to me is, whether, under the provisions of the last sentence of said section 2, such increase dissolves the union. The clause in question is as follows: "When such a union has been effected it shall not be dissolved because any one of the towns shall have increased its valuation so that it exceeds $2,500,000, nor because the number of schools shall have increased beyond the number of fifty or decreased below the number of twenty-five, nor, for any reason, for the period of three years from the date of the formation of such union, except by vote of a majority of the towns constituting the union."

The exact question is, whether the words "for the period of three years from the date of the formation of such union," relate to the

whole sentence, or to that part of the sentence beginning "nor for any reason," etc. If the former construction is adopted, the union referred to has been dissolved by the increase of one of the towns beyond the limit.

I am of opinion, however, that the phrase, "for the period of three years," etc., relates only to the last division of the sentence beginning "nor for any reason," etc.; and that the meaning of the sentence is that the union shall not be dissolved because any one of the towns has increased its valuation, etc.; and that it shall not be dissolved because the number of schools has increased or decreased, etc.; and that it shall not be dissolved for a period of three years for any reason, excepting by vote of a majority of the towns. If the meaning of the Legislature had been that a union should not be dissolved for a period of three years because one of the towns had increased its valuation or had increased its number of schools, the phrase "for the period of three years," etc., would properly and naturally have been inserted after the words "shall not be dissolved," etc. The phrase then would have limited the whole sentence. In the place where it is inserted, however, it refers only to part of the sentence in which it is interpolated.

The statute purports to provide that a union once formed shall not be dissolved: first, because one of the towns has increased its valuation; nor, second, because the number of schools has increased or diminished; nor, third, for any reason, for a period of three years, excepting by a vote of a majority of the towns.

The history of the act in question confirms this view. As originally reported (Senate Doc., No. 126), the bill provided that: "When such a union has been effected, it shall not be dissolved because either of the towns shall have increased its valuation so that it exceeds $2,500,000, nor because the number of schools shall have increased beyond the number of fifty or decreased below the number of twenty-five, nor for any reason except by vote of a majority of the towns constituting the union."

It being deemed inadvisable, apparently, to impose an unwilling membership in a union upon a single town for an indefinite period, the bill was amended by inserting the phrase "for a period of three years," etc. This phrase was inserted not at the beginning of the sentence, where it naturally would have been placed if it had been intended to limit the whole sentence, but in the third division, relating to the dissolution of the union by vote of a majority of the towns.

It is not a safe or recognized rule of construction to interpret a statute by considering the views and desires of those by whom it was promoted. It is satisfactory, however, to be assured that the initiation of the act in question was a petition from the inhabitants of one

of the towns of the union now in question, which asked, in terms, for the enactment of a law by which the increase of valuation of a town above the statute limitation of two and one-half millions at any time should not operate as a dissolution of the union.

I am of opinion, therefore, that the increase of the valuation of one of the towns above the limit of two and one-half millions, whether before or after the period of three years, does not of itself dissolve the union.

Very respectfully, your obedient servant,
HOSEA M. KNOWLTON, *Attorney-General.*

Bonds executed jointly and severally by two railroad companies and secured by a first mortgage on one of the roads, when the mortgaged road, although leased to the other, has paid dividends on its entire issue of capital stock out of the rentals received from the lease, are legal investments for savings banks under the provisions of clause 3, section 20, chapter 116, Public Statutes, as amended by chapter 305 of the Acts of 1889.

APRIL 14, 1894.

Hon. WILLIAM D. T. TREFRY, *Chairman Commissioners of Savings Banks.*

SIR: — I have the honor to acknowledge your communication of April 11th inst., asking my opinion as to whether certain bonds therein described are a legal investment for savings banks of this Commonwealth, under the provisions of clause 3, section 20 of chapter 116 of the Public Statutes, and amendments thereof.

What purports to be a copy of the form of the bond in question shows that it is an instrument executed jointly and severally by the European & North American Railway and the Maine Central Railroad Company. It is said to be secured by a mortgage of that part of the railroad of the European & North American Railway lying between Bangor and Winn in said State of Maine. It is also stated that the European & North American Railway has leased its railroad, including the part described in said mortgage, to the Maine Central Railroad Company for a term of nine hundred and ninety-nine years.

These bonds are the several obligations of each railroad corporation executing them. They are the several bonds of the European & North American Railway, and are secured by a mortgage of its road. They are also the several obligations of the Maine Central Railroad Company. The fact that both companies join in executing the bonds does not operate to destroy their character as the several obligations of each company.

Public Statutes, chapter 116, section 20, clause 3, provide that savings banks may invest in the "first mortgage bonds of any railroad company incorporated under the authority of any of the New

England States, and whose road is located wholly or in part in the same, and which is in possession of and operating its own road, and has earned and paid regular dividends for the two years next preceding such investment." These bonds do not come within this description. While they are the bonds of the Maine Central Railroad Company, they are not its first mortgage bonds, for they are not secured by mortgage of any part of its railroad. The Maine Central Railroad Company, it is true, is the lessee for a term of nine hundred and ninety-nine years of the railroad described in the mortgage, but it is not the owner of that railroad. It is only lessee, and the lease may be avoided, and the possession of the railroad return to the owner by the happening of several contingencies, some of which are specifically set forth in the lease. A lessee, even for a period of nine hundred and ninety-nine years, may not execute an indefeasible mortgage of the leased road. On the other hand, although they are the first-mortgage bonds of the European & North American Railway, that corporation is not in possession of and operating its own road.

The clause further provides as follows: "or in the first-mortgage bonds guaranteed by any such railroad company (to wit, a railroad company which has earned and paid regular dividends, etc.) of any railroad company so incorporated, whose road is thus located." These bonds are not guaranteed by the Maine Central Railroad Company; technically, therefore, they are not within the class of railroads to which this operation of the statute has reference. It is to be remarked, however, that, although the Maine Central Railroad Company is not a guarantor, technically speaking, it is in fact a guarantor, and more, for it is an original obligor upon the bonds. A guarantor may have certain defences, such as laches, want of notice, etc. None of these defences could be set up by an original promisor. The obligation of the Maine Central Railroad Company is that of a guarantor, but is stronger, for it is open to none of the defences which might be set up by a guarantor. Looking, therefore, at the spirit of the statute, rather than its language, it appears to me quite plain that these bonds are a permissible investment by our savings banks. The greater includes the less; and it can scarcely be supposed that the Legislature intended to exclude a character of investments which contained all the elements of security set forth in the statute, with other elements of strength added.

But whether this be so it may not be necessary to decide. Upon the facts submitted to me, the bonds in question appear to fall within the description of Statutes 1889, chapter 305, which provide that savings banks may invest "in the first-mortgage bonds of any railroad company incorporated under the authority of any of the New

England States, and whose road is located wholly or in part in the same, and has earned and paid regular dividends for the two years next preceding such investment on all its issues of capital stock, notwithstanding the road of such company may be leased to some other railroad company." If the European & North American Railway has paid dividends on all its issues of capital stock out of the rentals received by the lease, such dividends have been earned within the meaning of that statute; and the bonds in question fulfil the description of this statute. The fact that by the same instrument the Maine Central Railroad Company has become bound to pay them, does not, as above stated, diminish or detract from their validity as the first-mortgage bonds of the European & North American Railway.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

If the courts of Middlesex County devote more time to their sittings in Cambridge than in Lowell, the remedy is by application to the court itself or to the Legislature.

APRIL 14, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

SIR: — I have the honor to acknowledge the communication of your Excellency, dated 13th inst., asking for my opinion upon the questions stated in a communication from Charles R. Blaisdell enclosed therein.

So far as I am able to understand the letter of Mr. Blaisdell, he asks what relief can be had, first, by reason of the alleged fact that much more of the time of the sitting of the courts in Middlesex County is given to Cambridge than to Lowell, including the probate court; and, second, for disagreement of juries.

As to the first matter of inquiry, I find, upon examination of the statutes, that the same number of sittings for civil business are appointed for Lowell as for Cambridge (Public Statutes, chapter 152, section 17). It is further provided that sittings of the court may be adjourned from one shire town in the county to another (Public Statutes, chapter 153, section 25). It would appear, therefore, that so far as the statutes are concerned the sittings of the court are fairly proportioned between the two portions of the county. If, as is alleged, a disproportionate amount of the business of the court is transacted at Cambridge, the remedy of the parties interested would seem to be, first, by an application to the court itself, which is presumed to see that justice is done in the matter of assignments; and,

second, if such course proves ineffectual, by application to the Legislature.

The statutes also provide that sittings of the probate court shall be held on the first, second and fourth Tuesdays of every month at Cambridge; and on the third Tuesdays of January, March, May, July, September and November at Lowell. This being a matter within the jurisdiction of the Legislature, if injustice is done under the present law, the remedy of the parties aggrieved would seem to be by application to the Legislature.

As to this matter, therefore, it does not seem to be within the province of the executive to furnish the desired relief.

As to the second complaint, that juries do not agree, I know of no remedy excepting the improvement of the character of jurymen, a subject which I understand is already under consideration by the Legislature.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

A corporation whose purpose is to register employees and provide such as register with employment in case they are discharged or suspended, is not entitled to be organized under section 14, chapter 106, Public Statutes.

APRIL 20, 1894.

Hon. CHARLES ENDICOTT, *Commissioner of Corporations.*

DEAR SIR: — I am in receipt of your communication of April 16, requesting my opinion as to whether a corporation whose purpose is stated to be "to register employees and provide such as register with employment in case they are discharged or suspended from employment" is entitled to be organized under Public Statutes, chapter 106, section 14.

The section referred to reads as follows: —

"For the purpose of carrying on any lawful business not mentioned in the seven preceding sections, excepting buying and selling real estate, banking, insurance and any other business, the formation of corporations of which is otherwise regulated by this statute, three or more persons may associate themselves with a capital of not less than one thousand nor more than one million dollars."

The question which arises is, whether the purpose stated comes within the definition of the word "insurance," as used in that section.

If the only purpose of the proposed corporation was to conduct an employment bureau, it would be a lawful business, and not one included within any of the exceptions set forth in said section. If this were the only purpose, it could be stated in unmistakable language.

But I am of opinion that the statement of the purpose quoted above plainly indicates a purpose to guarantee employment, or its equivalent. It does not provide for a register of persons seeking employment, but deals only with those already employed. It undertakes to provide such employees as register with employment. Inasmuch as such a contract might not be capable of execution if a situation were not open, the purpose therefore must be to provide indemnity for such as fail of securing employment under such a contract. That this construction is correct is confirmed by the fact that, as I am informed, such is stated to be the purpose of the proposed corporation.

This is plainly insurance; and it was with a view of excluding from corporate rights in Massachusetts such corporations that the exception was made in the statute quoted. The statutes relating to the business of insurance carefully limit the forms of insurance which are permitted in this Commonwealth, and many subjects of insurance are declared by implication to be contrary to the policy of our laws.

Taking the statutes as a whole, they plainly point to a purpose on the part of the Legislature to restrain the formation of corporations for the purpose of doing insurance business to such as are specified in the statutes relating to that subject. The purpose declared by this corporation is not so included; and if this corporation were chartered, it would acquire rights which the insurance statutes intended to forbid.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

The Chief of the State District Police has the exclusive right to the advice of the Attorney-General in relation to the rights and duties of the State District Police.

APRIL 20, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

SIR: — I have the honor to acknowledge the communication of your Excellency, dated April 16, referring to me certain questions relating to the rights and duties of the Chief of the State District Police force in the matter of fire-escapes for buildings, under Statutes 1888, chapter 426.

The Chief of the State District Police force is not an officer who has the right to take the opinion of the Attorney-General. But under section 12 of said chapter 426 it is made the duty of his department to bring proceedings in the supreme judicial and superior court for the enjoining of persons who use or occupy buildings contrary to the provisions of said act. In such cases, if the suit is brought in the supreme judicial court, it is, under other statutes, the duty of the At-

torney-General to appear in behalf of the Commonwealth. The State police department, therefore, has the right to my services in the enforcement of the provisions of the statutes, to which the questions submitted to your Excellency and referred to me relate.

This being so, it would be obviously improper for me to give advice as to the rights and duties of the Chief of the District Police force under said chapter to any one excepting him and at his request. It would be especially improper to advise persons upon such matters who may at any time become or be interested in behalf of defendants in suits brought by the State police force, and in which I may be called upon to appear.

I do not doubt that your Excellency will upon consideration fully agree with me that in the matters referred to, the Chief of the District Police force has the exclusive right to my services and advice; and that other parties seeking information as to rights in such matters must go elsewhere.

Very respectfully, your obedient servant,
HOSEA M. KNOWLTON, *Attorney-General.*

Corporations organized and transacting business under chapter 429, Acts of 1888, as amended by chapter 341, Acts of 1890, cannot hold real estate except in accordance with the provisions of section 9 of the last-named act.

MAY 15, 1894.

Hon. GEORGE S. MERRILL, *Insurance Commissioner.*

DEAR SIR: — I am in receipt of your letter of May 4, inquiring whether a corporation organized and transacting business under chapter 429 of the Acts of 1888, as amended by chapter 341 of the Acts of 1890, can hold real estate, other than as permitted in section 9, to a limited amount, in a building for use and occupancy by the corporation. Your letter also states that the moneys proposed to be invested in said building did not belong to any of the beneficial funds, but are received from donations, entertainments and the like sources.

The statutes referred to in your letter provide in the 8th and 9th sections for the payment of benefits to sick members, for the payment of benefits at the end of a fixed period, and for payments to beneficiaries of deceased members. A provision is also made for a death and reserve fund; and there are provisions authorizing assessments for these purposes.

The rapid increase of the endowment insurance business undoubtedly led to the more elaborate provisions contained in chapter 341 of the Acts of 1890, specifying the amount of funds which such corporations might hold, and the manner of their investment. Under this act by amended section 9 the corporation is allowed to invest not

exceeding twenty per cent. of the emergency fund in a building for use and occupancy by the corporation as its home office within this Commonwealth. The only business contemplated by section 8 is the payment of one of the several specified benefits, or of an endowment insurance, so called; and the amount of property which the corporation may acquire and hold, and the manner of the investment of the same, is carefully specified in said acts.

The limitations imposed by these acts upon the right of the corporation to acquire and hold funds is exclusive of any right to said corporation to receive from any other source, or to hold any property for any purpose, except as therein expressly provided. It follows, therefore, that such corporation may not receive money from donations, entertainments and the like. This being so, it necessarily follows that property which it is not authorized to receive or hold cannot be invested by it in real estate.

This conclusion is made certain by the provisions of Statutes 1893, chapter 47, which provided that "no corporation organized as aforesaid, which limits its membership to the permanent employees of towns and cities, and which pays only annuities or gratuities contingent upon disability or long service, shall be subject to the foregoing limitations as to the amount of funds to be held for the purpose of its organization, and may accept gifts, legacies or other contributions therefor."

I assume that your inquiry does not relate to the particular class of corporations described in this exception; and I am, therefore, of opinion that, with the exception included in the provision quoted, corporations organized and transacting business under chapter 429 of the Acts of 1888, as amended by chapter 341 of the Acts of 1890, cannot hold real estate except in accordance with the provisions of section 9 of the last-named act.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

Chapter 391 of the Acts of 1894 does not authorize the expenditure during the year 1894 of any part of the $200,000 appropriated for the construction of the Medfield Insane Asylum by chapter 395 of the Acts of 1893.

JUNE 7, 1894.

Hon. JOHN W. KIMBALL, *Auditor.*

SIR: — I have, at your request, examined Statutes 1894, chapter 391, in reference to the question submitted to me by you, whether that act authorizes the immediate expenditure of the $200,000 appropriated by Statutes 1893, chapter 395, for the construction of the Medfield Insane Asylum. Statutes 1893, chapter 395, provides that

no portion of said sum of $200,000 shall be expended during the years 1893 and 1894. The question submitted I understand to be whether Statutes 1894, chapter 391, can be construed as repealing the prohibition as to the time of the expenditure of the $200,000.

In my opinion, the provisions of Statutes 1893, chapter 395, providing that no portion of said sum of $200,000 shall be expended during the years 1893 and 1894, are not affected by Statutes 1894, chapter 391. The last-named act provides only for the method of raising the money to be expended for the plan of the asylum. It authorizes the issuing of bonds to the amount of $700,000, that being the amount authorized to be expended by previous legislation. It does not make a new appropriation of $700,000, nor change the terms and conditions upon which the money already appropriated is to be expended.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

Insurance companies within the description of section 46, chapter 214, Acts of 1887, and doing business upon the premium note plan under authority of said section, may cease such business and proceed upon the cash premium plan stated in section 45 of said act; but in so doing they lose their right to continue under the provision of section 46.

JUNE 7, 1894.

Hon. GEORGE S. MERRILL, *Insurance Commissioner.*

SIR: — I am in receipt of your favor of May 21, asking for my opinion whether a mutual fire insurance company, authorized to transact business under section 46 of chapter 214 of the Acts of the year 1887, can avail itself of the provisions of section 45 of the same chapter.

I understand the exact question to be this: under section 46 certain insurance companies are authorized to issue policies of insurance upon the plan of taking deposit notes for a percentage of the amount insured by its policy, and making a call or assessment thereon for the payment of losses and expenses as the same are incurred. One of the companies authorized to do business under said section 46 desires to abandon that method of doing business, and to conduct its business for the future upon the plan set forth in section 45 of the same chapter; under which a full mutual premium is provided to be paid in cash upon fire policies, with liability to the insured to assessment to an amount fixed by the by-laws of the company for the payment of such losses and expenses as are not provided for by its cash fund.

The provisions of section 46 are permissive, merely. The section provides that such fire-insurance companies as at the time of the enactment of that section were lawfully doing business upon the

premium note plan, "may" continue such system of business. Whether under that section companies having the right to conduct business upon that plan would have the right to issue both kinds of policies may well be doubted. It would be impracticable to carry on business under both sections. If, therefore, the question were whether companies authorized to do business under the provisions of section 46 could also do business under the provisions of section 45, I should feel inclined to say it could not be done.

The policy of the Legislature in enacting sections 45 and 46 was obviously to provide that fire insurance should be done upon the cash premium basis as laid down by section 45, but permitting companies already doing business upon the premium note plan to continue that form of business, if they desired. If, however, companies having the permissive right to do business under section 46 desire to abandon that plan of doing business and to bring themselves within the provisions of section 45 and in line with the general policy of legislation with regard to fire-insurance companies, I see no reason why they may not do so. I regard the provisions of section 46 as creating a permissive exception only to the general policy as enacted in section 45.

My answer to your question, therefore, is that the companies who come within the description of section 46, and who are exercising the privilege granted by said section of doing business upon the premium note plan, may surrender the privilege granted them by section 46 and proceed upon the cash premium plan set forth in section 45; but that in so doing they lose their rights to continue under the provisions of section 46.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

The trustees of the Danvers Lunatic Hospital cannot charge a town, under section 45, chapter 87, Public Statutes, for clothing furnished patients transferred by the Board of Lunacy and Charity to another State institution, under the provisions of section 9, chapter 79, Public Statutes.

JUNE 10, 1894.

F. W. HOPKINSON, Esq, *Chairman of the Trustees of the Danvers Lunatic Hospital.*

DEAR SIR: — I acknowledge the receipt of your communication of June 8, 1894, in which you request my opinion upon the following question: —

Can the trustees of the Danvers Lunatic Hospital, under the provisions of Public Statutes, chapter 87, section 45, legally charge a

town or city for clothing furnished patients transferred by the Board of Lunacy and Charity to another State charitable institution or lunatic hospital, under the provisions of Public Statutes, chapter 79, section 9?

Section 45 of chapter 87 of the Public Statutes provides that no pauper shall be discharged from a State hospital without suitable clothing; that the trustees may furnish the same at their discretion; and that the cost of said clothing shall be reimbursed to the trustees by the places of local settlement of city and town paupers, and by the Commonwealth in the case of State paupers. No direct decision has been given upon this question by our court, but in the late case of Gould *v.* Lawrence, 160 Mass. 233, in referring to this provision, the court imtimates that such a charge as this would ordinarily be made but once in the case of each pauper; and it is apparent that in the statute the meaning of the word "discharged" imports the going out of an inmate to resume his status and position in the world at large, and the purpose of it is that he may be furnished with suitable clothing. By section 9 of chapter 79 of the Public Statutes the State Board of Lunacy and Charity is given the power to transfer pauper inmates from one State charitable institution or lunatic hospital to another, or send them to any city or place where they belong; and this power of transfer is limited only by the public interest or the necessities of the inmates, and lies wholly within the discretion of the Board. It is apparent, therefore, that under its provisions a case might arise in which a pauper inmate might be transferred many times from one lunatic hospital to another, and returned in the course of the transfer several times to the hospital to which he was originally committed. In this case, if the construction was given to the word "discharged" that it might apply to the case of a transfer, it is evident that it would be within the powers of the trustees of a lunatic hospital to charge a city or town, or the Commonwealth, with the costs of suitable clothing whenever the transfer was made. It does not seem that such a construction can reasonably be supposed to have been intended by the Legislature; and we must assume that the State Board would not order the transfer of a pauper inmate from one State institution to another when his condition as to clothing was such as to endanger his life or health.

In my opinion, your question must be answered in the negative.

Very respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

In a contract covering printing for all the "several departments of the government of the Commonwealth," county courts, or officers of any department which have to do only with a portion of the Commonwealth, are not included. For the same reasons, insolvency blanks, although furnished at the expense of the Commonwealth, are not within the terms of the contract.

June 21, 1894.

Hon. John W. Kimball, *Auditor.*

Dear Sir: — I am in receipt of your letter of June 14, asking my opinion as to the construction of the contract between the Commonwealth and the State printer, a copy of which is submitted with your letter.

The material portions of the contract, so far as they relate to the question submitted, are as follows: "The said Commonwealth agrees to give to said parties of the second part (the State printers) all the printing and other work to be performed by the terms of this contract for the several departments of the government of the Commonwealth" . . . "it is understood and agreed that this contract shall not apply to or include envelopes with printing upon them, letter paper with printed headings, blank books, or any form or blanks used in the various departments of the Commonwealth in which printed matter occurs, unless the printing covers one-half or more of the entire surface of the sheet."

The questions stated are as follows: —

First. Are judges, registers and assistant registers of probate and insolvency, "departments of the government of the Commonwealth," within the meaning of the expression as used in said contract, and, therefore, subject to the provisions of the clause of said contract first above quoted?

The contract submitted with your letter was made under the authority of Resolves of 1892, chapter 190. Previous resolves referring to the matter of said printing are Resolves of 1887, chapter 16, and Resolves of 1882, chapter 57. The Resolves of 1882 set forth a form of contract which appears to be substantially similar to the form of contract executed under the Resolves of 1892. I am further informed that the contract executed under the provisions of Resolves of 1887 was substantially in the same form. I am further informed that all three of these contracts were with the same printers.

I find upon examination of the statutes that the salaries of the judges and registers of probate are paid out of the treasury of the Commonwealth (Public Statutes, chapter 158, section 23). The blanks used in probate proceedings are provided by the county commissioners, and are, therefore, payable out of the county treasuries (Public Statutes, chapter 156, section 42). The blanks used in in-

solvency proceedings are furnished at the expense of the Commonwealth (Public Statutes, chapter 157, section 13). Probate blanks have always been paid for by the county (see General Statutes, chapter 117, section 31; Revised Statutes, chapter 83, section 54). Separate courts of insolvency were established by Statutes 1856, chapter 284; and in the act creating insolvent courts it was provided that blanks used in the business of the court should be paid for out of the treasury of the Commonwealth. Probate courts and insolvent courts were consolidated by Statutes 1858, chapter 93; but the provisions in regard to the payment for blanks have remained unchanged, and have so continued until the present time. The reason for charging the expense of insolvency to the Commonwealth is probably the fact that the fees received in the course of insolvent proceedings are rendered by the registers to the treasurer of the Commonwealth (Public Statutes, chapter 157, section 138).

What is the meaning of the expression "departments of the government of the Commonwealth," as used in the contract for the State printing? This contract is executed under a resolve which authorizes the making of a contract for the printing "for the several departments of the government of the Commonwealth." Substantially similar words have been used in all previous resolves authorizing contracts for State printing, excepting Resolves 1857, chapter 86, in which the language was "the State printing" (*vid.* Resolves of 1849, chapter 57; Resolves of 1852, chapter 9; Resolves of 1855, chapter 49; Resolves of 1856, chapter 100; Resolves of 1857, chapter 86; Resolves of 1866, chapter 74; Resolves of 1867, chapter 4; and Resolves of 1877, chapter 69).

I am of opinion that the words "the several departments of the government of the Commonwealth," as used in the contract referred to, do not include county courts, even though the salaries of officers of those courts are paid from the treasury of the Commonwealth. It is true that the Constitution of Massachusetts recognizes the judiciary as one of the "departments" of the government of the Commonwealth. Part the second of the Constitution is entitled "The Frame of Government." There are three topics under this title. Chapter I. is the legislative power, chapter II. the executive power and chapter III. the judiciary power; and under the head of the judiciary power, in Article 3, the judges of probate are specifically referred to. And the Bill of Rights provides in Article 30 that in the government of this Commonwealth "the legislative department shall never exercise the executive and judiciary powers," and "that the judiciary shall never exercise the legislative and executive powers." If, therefore, we are to look to the frame of government set forth in the Constitution for the definition of the words "the departments of the

government of the Commonwealth," the judiciary must be regarded as a part of the government, including probate courts.

But I do not think the words are used in this contract as they are used in the Constitution. They are words not of law, but of contract, and are to be understood in a commercial sense; that is, in the sense in which they are commonly used. As so used, the expression "the departments of the government of the Commonwealth" refers exclusively to those branches of the government which have to do with the entire Commonwealth, and not with a portion only. Such a definition would include the governor, the secretary, the treasurer, the auditor and the attorney-general. It would also include commissions having jurisdiction throughout the Commonwealth, appointed by the governor or created by an act of the Legislature, — such as the Insurance Commissioner, the Gas and Electric Light Commissioners and the Harbor and Land Commissioners. These different branches of the government of the Commonwealth are usually entitled "departments," such as the executive "department," the "department" of the Attorney-General, the insurance "department," etc. I think the word "department," as used in the contract, has the same significance; and, therefore, that it does not and is not intended to include officers, whether of the judiciary or any other department, which have to do with only a portion of the Commonwealth.

Just how far practice and usage is admissible to throw light upon the construction of the contract is not entirely clear; but so far as they have any weight they strengthen this view; for I understand that, not only in the previous contracts with the present State printers, but in all the contracts under the various resolves hereinbefore cited, this construction has been put upon similar expressions; and that it has never been supposed that any of the blanks for county courts were included in the contract with the State printer.

Second. Are blanks of the kind annexed to your letter included within the terms of the contract in question?

Said annexed blank is a form of petition by a widow for the assignment of dower. It is a form used in the probate courts. Inasmuch as probate blanks are furnished by the county, as hereinbefore stated, it is obvious that they are not within the terms of the contract with the State printer; because the Commonwealth does not furnish them, and has no authority to contract for their printing under existing laws.

I presume, however, that the enclosing of a probate blank was an inadvertence, and that your inquiry was intended to refer to blanks used in insolvency proceedings. Assuming this to be so, I reply that, for the reasons above set forth in answer to your first inquiry, I am of opinion that insolvency blanks, although furnished at the

expense of the Commonwealth, are not within the terms of the contract with the State printers.

Yours respectfully,

HOSEA M. KNOWLTON, *Attorney-General.*

A certificate of insurance issued for a money consideration, whereby the company agrees to employ the holder at a fixed salary for a limited period in case he is discharged from employment, is insurance within the meaning of section 3, chapter 214, Acts of 1887.

JUNE 21, 1894.

Hon. GEORGE S. MERRILL, *Insurance Commissioner.*

DEAR SIR: — I am in receipt of your favor of June 13, asking my opinion whether the certificate issued by the United States Registration Company is insurance within the meaning of that term as defined by Statutes 1887, chapter 214, section 3.

The certificate of the United States Registration Company is in effect a contract between the company and the holder thereof, whereby for a money consideration the Registration Company agrees to employ the holder of a certificate, at a fixed salary per week, for a period not to exceed ten weeks in any one year excepting at the option of the company, in case the said holder is discharged or suspended from employment.

In my opinion, this is a contract of insurance under the provisions of the section above referred to. That section defines a contract of insurance to be "an agreement by which one party for a consideration promises to pay money or its equivalent, or to do some act of value to the assured, upon the destruction or injury of something in which either party has an interest." The contract in question is for a consideration. It promises to do some act of value to the assured, to wit, to furnish him employment for ten weeks at a fixed compensation. It further promises to furnish this employment upon the destruction or injury of something in which the other party has an interest, to wit, his prior contract of employment. This contract of employment, upon the destruction of or injury to which the obligation of the Registration Company arises, may be a contract for a fixed time and for fixed wages; or it may be a more ordinary form of contract for an indefinite time, either at fixed wages or for a *quantum meruit.* In either case it is a contract in which the certificate holder has an interest; and for the destruction, or, in other words, the cancellation or suspension of which he receives his indemnity in the shape of employment by the Registration Company.

I do not think, as has been suggested by representatives of the company, that the words "upon the destruction or injury of some-

thing," are intended to include only material commodities, like houses, ships and the like. Among the authorized subjects of insurance set forth in section 29 of the same chapter are enumerated "the fidelity of persons in positions of trust," and "the liability of employers for injuries to persons in their employment." These are schemes of insurance not against loss of material things, but against liabilities which may arise by reason of the acts of others. If these are included within the meaning of the expression already quoted, to wit, "the destruction or injury of something" in which the insured has an interest, I see no reason why the cancellation of a contract by which the assured is enabled to earn his subsistence may not also be included.

It has been further suggested that the business of this company, as set forth in its contract, amounts to nothing more than the carrying on of the business of an employment bureau. The clear distinction, however, is that an employment agency merely undertakes to use its best efforts to provide employment, while the contract of this company guarantees employment.

Very respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

The Quartermaster-General has no legal right to furnish horses for batteries for any ordered tour of duty.

JUNE 25, 1894.

Maj.-Gen. SAMUEL DALTON, *Adjutant-General.*

SIR: — I have your request for my opinion whether, under the provisions of chapter 367 of the Acts of 1893, the quartermaster-general can furnish directly horses for batteries for any ordered tour of duty.

In section 14 the duties and powers of the quartermaster-general in the provision, purchase and custody of military stores and property are carefully defined, and what he is to furnish is enumerated with great precision. No mention is made of horses for the purpose named by you. The power given him to "provide means of transportation" I understand is for a purpose quite different from that for which the present requisition referred to in your letter has been made.

I am of the opinion that the quartermaster-general under this section has no legal right to furnish horses for the purpose named. The provisions of other sections of the act indicate that the intention of the Legislature was that horses for the purpose named should not be furnished directly by the quartermaster-general, but by the officers and soldiers authorized by law to be mounted; and that a fixed sum should be allowed in full for keeping and forage (see sections 127, 129, 130).

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

The powers and duties under chapter 86, Public Statutes, of the Board of Lunacy and Charity to regulate immigration are superseded by the act of Congress, approved March 3, 1891, vesting the regulation of immigration in United States officials.

JUNE 25, 1894.

Hon. GEORGE W. JOHNSON, *Chairman of the Board of Lunacy and Charity.*

DEAR SIR: — I am in receipt of your letter of June 16, asking my opinion concerning the "powers and duties of the Board under chapter 86 of the Public Statutes, since the passage of the act of Congress approved Aug. 5, 1882, and the acts supplementary thereto;" and "what, if any, power and duty does the Board have in relation to the matter of immigration from foreign countries to the ports of this Commonwealth."

It is well settled that the immigration of aliens is within that clause of the Constitution of the United States which gives Congress power "to regulate commerce with foreign nations;" and that whenever this power is exercised by Congress it is exclusive of the jurisdiction of the several States.

While the States have no power to pass laws limiting or imposing any burdens whatever upon immigration, it is undoubtedly true that, so long as Congress does not exercise the powers conferred upon it by the Constitution, the Legislatures of the States may, in the exercise of the power of police supervision, enact laws for their own benefit regulating foreign immigration, so as to exclude from their borders persons liable to become a public charge, infected with disease, or criminals.

Public Statutes, chapter 86, was presumably enacted in the exercise of such a power by the Commonwealth; and at the time of the enactment of the law Congress had not undertaken to interfere with the subject. Indeed, an act of Congress, approved Aug. 3, 1882, authorized the secretary of the treasury to act in co-operation with the appropriate boards of the several States in the regulation of immigration into those States.

Since that time, however, by act of Congress, approved March 3, 1891, the whole matter of the regulation of immigration has been vested in officers of the United States, with the power or right on the part of such officers to act in co-operation with the officers of the several States. This act is similar in its provisions to those of Public Statutes, chapter 86, in respect to the prohibition of the immigration of persons liable to become a public charge, or criminals, and of those suffering from contagious diseases.

It is well settled that when Congress exercises the powers conferred upon it by the Constitution, such exercise of power is in its nature exclusive of concurrent legislation by the several States. It follows

that Public Statutes, chapter 86, are now inoperative, and cannot be sustained even in the exercise of the police power of a State. That being so, your Board can exercise no power or duty in the matter of foreign immigration.

The foregoing principles, although briefly stated, are elaborately discussed and settled in many cases in the supreme court of the United States, some of which, for convenience, I herewith cite: —

New York *v.* Miln, 11 Peters, 102.
Passenger Cases, 7 How. 283.
Henderson *v.* Mayor of New York, 92 U. S. 259.
Chy Lung *v.* Freeman, 92 U. S. 275.
Railroad Company *v.* Husen, 95 U. S. 465.
Bowman *v.* Chicago Railway Company, 125 U. S. 465, 492.
Leisy *v.* Hardin, 135 U. S. at p. 108.
Head Money Cases, 112 U. S. 580.
Ekin *v.* U. S., 142 U. S. 651.
Brennan *v.* Titusville, 153 U. S. 289, 299–306.

Very respectfully yours,
HOSEA M. KNOWLTON, *Attorney-General.*

The governor, after the adjournment of the Legislature, may sign bills that have been presented to him within five days before such adjournment.

JUNE 30, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

SIR: — In response to the inquiry of your Excellency whether the governor has the power under the Constitution to sign a bill after the Legislature is prorogued, presented to him within five days before the prorogation, I have the honor to reply: —

The question has not been passed upon in this State, although I cannot learn upon inquiry that any governor has ever signed a bill after the Legislature adjourned.

The question has been brought before the courts, however, in other States.

In Conrad *v.* Lindley, 2 California, 173, where the Constitution provided that "if a bill shall not be returned by the governor within ten days after it shall have been presented to him, Sundays excepted, the same shall be a law in like manner as if he had signed it, unless the Legislature by adjournment prevents such return," the court held that the governor had no power to sign a bill after the adjournment of the Legislature. The reason for the opinion is stated to be that "the executive is by the Constitution a component part of the law-

making power in approving a law. He is not supposed to act in the capacity of the executive magistrate of the State, whose duty it is to see that the laws are properly executed, but as a part of the legislative branch of the government. Whenever a part ceases to act, the whole becomes inoperative. The executive act owes its validity to the existence of the legislative power; upon the adjournment of that body the power ceases, and all acts of a legislative nature are void."

I have found no other case which sustains this view.

On the contrary, in the case of the People *v.* Bowen, 21 N. Y. 517, upon a provision of the Constitution substantially similar to that of California above cited, the court held, with one judge dissenting, that the governor had the right to sign bills after the Legislature had adjourned. The court says: "if he approves, the concurrence of the whole law-making power is secured, precisely as though the Legislature was in session. The bill has received the concurrence of all the functionaries which the constitution requires should unite in enacting a perfect law."

In Louisiana, in the case of Attorney-General *v.* Fagan, 22 Louisiana, 545, in which State the Constitution made provision that when the Legislature by adjournment prevented the return of the bill, the governor should return the bill on the first day of the next meeting of the General Assembly, or it should be a law, the court held that the governor could sign the bill after the adjournment of the Legislature. The same conclusion was reached in Solomon *v.* Commissioners, 41 Georiga, 157. And in Seven Hickory *v.* Ellory, 103 U. S. 423, a case decided in 1880, — in which the opinion was delivered by Chief Justice Waite, — the court held that, under the Constitution of Illinois, the provisions of which were in many respects similar to those of Louisiana, the governor might sign a bill after the Legislature had adjourned. The court says: "*after a bill has been signed the Legislature has nothing more to do with it.*"

I think it may be fairly said that the weight of authority is in favor of the proposition.

It appears to me, also, that the reasons stated by the courts in favor of the proposition, as above briefly summarized, are the more cogent. The governor is undoubtedly a part of the legislative department of the government, in that his signature is necessary to the enactment of a law. But the affixing of his signature is an act which is independent of the action of the Legislature, — an act over which that body has no control, and which he does under his constitutional power as governor. It does not follow that he can only perform that constitutional act before he has prorogued the Legislature. If he disapproves, the provisions as to co-ordinate action are minute and particular; but his approval is an independent act.

An inspection of the language of the Constitution, Part II, chapter I, section I, Article II, in connection with the articles of amendment, Article I, confirms this view. No bill shall become a law "until it shall have been laid before the governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing." Then follow provisions for the return of the bill by him in case of disapproval, with the additional provision in the original instrument that if he does not return the bill within five days the same shall have the force of a law.

Transposing the words of the amendment, it provides substantially that a bill or resolve shall not become a law if it shall be objected to and not approved by the governor, AND if the General Court shall adjourn within five days after the same has been laid before him for his approbation. In other words, the amendment provides substantially that a bill or resolve shall not become a law if the Legislature adjourns within five days after its presentation to the governor, in case he objects to it and does not approve it. The amendment does not cover, and has no reference to a case where the governor does *not* object to the bill, but, on the contrary, approves it. The provisions relate wholly to the failure of the bill to become a law in case of his disapproval. It follows that it was not intended to limit his right of approval by the prorogation of the Legislature.

I am aware that this view raises the very important question within what time the governor may approve a bill passed within the five days before prorogation. In some of the cases above cited, it is urged that to give him the right to sign bills after adjournment would put it within his power to hold them indefinitely during his term of office. In the New York case, however, it is held that by implication his signature must be affixed within the time provided for his disapproval; and this seems to be reasonable. Upon the whole, therefore, I am of the opinion that the governor may sign bills after the Legislature has adjourned that have been presented to him within five days before that time.

It is proper, however, to say to your Excellency that the authorities are not unanimous in support of this doctrine; that the usage in this Commonwealth, so far as there is a usage, is otherwise; and that to delay action until after prorogation upon a bill which your Excellency proposes to sign may involve serious, and to some extent, doubtful, questions of law.

Very respectfully, your obedient servant,

HOSEA M. KNOWLTON, *Attorney-General.*

A statute provided that the directors of a newly incorporated railway, before constructing the road, should apply to the governor and council for a certificate that public convenience required the construction; and that, in case such certificate was refused, the act of incorporation was to become void. Such a statute is unconstitutional.

JULY 18, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

DEAR SIR: — In response to the verbal request of your Excellency as to the rights and duties of the governor under Statutes 1894, chapter 550, section 18, I have the honor to reply as follows: —

The act in question is an act to incorporate the Boston & Lowell Bicycle Railway. By the first section of the act the persons therein named are made a corporation under the above name, "to construct and operate an elevated bicycle railway for the carriage of passengers," etc., between and through the cities therein named. Section 18 of the same act provides that "within sixty days after the passage of this act, the directors shall apply . . . to the governor and council for a certificate that public convenience and necessity require the construction of said railway. If a certificate is granted by . . . the governor and council, proceedings may be continued as herein provided. If a certificate is refused, no further proceedings shall be had, and this act shall be null and void."

This section makes it the duty of the executive department to pass upon the question of the "public convenience and necessity" of the proposed railway. It further provides that in case of an adverse decision upon this question the act shall become null and void. The question submitted to me is whether this duty can be imposed upon the executive by the Legislature.

I am clearly of the opinion that it is not within the constitutional power of the Legislature to impose such a duty upon the executive department of the government. I am led to this conclusion upon various considerations.

1. The governor is "the supreme executive magistrate of the Commonwealth." He is independent of the Legislature. His rights and duties are prescribed solely by the Constitution. No duties can be imposed upon him by the Legislature or by any other authority, other than those set forth by the terms of that instrument. It is needless to say that the duties required by section 18 are not such as are required by any of the provisions of the Constitution prescribing his duties.

2. Under the section in question the governor is called upon to pass upon the question of the expediency of the charter, and in effect to nullify the act by his adverse decision upon that subject. In other

words, a veto power is given to him in addition to the carefully guarded provisions relating to his right of veto in the Constitution. He is a constituent part of the Legislature, in so far as he has the right, under certain conditions and within certain limitations, of revising the bills passed by the Legislature, and of signifying his approval by his signature, or his disapproval by returning the same without his signature to the Legislature. The terms of the limitations of this power of revision are necessarily exclusive of all other interferences with, or revision of, legislative acts. The Legislature cannot give him the right to revise the law in the manner provided in this section, and to declare it null and void as therein provided, for the reason that it provides for a method of doing so not known to the Constitution, and not included within the veto powers of the governor as therein expressed.

3. The question submitted to the governor and council under said section is a legislative question. Without attempting to determine the question how far the Legislature may delegate its legislative power by provisions that the acts passed by it shall become a law upon their approval by other tribunals, like towns, private corporations and the like, it is sufficient for the purpose of the exact inquiry submitted to me to refer to explicit provisions of the Constitution of Massachusetts, which absolutely separate the legislative from the executive department; excepting, of course, so far as the executive has legislative powers under the constitutional provisions requiring his signature to bills passed by the Legislature. To attempt to confer upon the governor the power or duty of passing upon the questions which are properly for the consideration of the Legislature, as is attempted by this section, is a clear invasion of the provision of the bill of rights, which provides that "the executive shall never exercise the legislative and judicial powers, or either of them" (Bill of Rights, Article 30; Cases of Supervisors, 114 Mass. 247).

The foregoing considerations sufficiently dispose of the proposition that the Legislature could lawfully impose upon your Excellency any duty of determining, in the manner provided in the section referred to, whether the act should be in force or not. I have not attempted to consider whether this section, so far as it attempts to impose a duty upon the executive department, renders the act, as a whole, unconstitutional or not. It is sufficient at present to say that there can be no doubt that, in so far as it attempts to impose duties of revision upon the executive department, it is in violation of the Constitution, and in so far is void.

Very respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Under section 1, chapter 444, Acts of 1894, the power of designating the deputy fire marshal is incidental to the power of appointment vested in the governor; and the phrase, "upon the recommendation of the fire marshal," must be interpreted in reference to the general expediency of an appointment.

JULY 18, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor*

DEAR SIR: — Replying to your verbal request for my opinion as to the construction of Statutes 1894, chapter 444, section 1, I have the honor to reply as follows: —

The words of the statute as to which the inquiry is directed are as follows: "The governor and council may, upon the recommendation of the fire marshal, appoint a deputy marshal to assist him in his duties, and such deputy may in like manner be removed." As I understand the question of your Excellency, it is this: does the "recommendation of the fire marshal" mean a recommendation that an appointment be made, or a recommendation of a person for appointment?

The words of the statute are not technically accurate. Strictly speaking, there is no such thing known to our laws as an appointment by the "governor and council." Inasmuch, however, as in the first part of the section it is provided that the fire marshal is to be appointed by "the governor, with the advice and consent of the council," it is to be presumed, I apprehend, that the briefer words "the governor and council" in the latter part of the section are intended to have the same significance, and to authorize an appointment by the governor by and with the consent of the council.

I have been unable to find any other statute containing the same form of language. The interpretation of this statute, therefore, must be determined on general principles, and by comparison, so far as the same is useful, with other statutes relating to the appointment of heads of departments and subordinates in the same department.

On general principles, it may be said that the power of appointment necessarily imports the power of designation. It is of the essence of the exercise of the privilege of appointment that the appointing power shall have the right of selection of the person to be appointed. It is not to be presumed, therefore, that the Legislature intended to abridge the scope of the authority of the executive in making appointments, unless such limitation is expressed in unambiguous language. A power of appointment without the right to select and designate the person to be appointed is an anomaly. It is in no proper sense of the term a power of appointment. It is a limitation of the functions of the executive which is to be found in no other law.

There are statutes, however, in which the power of appointment is expressly given to the head of the department, and the duties of the executive are merely those of approval of the appointment so made. Statutes 1887, chapter 214, section 5, provides that the Insurance Commissioner "may, with the approval of the governor and council, appoint . . . a deputy commissioner." In this statute the power of appointment is clearly conferred upon the commissioner, and the governor and council have the power of approval only. But in the statute under consideration the executive is vested with the power of appointment, and he can effectually exercise this power only when he has the right of selection. If it had been intended by the Legislature to confer upon the executive the power of approval only of a person designated by the fire marshal, it is to be presumed that apt language for that purpose would have been used, as in the provision above quoted for the appointment of a deputy insurance commissioner.

On the other hand, it well may be that the question of the expediency of the appointment of a deputy fire marshal is one that can be best determined by the fire marshal, in consequence of his more intimate acquaintance with the extent of the work of his department.

It may be suggested, however, that the efficiency of the department would be promoted if the marshal were to have the selection of his subordinates, for the performance of whose duties he is responsible, and that the Legislature may be presumed to have had that consideration in mind in enacting the section. But an examination of the provisions of the statute do not bear out this suggestion. The duties of the deputy fire marshal, as specified in the act, are not subordinate duties in the same sense as are those of clerks and employees. The deputy fire marshal is, for all practical purposes, an additional fire marshal. He has the same powers of summoning witnesses and of inquiry and investigation as the fire marshal himself. It is true that the deputy fire marshal as to the assignment of his work is necessarily under the direction of the head of the department, and in that respect is a subordinate officer; but in the performance of the work assigned to him he acts upon his own responsibility and with the same judicial powers as the marshal himself.

The act seems to contemplate the possibility that the duties of the fire marshal may be so onerous as to render it necessary to divide his work. When he finds it so, the act provides that he may recommend to the executive that a deputy marshal should be appointed; and thereupon the governor, in his discretion, may make an appointment. The same considerations which render the executive interested in the efficiency of the marshal apply to the work of the deputy marshal. The latter officer is required to act in the matters assigned to him upon the same lines and with the same powers as the marshal himself.

On the contrary, as to officers whose duties are strictly subordinate, like clerks and other employees, for whom the fire marshal is and should be responsible, the act provides in section 7 that such officers shall be appointed by the fire marshal himself.

Upon the whole, therefore, I am clearly of the opinion that the expression "upon the recommendation of the fire marshal" is intended to have reference to the question of the expediency or necessity of an appointment of an assistant, and that the Legislature did not intend, while employing language which purports to give the governor the power of appointment, to reduce that power in effect to a mere right of approval or disapproval of the person appointed by the marshal, but did intend to give to the governor the right of selection as incidental to the right of appointment.

It is proper to say, however, that the whole matter of appointment of a deputy is discretionary with your Excellency; and to the end of securing greater harmony and efficiency in the work of the office, the governor may in his discretion require the fire marshal to make suggestions as to the person to be appointed.

Very respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Section 3, chapter 159, Acts of 1890, does not require a measurement of lumber to be made by the surveyor-general unless such a measurement is requested by one of the parties to the sale. The surveyor-general can establish other grades of lumber not included in the statute and not in conflict with its terms.

JULY 25, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

SIR: — Replying to the questions contained in a letter to your Excellency from John W. Wiggin, surveyor-general of lumber, submitted to me June 21, 1894, I have the honor to say: —

The first question contained in the letter is as follows: "Does it not require in section 3 of the law that all lumber that is to be surveyed for any purpose of getting grade or measurement for settlement of a sale between purchaser and seller shall be surveyed under the authority of this office?"

As originally enacted (Statutes 1859, chapter 224, section 2), it was provided that all lumber brought into the district of Boston for sale should be surveyed by the surveyor-general. By Statutes 1878, chapter 65, section 2, this law was amended so that the survey of lumber by the surveyor-general became optional.

The law was again amended by Statutes 1890, chapter 159, and the effect of this amendment is the substance of inquiry now under consideration. The exact change made was in striking out the words

"he shall, by himself or his deputies, survey and measure all lumber brought into said district for sale, when a request therefor is made by either the purchaser or the seller," and in substituting in the place thereof the following: "All lumber brought into said district for sale, a survey or measurement of which is required by either seller or purchaser, shall be surveyed or measured by him or his executive."

It is probable that the intention of the Legislature in so amending the law was to provide that all lumber, measurement of which is needed in order to effect a sale, must be surveyed by the surveyor-general or his deputies. I can conceive of no other purpose of the amendment. I understand, however, that, acting under advice, dealers in lumber do not so construe the statute, and continue as before in many instances to do their own measuring without calling upon the surveyor-general, thereby largely reducing the emoluments of his office. This practice, if the law will permit him, he desires to stop.

It must be borne in mind, however, that the statute is penal in its nature, and must be construed strictly. It is a cardinal principle in the construction of penal statutes that a criminal offence cannot thereby be created except by the use of plain and unambiguous language.

Notwithstanding the apparent intent of the Legislature, it seems to me the language is not only not ambiguous, but that its plain intent is to leave the question of whether the services of the surveyor-general or his deputies shall be invoked still optional with the parties. I presume the Legislature intended the language "measurement of which is required by either seller or purchaser" to be equivalent to the words, "measurement of which is necessary" in order to effect a sale. That is, if in order to make a sale it is necessary to measure the lumber, then the measuring must be done by the surveyor-general. Such might be the meaning of the words if the clause "by either seller or purchaser" were omitted, making the statute read "measurement of which is required." Though even then the language would be somewhat ambiguous, as the word "required" may import either a request or a necessity.

But the expression cannot be construed without giving some force to the words "by either seller or purchaser." I cannot conceive of a case where measurement is necessary to effect a sale as to one of the parties to the transaction and not necessary to the other. If it is necessary to the buyer, it is also necessary to the seller. These words, therefore, "by either seller or purchaser," cannot be construed sensibly without giving to the parties therein described the option of having it measured or not by the official surveyor, as either of them may choose.

The plain meaning of the statute as it now stands, therefore, is that in case of a sale of lumber by measurement either party may call upon the surveyor-general or his deputies for measurement. If either party so requires his services, he shall survey it and receive his fees. If neither party invokes his services, then he has no jurisdiction.

I am not unmindful of the suggestion which may be made, that this construction leaves the law as it was before the statutes of 1890; and that no essential change was made by chapter 159 of that year so far as this part of the law is concerned. If it were a remedial statute, it might be imported into its significance by the intent of the Legislature; but a penal statute cannot be construed otherwise than by its own terms.

My attention has been called to the last section of the law, which provides that "whoever performs without authority any of the duties of surveyor of lumber shall forfeit not less than fifty nor more than two hundred dollars." This section has not been changed by the amendment discussed, and was a part of the law when measurement of lumber was clearly optional on the part of dealers and purchasers. It cannot, therefore, add to or modify the meaning of the section under discussion.

On the whole, therefore, my answer to the question submitted by the surveyor-general is that the section he refers to does not require a measurement by the surveyor-general or his deputies, unless such measurement is requested by one of the parties to the sale of the lumber.

The foregoing consideration disposes of the second and third questions in his letter; to wit, whether a man in the employ of a dealer or consumer can measure or mark its contents, and render account thereof, for purposes of sale or purchase, without making himself amenable to the law and liable to the penalty imposed. He would if he assumed to act as an official measurer; otherwise, not.

The fourth question submitted by the surveyor-general is not clearly stated; but I understand from oral conversation with the surveyor-general that it is intended to inquire whether the surveyor-general has the right to establish grades of lumber other than which is provided for in section 16 of Public Statutes, chapter 63, referring to the duties of the surveyor-general, in case the grades established in that statute have become obsolete.

In answer to this question, I should say that, while the surveyor-general cannot change the existing law as to grades of lumber, he can introduce and establish other grades not included in the statute and not in conflict with its terms.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

A pilot who offers his services to a vessel bound into a port where pilotage is not compulsory has no claim for services when they are declined in favor of a person forbidden under a penalty to act as pilot, or when another authorized pilot subsequently offering himself is secured.

AUG. 3, 1894.

JOHN C. ROSS, Esq., *Pilot Commissioner.*

DEAR SIR: — I am in receipt of your letter requesting my opinion as to whether or not it is the duty of the Pilot Commissioners, under section 21 of chapter 70 of the Public Statutes, to approve pilotage fees in two cases referred to in your communication. The facts as stated by you in the two cases, while different in other respects, are the same in this, — that in neither case was the pilotage compulsory under the provisions of law.

In my opinion, in neither case has the pilot a legal claim for compensation for the services which in each case he offered to render. The fact that in the first case mentioned by you some person may be liable to a penalty under section 6 of chapter 252 of the Acts of the year 1884 in no way affects the question of the legality of the claim of the pilot for compensation for the services offered to be rendered by him. In the second case, the pilotage not being compulsory, the provisions of section 26 of chapter 70 of the Public Statutes has no application to the claim of the pilot who has offered his services.

In answering your inquiries I have assumed that the provisions of section 21 above referred to make it the duty of the Pilot Commissioners to consider not alone the question of the correctness in amount of the pilotage fees, but also the question of the legality of any claim a pilot may make for fees.

Very respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

A foreign corporation, organized for purposes many of which are lawful under the laws of this Commonwealth, may, under chapter 330, Acts of 1884, appoint the Commissioner of Corporations its attorney for accepting service of process.

AUG. 25, 1894.

HON CHARLES ENDICOTT, *Commissioner.*

DEAR SIR: — Your letter of August 4 raises some interesting questions. Understanding from oral conversation with you that you are only desirous of such interpretation of the law as may assist you to the performance of your duties, it seems to be unnecessary at present to pass finally upon the questions raised. I am informed that the law was drawn primarily with reference to a class of corporations that do not come within your jurisdiction. The only particular in respect to

which it affects the performance of your duties, at least so far as concerns the questions submitted by you, is the accepting of the appointment of attorney for foreign corporations under the provisions of Statutes of 1884, section 330. Under Statutes of 1894, chapter 381, it is your duty to refuse to accept appointment as attorney for a corporation "doing a business in this Commonwealth the transaction of which by domestic corporations is not then permitted by the laws of the Commonwealth."

So far as it concerns your duty, the law seems to look only to the carrying on of unlawful business, and not principally to the purposes for which the corporation is formed.

Inasmuch as no brewing company has asked you to accept appointment as attorney, there seems to be no occasion to answer the first question.

Unless you have information that the corporation with reference to which the second inquiry is put is engaged in carrying on business "the transaction of which by domestic corporations" is forbidden, there is no reason why you should refuse to accept appointment as its attorney Many of the purposes of its organization are lawful, if not all; and it certainly has a right to carry on such portions of its business as are permitted by the laws of this Commonwealth.

Yours truly,

HOSEA M. KNOWLTON, *Attorney-General.*

An inmate of the State Industrial or Reform School, transferred under section 7, chapter 89, Public Statutes, to the State Primary School, becomes a member of the latter school, and subject to all the laws relating to its scholars. The power of discharge of children so transferred lies in the State Board of Lunacy and Charity.

AUG. 25, 1894.

To His Excellency FREDERIC T. GREENHALGE, *Governor.*

DEAR SIR: — I have the honor to acknowledge the receipt of your communication enclosing a letter from the trustees of the State Primary and Reformatory Schools, in which my opinion is asked upon the question, "Whether the transfer of inmates from the Industrial School and Reformatory School to the Primary School, as provided in section 7, chapter 89 of the Public Statutes, discharges said inmates from the custody of said schools and transfers said custody to the State Board of Lunacy and Charity."

The statute referred to in the inquiry is as follows: —

"The trustees may also transfer inmates from the Industrial School and Reform School to the Primary School. When such transfers are made, the mittimus upon which the person was committed shall

accompany the person transferred; and such person shall be held upon the mittimus until the term of sentence has expired, unless sooner discharged or remanded. On application of any three of the trustees, the State Board of Health, Lunacy and Charity may return any boy so transferred, with the mittimus, to the Reform School, there to be held as if no such transfer had been made."

Upon examination of the numerous and in some respects not wholly consistent provisions of the statutes relating to the duties of the trustees and of the State Board with relation to the State Primary School, I am led to the conclusion that when an inmate of the Industrial or Reform School has been transferred to the State Primary School, as provided in the law referred to, the child so transferred becomes a member of the State Primary School to all intents and purposes, and as such is subject to all the provisions of law with relation to scholars in the State Primary School. In other words, the status of a child so transferred is the same as the status of all the other scholars in the State Primary School.

It seems to be unnecessary at this time to attempt to define or to distinguish the respective duties of the trustees and of the State Board with reference to the State Primary School. In general, however, it may be said that the State Board is to have general supervision over the State Primary School (Public Statutes, chapter 79, section 2); also the duty of visitation of the school (Public Statutes, chapter 79, section 5). It also "shall have the power of admission and discharge" (Public Statutes, chapter 79, section 11).

On the other hand, the trustees are charged with the government of the school (Public Statutes, chapter 89, sections 1 and 3). The trustees may also place inmates of the Primary School in charge of suitable persons; but, even in such case, "the power of visitation and final discharge" remains with the Board (Public Statutes, chapter 89, section 6).

It has been suggested that the inquiry submitted is intended to relate principally to the question of who has the right of discharge of children so transferred to the Primary School. I see no reason to doubt that the right of discharge is with the State Board, as above stated. The power of admission and discharge is expressly vested in the State Board (Public Statutes, chapter 79, section 11). This provision is in the chapter of the Public Statutes which defines the duties and powers of the State Board. It must be taken to be broad enough to include all the inmates of the school, however admitted. The fact that the mittimus accompanies the child transferred does not change its status, so far as the power of discharge by the State Board is concerned. So long as the child is in the State Reform or State Industrial School, he may be discharged by the trustees under the

authority given them in relation to inmates of those schools. When he is transferred to the State Primary School, he is subject to be discharged from that institution like any other pupil in the school, upon the order of the State Board, which has the exclusive right of discharge from that school.

The section under consideration is almost identical with the provisions of Public Statutes, chapter 89, section 47, relating to the transfer of girls from the Industrial School to the State Reformatory. In case of such transfer it is provided in that section that the girl is to be held upon the mittimus in the Reformatory Prison "until the term of sentence has expired, unless sooner discharged." It will scarcely be disputed that a girl so transferred and held in the Reformatory Prison may be discharged only as other inmates of the reformatory are discharged, — to wit, by the authority of the Commissioners of Prisons.

Upon the whole, therefore, I am clearly of the opinion that the power of discharge of children transferred to the State Primary School from the State Industrial School or Reformatory School is in the State Board.

Respectfully,

HOSEA M. KNOWLTON, *Attorney-General.*

No session of registrars for the purpose of registering voters can lawfully be held after the Saturday but one before election day.

OCT. 8, 1894.

Hon. WILLIAM M. OLIN, *Secretary of the Commonwealth.*

DEAR SIR: — I have the honor to acknowledge your favor of October 6, relating to the duties of registrars of voters under Statutes 1894, chapter 271, section 2.

Inasmuch as the question stated in your letter is one which may come before the Ballot Law Commission, of which both you and I are members, it would not be proper to pass finally upon the question submitted at this time.

However, as I am told that there is a general inquiry on the subject, and as it is desirable to secure uniformity and regularity of action, I may, perhaps, properly say that it is a well-recognized principle of law that a later statute, inconsistent in its terms with a former statute, must be taken to repeal the former statute, although such repeal is not expressed in terms

Applying this principle to the case submitted, it would seem to be plain that, although Statutes 1893, chapter 417, section 38, provided for a meeting of the registrars on the Wednesday next preceding the

annual State election, yet, inasmuch as Statutes 1894, chapter 271, section 2, has explicitly provided that registration shall cease the Saturday but one before election day, no session of registrars for the purpose of registering voters can now be lawfully held after the last-named named date, to wit, the Saturday but one before election day; and that, so far as Statutes 1893, chapter 417, section 38, provides for sessions for the purpose of registering after that date, its provisions have become inoperative.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

A business corporation organized under chapter 106 of the Public Statutes cannot be legally organized without the limits of the Commonwealth.

NOV. 13, 1894.

Hon. CHARLES ENDICOTT, *Tax Commissioner.*

DEAR SIR: — I have the honor to acknowledge your letter of the 24th ultimo, making the following inquiry: "Can a business corporation, under chapter 106 of the Public Statutes, be legally organized outside the limits of the Commonwealth?"

Corporate powers are the creation of the sovereign. Its charter invests those to whom it is granted with the right to act, not as natural persons, but in a corporate capacity. But, inasmuch as the charter is inoperative beyond the jurisdiction of the State, the powers granted by it do not accompany the persons holding it beyond its jurisdiction. It is well settled that a corporation whose charter has been granted by one State cannot hold meetings, pass votes or in any way exercise its corporate functions in another State. It has no legal existence outside the jurisdiction of its sovereign. (Miller *v.* Ewer, 27 Maine, 509; Freeman *v.* Machias Water Power Company, 38 Maine, 343; Franco Texan Land Company *v.* Laigler, 59 Tex. 339; Ormsby *v.* Vermont Copper Company, 56 N. Y. 623.)

It is to be observed that this principle applies only to corporate acts. It does not include and does not prohibit the carrying on of business and the making of contracts through the agents of the corporation, whether within or without the State. The limitation is only upon the exercise of the corporate functions of its charter. (Bellow *v.* Todd, 39 Iowa, 209; Arms *v.* Conant, 36 Vt. 744.)

The cases cited deal mostly with the doings of the corporation after its organization. But the principle is equally applicable to the act of organization itself. The meeting at which the life granted by the charter is set in being is not only a corporate act, but it is the first and most important act. If a corporation cannot live and have being

as a corporation, under Public Statutes, chapter 106, without the State, *a fortiori*, it cannot begin to live abroad.

In my opinion, therefore, a business corporation cannot be legally organized outside the limits of the Commonwealth.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

It is not compulsory upon the Board of Gas and Electric Light Commissioners to exhibit the returns made by gas companies, to any person who may ask to see the same.

Nov. 14, 1894.

Hon. F. E. BARKER, *Chairman Board of Gas and Electric Light Commissioners.*

DEAR SIR: — I have the honor to acknowledge the receipt of your letter of 8th inst., containing several specific inquiries as to the duty of your Board in reference to the exhibition, to any person who may ask to see the same, of the returns of gas companies made to your Board, pursuant to the provisions of Statutes 1885, chapter 314, section 7, and Statutes 1886, chapter 346, section 2.

The statutes of the Commonwealth contain many and various provisions for returns by corporations, both those chartered within the Commonwealth and foreign corporations doing business here. Some of the returns so provided for are plainly for the information of the public. Examples of such are the returns required to be made by domestic corporations to the Secretary of State, under the provisions of Public Statutes, chapter 106, section 54; and returns required of foreign corporations to be made to the Secretary of State, under the provisions of Statutes 1891, chapter 341. The returns provided by these statutes relate to the financial condition of the corporations affected by its provisions, and are obviously of interest and importance to all persons having business with them.

But the returns required to be made by gas companies to your Board are of a different character, and for a different purpose. An examination of the purpose and scope of the acts containing such provisions make it clear that returns from gas companies are required for the information and guidance of the Board in discharging its duties of supervision and regulation over such companies. By Statutes 1885, chapter 314, section 8, it is provided that the Board shall have "the general supervision of all corporations engaged in the manufacture and sale of gas for lighting and for fuel." By section 9 of the same chapter the Board is authorized, upon the complaint in writing of the officers of the city or town in which a gas company is located, or of twenty customers of the company, to order such reduc-

tion in the price of gas, or improvement in the quality thereof, as it shall deem just and proper. The Board is also by section 11 charged with the duty of ascertaining with what degree of purity gas companies can reasonably be required to make and supply gas. By Statutes 1886, chapter 346, section 5, the Board has jurisdiction over complaints for the refusal or neglect of gas companies to supply gas to persons residing in the place where the company carries on its business.

To the end that the Board may perform the duties so required of it intelligently and wisely, the same act (Statutes 1885, chapter 314, section 7), provides that every gas company shall annually make a return to the Board in such form as may be prescribed by the Board, "setting forth the amount of its authorized capital, its indebtedness and financial condition on the first day of January preceding, and a statement of its income and expenses during the preceding year, together with its dividends paid or declared, and a list containing the names of all its salaried officers and the amount of the annual salary paid to each." This return must be signed and sworn to by the officers of the company. The same section further provides that the company shall also at all times on request "furnish any statement of information required by the Board concerning the condition, management and operations of the company." Acting under the authority of this section, I am informed that your Board has prescribed a form of return by the gas companies within your jurisdiction, calling for a large number of items of information as to the business management and operations of the company not included in the statute requirements for sworn returns. These inquiries are so minute and far-reaching in their nature that they are intended to exhibit to the Board every detail of the business of the company making the return.

These inquiries are within the authority contained by section 7 above cited, and put the Board in possession of such information as enables it to exercise the jurisdiction conferred upon it as to the price and quality of the gas furnished, and the other matters of supervision set forth by the provisions of the statutes.

They are not, however, of interest or importance to the public generally. The customers of the company, it is true, are interested in the price and quality of the gas furnished. Express provision, however, is made for the hearing of complaints made by them to the Board; and, if they deem the price unreasonably high or the quality unreasonably poor, they have their remedy by appeal to the Board, which, with the knowledge furnished it by the returns called for, is enabled to do justice between them and the companies who serve them.

This view is confirmed by the fact that there is no provision of law for giving publicity to the returns made to your Board, excepting

Statutes 1886, chapter 346, section 2, providing that the Board shall transmit such abstracts of the returns as it shall deem expedient annually to the Legislature. The abstracts referred to by this section are obviously abstracts of the sworn returns, and do not relate to the other inquiries, whether made from time to time by the Board or included by them in the requirements from the annual returns to be made by the companies. It would seem, therefore, that the only duty of the Board is to exhibit to the Legislature such portions of the sworn returns as may be called for by that body.

This view is confirmed by the consideration of the fact that gas companies, in addition to the returns required to be made by your Board, are also required to return a statement of their financial condition to the Secretary of State, under the provisions of Public Statutes, chapter 106, section 54. The latter returns, as already stated, are intended for the information of the public and persons having business dealings with the companies making the returns. If the returns required to be made to your Board were for the information of the public, it would not be necessary to make returns to the Secretary of State, as all the information returned to the Secretary of State is contained in the returns made to your Board. It is plain, therefore, that the returns to the Secretary of State are for the use and information of the public generally, while the returns made to your Board are for the use and information of your Board in the performance of its duties of supervision and regulation.

I am of opinion, therefore, that it is not the duty of your Board to exhibit the returns of gas companies to any person who may ask to see the same. I am of opinion, on the contrary, that it is your duty to refuse to exhibit any part of said returns to casual inquirers. What, if any, duties as to the exhibition of the returns devolve upon the Board in the case of proceedings before courts or other tribunals, or in hearings before your Board where the information contained in the returns may be of importance, is a question which may well be left to be dealt with when it arises.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

An instrument with a seal attached, but in other respects bearing all the attributes of a note, and issued by a city under a resolution authorizing the issue of promissory notes in anticipation of certain assessments, is not a bond within the meaning of a statute authorizing the purchase of legally authorized bonds.

Nov. 22, 1894.

To the Honorable the Board of Savings Banks Commissioners.

GENTLEMEN: — I have the honor to acknowledge the receipt of your communication of November 7, enclosing a form of instrument enti-

tled "Cleveland City Promissory Note," together with sundry other papers in connection with the same matter. In your letter you ask my opinion as to whether (other requirements being satisfactory) the instrument in question is a bond, within the meaning of Statutes 1894, chapter 317, section 21, clause 2, paragraph f. The portion of the statute in question authorizes savings banks, under certain conditions, which are not important to the present inquiry, to invest their deposits in legally authorized bonds for municipal purposes of certain cities in the State of Ohio, the city of Cleveland being one of those so described. If the instrument in question is a note, savings banks may not invest their funds therein. If it is a bond, I understand by your letter that it is a legal investment for savings banks.

It may be a question whether the word "bond" is used in the statute above quoted in its commercial or legal sense. As used in business transactions, the term "bond" often includes classes of securities which would hardly fulfil the common law definition of the word. Some confusion also has arisen through the legislation of different States upon the subject. It may therefore be difficult, if not impossible, to define the difference between notes and bonds in a way that shall be conclusive and sufficiently accurate to cover all possible cases that may arise.

But, whatever the general rule may be, it is plain that the instrument submitted by your letter is a note, and not a bond. It was issued under the authority of Revised Statutes, Ohio, section 2705, which is in the following words: "If the council makes any special assessments payable in annual instalments . . . it shall have authority to borrow upon the credit of the corporation a sum of money sufficient to pay the estimated cost and expense of the improvement, and shall have authority to issue bonds, notes or certificates of indebtedness . . . for the payment of the principal and interest of said bonds, notes or certificates of indebtedness." Acting under this statute, the council of the city of Cleveland passed a vote providing "that the city auditor may be authorized to make a loan of $53,200 in anticipation of the collection" of certain described assessments; and further providing "that the mayor and city auditor are hereby authorized to execute promissory notes of the city of Cleveland for said amount." The instrument itself is entitled "Cleveland City Promissory Note." It is of the tenor of a note in all respects, and is signed by the mayor and auditor.

It therefore appears that the Legislature gave and intended to give to the city of Cleveland the election to issue bonds, notes or certificates of indebtedness, as it should determine. The city council elected to issue notes, and so authorized the treasurer. The instruments issued have the attributes of a note, and are so entitled.

Neither the intention of the corporation nor the form of the instrument can properly be disregarded. Upon all the circumstances, therefore, it is plain that the instrument in question is intended to be and is a note, and is an instrument that the Legislature of the Commonwealth did not intend to authorize its savings banks to purchase.

It is suggested, however, that, inasmuch as the seal of the city is affixed to the instrument, it has thereby become a bond. But upon examination of the statutes of Ohio it is clear that the affixing of the seal has not changed the character of instrument. The seal was affixed in accordance with the requirements of Revised Statutes, Ohio, section 2706, which provided that "all bonds, notes or certificates of indebtedness issued by municipal corporations shall be signed by the mayor and the auditor . . . and be sealed with the seal of the corporation." The affixing of the seal is not recited in the body of the instrument, and it does not purport to be a sealed instrument by its tenor. The intention of the law was obviously to require the affixing of seals to municipal notes and certificates of indebtedness, not for the purpose of changing their character, but to establish their authenticity as municipal obligations. I am confirmed in this view upon consideration of the fact that by section 4 of the Revised Statutes of Ohio private seals are abolished, and the affixing of a private seal does not give an instrument any additional force or effect.

But, even if the affixing of the seal has changed the character of the instrument, the answer to your inquiry must still be the same. The statute in question authorizes savings banks to invest in the legally authorized bonds of certain western cities. The city council of Cleveland authorized the treasurer to issue prommissory notes; it did not authorize him to issue bonds. If the instruments are, or, by the affixing of the seal, have become, bonds, they are not legally authorized, and are not, therefore, obligations in which savings banks may invest.

Upon the whole, therefore, I have to say that the form of obligation submitted to me is a note and not a bond, and is not an authorized investment for our savings banks.

Very truly yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Chapter 143 of the Acts of 1894 is insufficient to authorize the transfer of the property that is vested in the Massachusetts Agricultural Experiment Station under the provisions of chapter 31 of the Acts of 1887.

DEC. 3, 1894.

To His Excellency the Governor.

I have received your communication with various papers relating to the transfer of the property of the Massachusetts Agricultural

Experiment Station under the provisions of chapter 143 of the Acts of 1894.

Statutes 1863, chapter 220, is entitled "An act to incorporate the trustees of the Massachusetts Agricultural College." By the provisions of section 1 the name of the body corporate thereby established is "Trustees of the Massachusetts Agricultural College." The corporation received certain moneys by the sale of land scrip, by virtue of the provisions of the 130th chapter of the Acts of the 37th Congress of the second session thereof, approved July 2, 1862. The land was bought and the college was located at Amherst, the town of Amherst giving thereto the sum of $75,000.

Statutes 1882, chapter 212, established an agricultural experiment station to be maintained at the Massachusetts Agricultural College in the town of Amherst, and the management of said station was vested in a board of control.

The following acts and resolves relate to said Agricultural Experiment Station: chapter 105 of the Acts of 1883; Resolves of 1884, chapter 48; Resolves of 1885, chapter 66; Resolves of 1885, chapter 68; chapter 327 of the Acts of 1885; Resolves of 1886, chapter 17; Resolves of 1887, chapter 44; Resolves of 1888, chapter 15; chapter 296 of the Acts of 1888; chapter 333 of the Acts of 1888; Resolves of 1889, chapter 12.

By chapter 31 of the Acts of 1887 the members of the Board of Control of the Agricultural Experiment Station, established by the Massachusetts Agricultural College in the town of Amherst, their associates and successors, were made a body corporate under the name of the "Massachusetts Agricultural Experiment Station;" and by section 5 of said act the said corporation, by virtue of the act, was authorized to take and hold as and for its property all the property in the charge of said board of control; and was thereby further authorized to hold such real estate and personal property as may be necessary for its purpose. The act was approved Feb. 21, 1887, and took effect upon its passage.

By chapter 212 of the Acts of 1887, the Commonwealth of Massachusetts assented to and accepted a grant of moneys to be annually made by the United States as set forth and defined in an act of Congress entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several States," under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto, said act designated "Public No. 112" being passed at a second session of the 49th Congress, and approved March 2, 1887, and upon the terms and conditions contained and set forth in said act of Congress.

The result is that there are in operation two experiment stations, one known as the Massachusetts Agricultural Experiment Station, carried on as the Massachusetts Agricultural Experiment Station, under the management of the body corporate known as the Massachusetts Agricultural Experiment Station, and a station known as the Hatch Experiment Station, carried on by the corporation known as the trustees of the Massachusetts Agricultural College. In order to consolidate these stations, the act of 1894, chapter 143, was passed.

As will be seen, section 5 of chapter 31 of the Acts of 1887 vested in the Massachusetts Agricultural Experiment Station, the body corporate constituted by said act, all the property in charge of said board of control. On the sixth day of July, A.D. 1887, the Massachusetts Agricultural College leased to the Massachusetts Agricultural Experiment Station, a corporation duly organized by law, certain real estate in Amherst for the term of ninety-nine years, which is part of the property enumerated in chapter 143 of the Acts of 1894. In the legislation in reference to the Massachusetts Agricultural Experiment Station, subsequent to chapter 31 of the Acts of 1887, to wit, chapter 333 of the Acts of 1888, and chapters 143 and 144 of the Acts of 1894, the fact that by chapter 31 of the Acts of 1887 the Board of Control was made a corporation appears to have been overlooked.

In my opinion, chapter 143 of the Acts of 1894 is insufficient to authorize the transfer of the property that is vested in the corporation by the provisions of chapter 31 of the Acts of 1887. It seems to me that the matter can be remedied only by legislation.

Very respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

The duties of the deputy superintendents of the public buildings department of the city of Boston, as defined in the evidence submitted by the Board of Civil Service Commissioners, are such as to bring the office of deputy superintendent within the classification of the public service provided by Class 7 of Schedule B, Rule 6 of the civil service rules.

DEC. 4, 1894.

CHARLES THEODORE RUSSELL, Jr., Esq.,
Chairman Civil Service Commission.

SIR: — I beg to acknowledge your request for my opinion as to whether the duties of the deputy superintendents of the public buildings department of the city of Boston are such as to bring the office of deputy superintendent within the classification of the public service provided by Class 7 of Schedule B, Rule 6 of the civil service rules.

The offices and places which are filled under the Civil Service Rules are classified in two divisions. The first division is subdivided into Schedule A and Schedule B, and each schedule is in turn subdivided into several classes. Class 7 of Schedule B includes inspectors of work and all persons under whatever designation doing inspection service not included in Schedule A. Rule 21, section 4, of the civil service rules, provides for the examination of applicants for the position of inspector, by giving the commissioners authority to order examinations upon subjects of a technical or special character, to test the capacity which may be needed in any part of the classified service which requires peculiar information or skill.

On the other hand, chapter 95 of the Acts of 1893 provides that heads of any principal departments of a city shall not be affected by the civil service rules, either as to their selection or their appointment.

The deputy superintendents of the public buildings department are at the present time appointed by the superintendent of the department. Under authority of section 1 of chapter 33 of the city ordinances, the superintendent has divided the city of Boston into six territorial districts, and for each district he has appointed under him a deputy superintendent, giving to each deputy a designated district. The question then is, first, whether these deputy superintendents are heads of any principal department of the city of Boston, and therefore specially exempt under authority of the above act from the operation of the civil service rules; second, if not so exempt, whether they are inspectors of work or persons under any designation doing inspection service, and therefore coming within the classification of the civil service rules.

An examination of the exhibits presented with your request shows: —

1. The work of inspection of buildings must be performed personally by each deputy.

2. A deputy has not the right to repair a building upon his own personal responsibility; but whenever, in his opinion, any building stands in need of repair, he is obliged to make a written report and recommendation of that fact to the superintendent, setting forth fully the nature of the repairs needed.

3. The execution of these repairs, and the employment of mechanics and other assistants in furtherance thereof, can only be had upon the approval of the superintendent.

4. There are no city employees under the control of any deputy.

5. The deputies have no offices of their own, each one merely having a desk in the office of the superintendent of the public buildings department.

6. The superintendent can change the number of deputies at will, and there is nothing to prevent him from sending one deputy into the district of another.

7. Each deputy is obliged to make an annual report to the superintendent.

8. The entire work is done under the general supervision of the superintendent.

The duties of the superintendent of this department are shown in section 1 of chapter 33 of the revised ordinances of the city of Boston. He has the supervision of all buildings belonging to the city and of all buildings or parts of buildings hired by the city, and he must provide therein all necessary furniture and keep the same in good condition; and he has the supervision of all repairs upon all buildings and parts of buildings used by the city.

It seems perfectly clear from the character of the deputy superintendents' duties, as shown by this analysis of the evidence submitted, that the said deputies cannot in any way be considered as the heads of any principal department of the city of Boston; and they do not, therefore, come within the exemption of chapter 95 of the laws of 1893. The evidence shows with the same clearness that in reality these so-called deputies are merely inspectors performing their work under the supervision of the superintendent, responsible to the superintendent, at the head of no department, and having no men in their employment; and, therefore, that they fall within the definition of Class 7 of Schedule B, Rule 6 of the civil service rules.

Very respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

Opinions upon Applications for Leave to File Informations in the Name of the Attorney-General.

Attorney-General *ex rel.* Charles C. Sanderson *et al. vs.* George W. Wells *et al.*

June 25, 1894.

This was an application by Charles C. Sanderson *et al.* to the Attorney-General for the filing of an information by him at their relation against the respondents.

As is customary in such cases, notice of the application was issued to the respondents, and the parties were heard before the Attorney-General on the fifth day of June, 1894. At that hearing the following facts appeared and were practically undisputed: —

The Southbridge, Sturbridge and Brookfield Railroad Company was

duly organized and chartered as a railroad corporation on the third day of May, 1892, with a capital stock of $130,000. The towns of Southbridge and Sturbridge became associates in the original agreement under the provisions of Public Statutes, chapter 112, section 34, and in said articles of association subscribed for shares of the stock of said railroad company, — the town of Sturbridge for one hundred and thirty shares, and the town of Southbridge for one hundred and eighty-five shares. The said towns have paid into the treasury of the railroad corporation twenty-five per cent. of their several subscriptions.

The construction of the railroad was begun within one year after the vote of the towns authorizing the above action, but less than ten per cent. of the capital stock was actually expended by said railroad within said time in the construction of its road.

The annual meeting of the stockholders of said corporation for the election of officers was duly held at Southbridge, May 16, 1894. Two tickets were voted for by the stockholders; one containing the names of the relators and the other those of the respondents. A. H. Edgerton, chairman of the selectmen of the town of Sturbridge, having been previously so instructed by vote of the selectmen of that town, cast the vote of the shares of said town for the respondents. Calvin Claflin, chairman of the selectmen of Southbridge, being also so instructed by vote of the selectmen of his town, cast the vote of the shares of the town of Southbridge for the respondents. No objection was made at the time of the casting of said ballot by said chairmen respectively against their authority so to vote. Before the taking of the vote certain stockholders protested in writing against the right of said towns to vote at said meeting, and challenged the counting of said votes by the committee appointed to count the votes, for the reason that said subscriptions were, as they allege, void, for the reason hereinafter stated.

A majority of the committee appointed to count the votes decided to count the votes of the two towns, and so reported. Including the votes of the towns, the respondents were duly elected directors of said company. If the votes of said towns were excluded, the relators would be so elected directors. One of the committee to count the votes submitted a minority report, protesting against the counting of the votes of the towns, for the additional reason that they were cast by one of the selectmen alone.

The report of the majority of the committee was accepted, and the respondents were declared directors of said company, and are now acting as such directors.

The information which it is desired that the Attorney-General shall bring seeks to oust the respondents from their offices as such directors

for the following reasons (it being apparent that without the votes of the towns the relators, not the respondents, were elected): —

First. Because the subscriptions of said towns to the stock of said company had become void, by reason of the fact that ten per cent. of the capital stock had not been actually expended in the construction of the railroad within twelve months from the date of the vote of said towns authorizing said subscription.

Second. Because the votes of the towns for the respondents were not cast by the selectmen, but by one of said selectmen only; and no written authority to the person so casting said vote was exhibited at the time of said election.

There is no doubt that an information may properly be brought by the Attorney-General to try the title of persons assuming to act as directors of a railroad company organized under the laws of this Commonwealth. This form of remedy, it is true, is more usually employed to try the title of persons holding public offices. But it is no less the duty of the Attorney-General, when, in his opinion, the interests of the public require it, to inquire into the validity of the title of officers of corporations organized under its laws. This is especially true of railroad corporations, in the maintenance of which the public generally are interested. (2 Spelling Extra. Rel. section 1831, and cases cited.)

In the present case, however, I do not think the petitioners have stated a case which entitles them to the intervention of this office.

As to the first cause alleged: I do not agree with the contention of the respondents, to wit, that the towns having become associates, under the provisions of Public Statutes, chapter 112, section 34, and in becoming associates having subscribed to the stock of the company, their subscription is not within the provisions of section 49 of the same chapter. It is true that section 48 refers in terms to a subscription authorized by vote under section 46; and it is claimed, therefore, by the respondents, that this section only refers to the case of a town subscribing to the stock of a railroad corporation, and not to the case of a town becoming an associate, under the provisions of section 34. I do not think the distinction is sound. Although under section 47 authority is given to towns to become associates under the provisions of section 34, yet such authority would be of no avail, and would not authorize action unless it were accompanied by a vote of the town authorizing a subscription to the stock; for whoever becomes associated under the provisions of section 34 must, in his subscription, set forth the number of shares to which he subscribes (*vide* section 35). Unless this is done, the person signing the articles of association does not become an associate. Therefore, if a town, under the provisions of section 47, votes to become an associate in a

railroad company, this is not in substitution for the subscription to the stock in the company, as authorized by section 46, but in addition thereto. There must still be a subscription, under the provisions of section 46, in addition to becoming an associate under the provisions of section 47.

While, therefore, it appears that both towns became associates, yet in so becoming associates they subscribed for shares of the stock by votes passed in accordance with the provisions of section 46 ; and such subscriptions became conditioned upon the provisions of section 49. This section provides that a town subscription shall be void "unless actually made by the person authorized within twelve months from said vote, and unless, within the said period, a part thereof is actually paid, or some proceeding is commenced by the corporation to enforce payment thereof, and at least twenty per cent. of the capital stock of the corporation is actually paid in cash, and at least ten per cent. of the capital stock is actually expended by it in the construction of its road."

It is practically conceded that the last condition set forth in this section was not complied with, and that the railroad did not actually expend in cash ten per cent. of its capital stock in the construction of said railroad within the one year from the time of the vote authorizing said subscription. It was stated that certain contracts were made, and certain land and land rights donated, which, if included, would bring the value of the results accomplished up to and beyond said limit of ten per cent. ; but there can be no doubt that the statute is not complied with unless ten per cent. is actually expended *in cash*, in accordance with the terms of the section quoted.

The vital question is, whether the failure to comply with this requirement renders the subscriptions of the towns void, or only voidable. The relators contend that it thereby becomes void and of no effect, and cannot be revived by any act or waiver whatever. The respondents, on the other hand, contend that the failure of performance of this condition only renders the subscription voidable, presumably upon action to that end by the town itself.

It is not claimed that the failure to expend the necessary ten per cent. in cash was due to any fault or omission on the part of the towns. On the other hand, it is not disputed that both towns have duly paid in all the assessments required by the corporation, amounting in all to twenty-five per cent. of their subscriptions ; and that they have appropriated the money necessary to complete their subscriptions, and stand ready and are anxious to go on with the enterprise, and to pay the balance of their subscriptions whenever the same shall be called for. The contention of the relators, therefore, must be that, although the town has complied with every act necessary to be done

by it in becoming a stockholder in the corporation, and is ready to go on with its subscription, yet it must be deprived of its rights as a subscriber because of the non-performance of duty by the other party to said contract of subscription, — to wit, the railroad company.

It would be, to say the least, exceedingly inequitable to hold that a contract, made for the benefit of both the contracting parties, should become void to the injury of one of the parties upon a failure of the other party in respect thereto. I cannot believe that such injustice was the intent of the Legislature. The only reasonable construction to put upon the clause of the statute under discussion is, that it was intended to give the towns the right, at their option, to be relieved of their contract of subscription in case the railroad company was not diligent in going on with the work of construction to such an extent that it failed to expend ten per cent. of the capital for that purpose within twelve months from the time the contract was authorized.

The ingenious suggestion is made, however, by the relators, that some of the conditions set forth in said section are of such character that the non-performance of them would plainly avoid the subscriptions. For example, the first condition is, that if the subscription is not made by the persons authorized to make it within twelve months from the vote of the town, then the subscription is void. This, being a condition precedent to the subscription itself, ought to go to the validity of the subscription; and, if not made within the time limited by the statute, it may well be that such a subscription would be void and not merely voidable. The relators, therefore, contend that if it is conceded that some of the conditions set forth in said section 48 are such as render the subscription void and not voidable, the same is and must be true of all said conditions; and that it cannot be said that the statute is to be construed as setting forth four conditions, the non-performance of some of which render the subscription void, while failure as to others renders it only voidable.

I see no difficulty, however, upon consideration, in so construing the statute that, as to some of the conditions set forth, the non-performance of them renders the subscriptions void, and as to others only voidable. It is true that the word "void" is used but once; but this is only for conciseness of expression. The legal effect of the section is not thereby changed. It is to be construed, notwithstanding that all the conditions are appended grammatically to the single word "void," as though the section read "if the subscription is not made by the persons authorized within one year from the time of the vote it shall be void. And if ten per cent. of the capital stock is not actually expended," etc., "it shall be void."

In other words, the question whether the word "void" is to be construed as meaning void or voidable, is to be determined not by rhet-

orical or grammatical construction of the sentence containing it, but rather upon the consideration of the intent of the Legislature in enacting the conditions. I cannot believe that it was the purpose of the Legislature to put it within the power of a railroad corporation to receive the subscription of a town, take its money, which may well be the whole of the subscription, perhaps misspend it (although no such claim is made in this case), neglect to construct the road, so far that not even ten per cent. is expended therefor within a year; and that thereupon, the town having complied with its part of the contract in full, and the railroad having been remiss in its duty, to declare the contract is to become void to the injury and loss of the town. It would require me to hold that the Legislature intended to punish one party to a contract for the sin of the other party.

We now come to the second point contended for by the relators. As has already been stated, it appeared at the hearing before me that the selectmen of each town, before the annual meeting of the corporation, authorized their chairman to cast the vote of the towns for the respondents as directors. This vote was in writing, but no copy was produced at the meeting. It further appeared that no objection was made at the time the vote was cast by the chairman to his so voting in behalf of his associates; and the objection to the manner of the vote was first taken by one of the committee to count the votes, on inspection of the ballot itself.

This objection is purely technical. It may be a sufficient answer to it to say that it should have been taken *in limine;* for, if it had then been taken, the irregularity might easily have been cured by producing the authority of the selectmen, or by having the selectmen themselves actually present. Such objections are not to be encouraged, and the analogy of proceedings at law do not favor them.

But I see no reason to hold that the vote was irregular. It is suggested by the relators that the language of section 50 is to be construed as requiring the personal presence of the board of selectmen. That section reads as follows: "The selectmen of towns, and such persons as may be authorized by the city council of cities, may represent their respective municipalities at all meetings of corporations in which stock or securities are held, and vote upon all shares of stock owned by them respectively." It is claimed that, inasmuch as this section authorizes the employment of an agent or proxy by city councils only, it must be held to intend that selectmen can only act in a body. It must be remembered, however, that city councils are parliamentary legislative bodies, incapable of acting excepting as legislative bodies, and under parliamentary organization, and that in the nature of things whatever is done by them must be done by an agent. This is not so as to selectmen, who are composed of a smaller number

of men, and can and often do act in *pais*, and not as a parliamentary body.

It would be, in my opinion, unreasonable to hold that the entire board should be present to do a formal act, like the casting of a ballot; and that when one of the selectmen is present, and no more, and he assumes to act for the others, it is to be presumed that he is acting as selectman, and as the representative of the board of which he is a member; and that at least, if objection is made that he is not authorized to do so, it should be made before he votes. He does not act as the agent of the selectmen, or as proxy, in the sense in which that word is used in corporation meetings, but rather as selectman, and as the representative of the board; and it would be, in my opinion, a strained construction of the statutes to require the physical presence of all the members of the board to do an act which can only in fact be done by one.

Upon the whole, therefore, I am clearly of opinion that the relators have not stated such a case in law as entitles them to the relief applied for.

If, however, the interests of the public might be affected injuriously by the continuance of the respondents in office, and it appeared that injustice were being done or even might possibly result thereby, I should hesitate to assume the function of determining the questions of law raised by the relators. It might in such a case, notwithstanding my personal views of the law, be my duty, if it were seriously claimed, as in this case, that the law were the other way, to give the relators the opportunity of having their rights determined by the court.

But this is not such a case. It has no merits. It is an effort to oust from the benefits of their contracts two towns which have performed all that has been required of them under their subscriptions, and stand ready to fulfil their obligations in full. Without considering the many matters alleged and disputed on either side of the hearing, none of which, it appears to me, are strictly material to the question now before me, I am clearly of the opinion, upon the facts not in dispute, that in the sound exercise of the discretion of this office, which I am called upon to exercise in the interests of the public, I should not sign this information for the purpose of trying out the questions stated. It is my duty, therefore, to refuse the use of my name to the information, and to leave the parties to such remedies, if any, as they have the right to institute on their own behalf, if they desire to have the question determined.

HOSEA M. KNOWLTON, *Attorney-General.*

ATTORNEY-GENERAL *ex rel.* ELISHA GREENHOOD *vs.* ERASTUS WORTHINGTON, Jr., *et al.*

SEPT. 21, 1894.

This was a proceeding in the nature of *quo warranto* against the defendants, setting forth that they were illegally elected as park commissioners of Dedham, and asking for judgment of ouster. A hearing was had upon the question of whether the name of the Attorney-General should be used in bringing said information, at which both parties were represented.

The bill sets forth substantially the following facts: —

The town of Dedham, at a meeting held Dec. 30, 1890, duly accepted Stats. 1890, chapter 386, commonly called the Australian ballot act.

At the annual town meeting, held March 5, 1894, the town accepted Stats. 1882, chapter 154, commonly called the park act. In the warrant for said town meeting, at which the park act was accepted, were articles as follows: "To see if the town will elect three competent persons to constitute a board of park commissioners, and determine the manner of their election and prescribe their terms of office." "To see if the town will vote that hereafter the park commissioners shall be elected by ballot at the annual election of town officers, and fix their terms of office."

Under these two articles the town voted to elect by ballot at the next annual meeting (March, 1895), and thereafter each year at the annual meeting, three park commissioners; and that the term of office should be one year each.

A special town meeting was held on Monday, July 30, 1894, the warrant for which contained an article as follows: "To see if the town will rescind the whole action taken at the last annual meeting under articles 29 and 30 (the articles above quoted) of the warrant of said meeting relating to park commissioners." Also articles similar in form to those above quoted in the warrant for the annual meeting.

At this meeting the town passed the following vote: "*Voted*, To rescind the whole action taken at the last annual meeting under articles 29 and 30 of the warrant of the last meeting relating to park commissioners." The meeting then voted: "To elect by a ballot in form of the Australian ballot at an adjournment of this meeting, to be held Aug. 6, 1894, at which meeting the polls shall be open from 12 noon until 9 P.M., three park commissioners, to hold office until the annual March meeting of 1895; and that hereafter three commissioners shall be annually elected by ballot for the term of one year at the regular March meeting of the town in the same manner as other

town officers are elected. And further *Voted*, That a caucus of the citizens be held in the town hall, Aug. 2, 1894, at 7.30 o'clock P.M., for the purpose of nominating at least six candidates for the office of park commissioners for the above term; at which caucus the check list shall be used and the nominations made by marking; the time allowed for said marking to be one hour at least. *Voted*, That the town clerk be instructed to call said caucus."

The special town meeting thereupon adjourned until Aug. 6, 1894, at 12 o'clock noon.

The caucus provided for by this vote was held in accordance with the terms of the vote. The call was issued by the town clerk, who called the caucus to order. A marking list was opened, but no name was permitted to go upon the list until it was accepted by a majority of those present. Fifteen names were in that manner placed upon the marking list, and each voter was permitted to nominate six candidates for the three places of park commissioners. The respondents in this petition were three of those so chosen. Another one of those so chosen subsequently declined to have his name used as a candidate.

At the adjourned town meeting, on Monday, Aug. 6, 1894, two persons acting as "ballot clerks" were present with ballots which had been furnished to them by the town clerk. The ballots were folded, and on one of the inside pages were printed the five names chosen at the caucus, with directions at the head of the list to vote for three. The voters expressed their choice by crossing the names of such persons as they favored. Inquiry was made of the moderator whether he would receive ballots containing the names of three candidates for park commissioners independent of those furnished by the clerk. He did not decline to receive them, but said they would be put in a separate box, and if the number of them affected the legality of the election their validity would be hereafter considered. Under this form of election the respondents were chosen to the office of park commissioners.

The relator claims that the election was illegal, and bases his claim upon the following grounds, none of which, in my opinion, are tenable: —

1. It is claimed that the Stats. 1882, chapter 154, provided that the park commissioners should be elected by ballot; and, even if this were not so, that the special town meeting had voted that they should be chosen by ballot; and that this being so, the provisions respecting the election of town officers under the Australian form of voting must be observed. It is conceded by the respondents that none of the provisions of Stats. 1893, chapter 417 (the Australian ballot act), were observed, excepting that the balloting was done in

the manner above indicated. And it is further conceded that, if the law required these officers to be elected under the provisions of Stats. 1893, chapter 417, the Australian ballot law, their election was illegal.

The Park Act, Stats. 1882, chapter 154, provides only that any town which accepts the provisions of the act may "elect" three competent persons as park commissioners. It can scarcely be claimed that the word "elect" is to be construed as meaning "elect by ballot." Pub. Stats., chapter 27, section 78, provides for the choosing of town officers. Section 80 provides that certain officers therein named shall be elected "by written ballots, and the election of all other town officers" shall be "in such mode as the meeting determines." These sections of the Public Statues were repealed by Stats. 1893, chapter 417; but section 274 of the last-named act contains substantially similar provisions. It cannot be said, therefore, that the "election" of town officers necessarily implies "election by ballot;" for the statutes have plainly prescribed that certain town officers shall be elected by ballot, and that all others may be elected in such manner as the town may determine.

It is claimed, however, that Stats. 1893, chapter 417, section 293, has changed the law in this respect, inasmuch as that section provides that in "towns which have accepted the provisions of chapter 386 of the Acts of the year 1890 . . . nominations of town officers to be elected by ballot shall be made . . . and elections of all such officers shall be conducted in accordance with the provisions" of this act; to wit, the Australian system of voting. It is claimed that under this section all officers which the town may be called upon to elect, if the voters determine that those officers shall be elected by ballot, must be voted for under the provisions of the Australian ballot act; and that, inasmuch as the town meeting at Dedham voted to elect the park commissioners by ballot, it must necessarily be by the Australian form of voting.

But the section under consideration is obviously to be read in connection with the other sections of the same act. Section 274, as above quoted, provides that certain officers shall be elected by ballot, and that other officers may be elected in such manner as the town may determine. The section under consideration following this must, therefore, be taken to mean that all town officers, whose election is required to be by ballot, shall be under the provisions of the Australian ballot act. There is nothing in any provision of law, nor in any previous vote of the town, requiring the park commissioners to be elected by ballot. They, therefore, could be elected by the town in such manner as it determined.

It is to be observed that the vote of the town was not to elect the officers by the Australian manner of voting, or simply by balloting,

either of which features might have required the use of the system of voting required by Stats. 1893, chapter 417. The vote of the town was to elect them "by a ballot in the form of the Australian ballot." The town had a right to choose them by a *viva voce* vote, by a marking list, by nomination and motion, or by what may be called the old-fashioned system of voting. None of these were prohibited under any provision of law. It was voted to adopt a system in which some features of the Australian method of voting were incorporated; but it did not and could not be deemed by its vote to have decided upon the Australian method of voting with all its provisions.

It cannot be said, as was urged by the relator, that freedom of choice was interfered with by the method established, whatever irregularities may have existed in the caucus, if any. That was a voluntary affair, and bound no voter. It does not appear, and in fact no such contention was made, that under the system adopted every voter did not have a right to vote for whom he pleased, by writing the name of his candidate in the ballot, and putting a cross against the same; nor even that any prohibition against the use of ballots not furnished by the town clerk was attempted by the authorities in charge of the meeting. The voters were, it is true, called upon to vote in a particular way. This, however, is true of every form of election. It cannot be said that a ballot is not a fair one because the voter is required to express his preference in any particular way, if his right of expressing his preference is unlimited.

Upon the whole, therefore, I cannot agree with the contention of the relator that the manner of electing the park commissioners was in violation of any of the statutes of the Commonwealth.

2. It is further claimed that when the town voted at the annual meeting to elect park commissioners for the first time at the next annual meeting, to wit, in March, 1895, it exhausted its powers, and could not rescind its vote in that respect. It would be, in my opinion, an extraordinary proposition to deny to a town the right to alter or rescind its action from time to time according to the will of the voters, provided always that due notice of the proposed action were given in the warrant. I know of no rule of law which forbids a town to rescind a vote once passed by it, especially when the vote relates to a method of procedure, and the rescission precedes the execution of the method previously determined upon.

3. It is also claimed that the action of the town in electing the respondents for the term of seven months, or until the next annual election, accompanied by a vote that thereafterwards commissioners should be elected for the term of one year at the annual town meeting, was *ultra vires*, for the reason that the town had no right to fix a period of service for the commissioners of less than one year, or a

different period of service for one board from that to be fixed for a succeeding board. If this claim were well founded, inasmuch as the town had the right to accept the park act at any meeting, regular or special, it would follow that, if the town proceeded to elect commissioners under the park act, it would be obliged to elect them for a year from the time of the special election, thus making it necessary to hold special elections every year, in order that the period of a year should be complete; or to wait until the next annual election after the acceptance before electing commissioners, and thus lose the benefits of the act for the greater part of a year.

It seems to me that sound sense requires me to hold that, when the town had settled upon its scheme relating to the time of election and term of office of its commissioners, it must be taken to have the right to proceed thereupon to elect commissioners to hold office until the time for the regular election fixed by the scheme. This is the practice in every corporation, which provides by its by-laws for the time of electing its officers and the term of their office. It gives, it is true, to the first board a shorter term; but inasmuch as that shorter term is only for the purpose of establishing the scheme as arranged by the town meeting, and gives the town the benefits of the act as soon as it is accepted by the town, I do not think the election of these respondents should be disturbed by this consideration.

4. When the special town meeting met by an adjournment for the purpose of electing park commissioners, a motion was made to adjourn the meeting. The moderator refused to entertain the motion, and ruled it out of order. It is claimed that the meeting was illegally held, for the reason that the moderator erred in refusing to entertain the motion. Nothing, however, is better settled than that courts will not disturb the results of deliberative bodies, otherwise regular, by reason of misinterpretation of parliamentary law by the presiding officers.

Upon the whole, therefore, I am of opinion that the relators have not stated a case which entitles them to relief. If rights were seriously to be jeopardized by the continuance of the respondents in office, and irregularity of proceedings imperilled, it might be my duty, notwithstanding my own opinion, to give the relator the opportunity of having the regularity of the election settled by the courts; but it is well settled that the validity of the acts of the respondents cannot be collaterally called in question, they having been chosen by the town at a meeting called for that purpose, and being at least *de facto* officers of the town.

HOSEA M. KNOWLTON, *Attorney-General.*

ATTORNEY-GENERAL *ex rel.* LUCY M. GREEN *vs.* THE CHILDREN'S AID SOCIETY.

(By vote of the governor and council, the petition of Lucy M. Green of Worcester to His Excellency, petitioning that the Children's Aid Society be cited to appear and show cause why its charter should not be annulled, was referred for action to the Attorney-General. After a full hearing of the case, the following communication was sent to His Excellency.)

Nov. 16, 1894.

To His Excellency the Governor and the Honorable Executive Council.

I have the honor to acknowledge the receipt of the petition of Lucy M. Green to the governor, which by vote of your honorable body was referred to this office.

I notified the parties in the matter of the petition to attend for a hearing upon the same, and have heard such witnesses and examined such documents as the parties submitted for my consideration. Upon consideration of the whole evidence submitted I have determined, in the exercise of the discretion imposed upon me, to refuse the use of the name of the Attorney-General to an information against the Boston Children's Aid Society, as prayed for in said petition; and it seems proper that I should submit to your honorable body my reasons therefor, with some suggestions that have occurred to me in my examination of the matter.

The Boston Children's Aid Society, against which the petition asks for an information, was chartered by Stats. 1865, chapter 97. By the terms of that chapter the corporation was authorized to provide temporary homes for vagrant, destitute and exposed children of tender years in the city of Boston and its vicinity, and to provide for them such other and further relief as might be deemed advisable. By section 4 of said chapter the directors were authorized in their discretion "to accept a surrender in writing by the father, or where there is no father having his legal domicile within the Commonwealth, by the mother . . . of any child or children to the care and direction of said institution." By section 5 of the same chapter the directors have authority "to consent to the adoption of any child which shall have been surrendered to the institution as aforesaid." Provisions are made in the same section relating to the manner of such adoption.

It appeared that the petitioner, Lucy M. Green of Worcester, a widow, was the mother of two children, Paul Revere Green and Cora May Green, aged respectively seven and ten years at the time of the surrender hereinafter set forth; that on the twenty-sixth day of June, 1889, by paper writings, a copy of one of which is herewith submitted, the said Lucy M. Green purported to surrender said

children to said society. The society thereupon received said children into its care, and, as I am informed, acting under the authority given to said society by its charter, caused them to be adopted in families, the names and residence of which were not disclosed. Soon after the execution of said agreements the petitioner, Mrs. Green, claimed that she was induced to sign said agreements under a misunderstanding as to the legal effect of the instrument, and by reason of misrepresentations made to her by the agent of the society as to its purpose in taking them into its custody, and asked the society to return the children to her. The society refused to return the children, and has refused since then, and still refuses, to disclose the residence of the children, or to permit the mother to see them, excepting upon certain conditions and limitations, as hereinafter stated.

Since the filing of the petition submitted to me, Mrs. Green has succeeded in ascertaining the residence of the son, and has recovered possession of him and now has him with her at her home in Worcester. The residence of the daughter is still unknown to her.

Various legal proceedings have been instituted by Mrs. Green, among which was an action of tort for damages against the society for abduction of her children, which is still pending. In the course of negotiations entered into for the purpose of settling the suit, the society proposed to Mrs. Green that if she would in some formal manner approve and ratify her surrender of the children, and assent to the adoption proceedings already entered into by the society, it would permit her to see the children at intervals, in the presence of some officer of the society, — she bearing a portion of the expense of travel of the children to the place of interview. This proposition was declined by Mrs. Green, and no other opportunity to see the children has been offered by the society. In 1892 Mrs. Green filed a petition for a writ of *habeas corpus* against the society in the supreme judicial court for the county of Suffolk, claiming that the detention of said children was unlawful, alleging as reasons therefor that at the date of signing the release above referred to she was misled and deceived by the false and fraudulent statements made to her in regard to the purpose of the society, and that she signed it under a mistake of the facts as to its contents. This petition was duly heard before Mr. Justice Lathrop of the supreme judicial court on the tenth day of November, 1892, and after hearing the parties fully and their evidence he refused the petition, and filed in the case a memorandum as follows: —

"I find in this case that the petitioner surrendered her children to the respondent, and to its care and direction, until each should respectively attain the age of twenty-one years, by instruments in writing, duly signed by her and with full knowledge of the contents

of said instruments, and that no false or fraudulent representations were used to induce her to sign said instruments. I further find that said children are not improperly restrained of their liberty, and that their welfare does not require that the prayer of the petition should be granted."

The next step taken by the petitioner, so far as I am informed, was the filing of the petition with the governor, which has been referred to me. In that petition she asks that the Attorney-General be requested to file in the supreme judicial court an information against said society, praying that its charter, hereinbefore granted, be annulled, and assigning as reasons therefor the abuse of the corporate rights granted to it under the statute above set forth. The specifications of the alleged abuses of corporate powers were substantially the same as the reasons assigned in her petition for *habeas corpus* for the alleged unlawful detention of the children by said society; and the further allegation that the society has refused her permission to see her children, or to furnish her knowledge of their whereabouts.

Conceding for the purpose of the hearing that the allegations in the petition, if proved, would be sufficient to authorize proceedings for the annulling of the charter of the society, I am yet of opinion that the exercise of the discretion imposed upon me in the matter of signing informations should not be exercised in favor of Mrs. Green.

It is true the finding of Judge Lathrop, above quoted, was no part of the judgment of the court, and that in a proceeding between the Commonwealth and the society it would not be conclusive, nor a bar to an information for annulling the charter, for the reason that it is *res inter alios.* The question of signing an information, however, is one addressed to the discretion of the Attorney-General; and it seems clear to me that, after the exact question at issue has been fully heard and passed upon on its merits by a justice of the supreme judicial court, that fact should determine the question of the exercise of the discretion entrusted to me. It would be asking the court to re-try a question fully heard and substantially determined upon its merits. Some additional evidence, which it is said was not produced before the court, was submitted to me, but in my opinion it was not sufficient to disturb the finding of the court, and if produced before the court would in no way have affected its decision.

Therefore, assuming, as I think I should, that the finding of the court should govern the exercise of my discretionary powers, and, as to me it is practically conclusive upon the allegations of fraud or mistake upon the part of the petitioner, I am unable to find upon the evidence any violation or abuse of its charter by the society. It had,

under the terms of the statute above quoted, the right to receive the surrender of the children and to cause their adoption elsewhere. The legal effect of such surrender was to give the entire control of the children to the society, and to take away any rights the mother had to see them or to know of their whereabouts. By her instrument of surrender she renounced any such rights she might have had absolutely and forever. Her position after her surrender was no better than that of any other person not bound by natural ties to the children. Whatever may be said as to the expediency or justice of depriving her of any knowledge of or communication with them, it is clear that the acts of the society are within the terms of its charter, and such deprivation affords no ground whatever for annulling its corporate existence. (Dumain *v.* Gwynne, 10 Allen, 270.)

I may be permitted, however, to submit one or two suggestions for the consideration of the council: —

First. — I am much impressed with the fact that no formalities or safeguards of any kind are required in connection with the execution of the instruments of surrender by the parent of the child surrendered. Nothing seems to be required under the law as it stands but the signature of the parent. Inasmuch as it is an act of far-reaching and vital importance in its consequences, and one which absolutely sunders the natural tie between the parent and the child, and, moreover, is an act usually done under circumstances of great mental strain on the part of the parent, it seems to me but just to require that there should at least be as much formality in the execution of such an instrument as is now required in the transaction of real estate. It is not my province to make specific recommendations, but I regard it as a matter worthy of the consideration of the council.

Second. — Whether there should not be a provision in the laws of the Commonwealth, when children are surrendered by their parents to a charitable institution, providing for some opportunity of communication between the children and their parents after the surrender, is a question upon which much may be said upon both sides, and which I beg to submit for the consideration of your honorable body. This society is not the only institution which is authorized to receive the surrender of children by their parents. I am informed that similar authority is conferred upon some of the State charitable boards, and perhaps on the officers of some cities. It is urged upon the one hand that it would be dangerous, and even subversive, to the welfare of the children, if in all cases the parent surrendering had the right thereafterwards to be in communication with the children so surrendered. But there is much weight in the suggestion, which was forcibly made

before me, that to deny the parent all right of knowledge of or communication with the child which he or she had been obliged by stress of circumstances to surrender the possession of, is cruel and unnatural. Without expressing any opinion upon the merits of the controversy, I beg to submit the matter for the consideration of your honorable body.

It should be understood that as to both of these suggestions there is no remedy but legislation.

Very respectfully yours,

HOSEA M. KNOWLTON, *Attorney-General.*

INFORMATIONS.

---

1. At the Relation of the Treasurer and Receiver-General.

(*a*) For the non-payment of corporation taxes for the year 1893, informations were brought against the —

A. M. McPhail Piano Company. Tax paid and information dismissed.
Adams Drug Company. Enjoined.
Attleborough, North Attleborough and Wrentham Street Railway Company. Receiver appointed.
Boston Advertising Company. Tax paid and information dismissed.
American Gospel Publishing Company. Enjoined.
Cassino Art Company. Tax paid and information dismissed.
Chase Elevator and Manton Windlass Company. Enjoined.
Choate Drug and Chemical Company. Tax paid and information dismissed.
Clemons Electrical Manufacturing Company. Pending.
Crystal Emery Wheel Company. Tax paid and information dismissed.
D. C. Storr Furniture Company. Tax paid and information dismissed.
East Boston Furniture Company. Enjoined.
Edwards Grain Company. Pending.
Engraver and Printer Company. Tax paid and information dismissed.
Foundry Supply Company. Enjoined. Tax was afterwards paid and injunction dissolved.
Eureka Ruling and Binding Company. Tax paid and information dismissed.
Franklin Educational Company. Tax paid and information dismissed.
H. A. Williams Manufacturing Company. Tax paid and information dismissed.
Haverhill Roller Toboggan Company. Tax paid and information dismissed.
Jamesville Manufacturing Company. Pending.

Lamprey Boiler Furnace Mouth Protective Company. Tax paid and information dismissed.
Lexington Print Works. Tax paid and information dismissed.
Lynn Ice Company. Tax paid and information dismissed.
Moulton Leather Company. Tax paid and information dismissed.
Neograph Publishing Company. Tax paid and information dismissed.
National Fireworks Company. Enjoined.
New England Folding Box Company. Tax paid and information dismissed.
New England Printing Telegraph Company. Tax paid and information dismissed.
New England Supply Company. Placed on file.
New York & Boston Inland Railroad Company. Enjoined.
Norton Iron Company. Tax paid and information dismissed.
Old Spain Co-operative Company. Tax paid and information dismissed.
Pearson Box and Moulding Company. Tax paid and information dismissed.
Pleasant Valley Live Stock Association. Enjoined.
Queen Hotel Company. Tax paid and information dismissed.
Rouillard Reid Company. Pending.
Sanders Musical Instrument Company. Tax paid and information dismissed.
Sterling Emery Wheel Company. Tax paid and information dismissed.
T. F. Little Oil Company. Tax paid and information dismissed.
Thompson & Odell Company. Tax paid and information dismissed.
Traveller Publishing Company. Tax paid and information dismissed.
W. C. Young Manufacturing Company. Tax paid and information dismissed.
W. E. Howe Company. Tax paid and information dismissed.
Woodward & Brown Piano Company. Tax paid and information dismissed.
Worcester Co-operative Meat Market. Tax paid and information dismissed.
Quaboag Steamboat Company. Tax paid and information dismissed.
Lynn Press Publishing Company. Enjoined.
Brookfield Brick Company. Tax paid and information dismissed.
Weymouth Light and Power Company. Tax paid and information dismissed.
Boston Times Company. Tax paid and information dismissed.
Whitman Electric Company. Tax paid and information dismissed.
W. M. Colby Company. Enjoined.

C. W. Mutell Manufacturing Company. Tax paid and information dismissed.

L. A. May Company. Pending.

Nantucket Electric Light Company. Placed on file.

(*b*) For failure to file the returns for 1894 required by section 38 of chapter 13 of the Public Statutes, informations were brought against the —

Andover Co-operative Creamery Association. Return filed. Information dismissed.

Atlantic News Company. Return filed. Information dismissed.

Bakers' and Confectioners' Co-operative Association. Enjoined.

Berkshire Electric Light, Heat and Power Company. Return filed and information dismissed.

Brockton Publishing Company. Placed on file.

Chisel Edge Nut Lock Company. Return filed and information dismissed.

Clark W. Bryan Company. Return filed and information dismissed.

D. C. Storr Furniture Company. Return filed and information dismissed.

Dorchester Chemical Company. Return filed and information dismissed.

E. B. Tinkham Shoe Company. Return filed and information dismissed.

East Boston Furniture Company. The company having been enjoined in another suit brought by the Attorney-General, the information was put on file.

Guptill Company. Pending.

Hercules Foundry Company. Return filed and information dismissed.

J. L. & T. D. Peck Manufacturing Company. Return filed and information dismissed.

L. A. May Company. Return filed and information dismissed.

Leach & Grant Company. Enjoined.

Millis Water Company. Return filed and information dismissed.

Nashua, Acton & Boston Railroad Company. Pending.

Phœnix Rattan Company. Return filed and information dismissed.

Pleasant Valley Live Stock Association. Return filed and information dismissed.

Pratt Manufacturing Company. Return filed and information dismissed.

Reading Water Company. Enjoined.

Revere Water Company. Return filed and information dismissed.

Salem Press Publishing and Printing Company. Return filed and information dismissed.
Traveller Publishing Company. Return filed and information dismissed.
United States Fireworks Company. Placed on file.
Waltham Tribune Company. Return filed and information dismissed.
West End Supply Company. Return filed and information dismissed.
Woburn Electric Light Company. Return filed and information dismissed.

2. At the Relation of the Commissioner of Corporations.

(*a*) For failure to file the return required by section 54 of chapter 106 of the Public Statutes —

Johnson Manufacturing Company. Return filed and information dismissed.
Monson Woolen Company. Return filed and information dismissed.
James Hunter Machine Company. Pending.
Warren Thread Company. Pending.

(*b*) Under the provisions of chapter 341 of the Acts of 1891, for failure to file the return for the year 1894 required by said chapter —

The American Sugar Refining Company. Return filed and information dismissed.

(*c*) Under the provisions of chapter 541 of the Acts of 1894, for failure to file the return for the year 1894 required by chapter 341 of the Acts of 1891 —

The American Sugar Refining Company. Return filed and information dismissed.

3. At the Relation of the Insurance Commissioner against the —

China Mutual Insurance Company. Bill to compel the company to cease the issue of policies on which the insured paid a fixed premium and agreed to waive all right to dividends. The information was not filed, as the company agreed to stop the issue of the objectionable policies.

4. At the Relation of Private Persons.

Attorney-General *ex rel.* Matthew H. Cushing *et al. vs.* Matthew H. Cushing. Information to appoint trustees under a public charity. Heard, and use of name granted.

Attorney-General *ex rel.* Frank A. Gardner *vs.* Town of Nantucket. Information to abate a public nuisance. Heard, and use of name granted.

Attorney-General *ex rel.* Charles H. Moulton *et al. vs.* License Commissioners of the City of Waltham. Information to test the legality of the election of the License Commissioners of Waltham. Heard, and use of name granted. Information dismissed.

Attorney-General *ex rel.* Inhabitants of Petersham *vs.* Adonai Shomo. Information to forfeit charter for abuse of public charity. Heard, and use of name granted.

Attorney-General *ex rel.* Elvira Willis *et al. vs.* Albert R. Wade *et al.* Information to try the title of the relators to certain offices in a corporation by the name of the Wales Home. Heard, and use of name granted.

Attorney-General *ex rel.* Aldermen of Boston *vs.* Brookline Gas Light Company. Information to abate a public nuisance. Heard, and use of name granted.

Attorney-General *ex rel.* Dorchester Historical Society and North Dorchester Improvement Society *vs.* City of Boston. Information for abuse of public charity. Heard, and use of name granted.

5. Informations Ex-Officio.

Attorney-General *vs.* The New England Construction Company *et al.* Public nuisance. Information dismissed.

Applications Refused for Leave to File Informations in the Name of the Attorney-General.

[For full text of opinions giving reasons of refusal, see page 107.]

Attorney-General *ex rel.* Charles C. Sanderson *et al. vs.* George W. Wells *et als.* Petition for use of name for information in the nature of quo warranto. Heard, and use of name denied.

Attorney-General *ex rel.* Elisha Greenhood *vs.* Erastus Worthington, Jr., *et al.* Petition for use of name for information in the nature of quo warranto. Heard, and use of name denied.

Attorney-General *ex rel.* Lucy M. Green *et al. vs.* Boston Children's Aid Society. Petition for use of name for information in the nature of quo warranto. Heard, and use of name denied.

Attorney-General *ex rel.* Everett B. Allen *et al. vs.* William B. Medlicott *et al.* Use of name refused without a hearing.

GRADE CROSSINGS.

Since the date of the last annual report notice has been served upon the Attorney-General of the following petitions for the appointment of special commissioners, under chapter 428 of the Acts of 1890, relating to the abolition of grade crossings: —

Berkshire County.

Lee, Selectmen of town of, petitioners. New York, New Haven & Hartford Railroad. Pending.

Bristol County.

New Bedford, Mayor and Aldermen of city of, petitioners. Old Colony Railroad and New York, New Haven & Hartford Railroad. Pending.

Taunton, Mayor and Aldermen of city of, petitioners. Old Colony Railroad. Pending.

Fall River, Mayor and Aldermen of city of, petitioners, New York, New Haven & Hartford Railroad Company. Pending.

Middlesex County.

Natick, Directors of Boston & Albany Railroad, petitioners. Pending.

Newton, Mayor and Aldermen of city of, petitioners. Boston & Albany Railroad. Pending.

Norfolk County.

Dedham, Selectmen of town of, petitioners. Boston & Albany Railroad. Pending.

Braintree, Directors of New York, New Haven & Hartford Railroad, petitioners. Pending.

Plymouth County.

Wareham, Directors of New York, New Haven & Hartford Railroad, petitioners. Pending.

Marshfield, Directors of New York, New Haven & Hartford Railroad, petitioners. Pending.

Worcester County.

Warren, Directors of Boston & Albany Railroad, petitioners. Pending.

The following corporations having made voluntary application to the supreme judicial court for dissolution, and having given the Attorney-General due notice of their petition, and the Tax Commissioner having certified that they were not indebted to the Commonwealth for taxes, the Attorney-General waived the right to be heard: —

Citizens' Steam and Gas Light Company.
Alliance of the Commonwealth.
Ayer Furniture Company.
Waterman & Bee Corporation.
Burbank-Swart Company.
Department Store Company.
People's Electric Company.
Thomas E. Proctor Leather Company.
Bacon Paper Company.
North Atlantic Steamship Company.
Faneuil Hall Insurance Company.
Bay State Paper Box Company.
Indian Orchard Mills.
Essex Steam Mill Company.
Central Mica Mining Company.

The following corporations, reported to this department by the Insurance Commissioner, have been required to file the report due for the year 1894, under the provisions of chapter 427 of the Acts of 1888: —

Masonic National Health and Accident Association.
Odd Fellows' Protective Union.
Ancient Order of Columbus.
Howard Relief Association.
Hibernians, Division No. 6.
Hibernians, Division No. 8, Bristol County.
Independent Chevaliers and Ladies of Industry.
Northern Legion.
United Pythian Brotherhood.
United American Mechanics.
American Relief Fund Association.
L. G. Burnham Mutual Relief Association.
Franco-American Union.
Haverhill Hebrew Beneficiary Association.
Brookline Police Mutual Aid Association.
Italia Societa de Mutuo Soccorso Birsaglem, etc.

Knights of St. Peters.
Lawrence Police Relief Association.
Letter Carriers' Relief Association.
Malden Mutual Benefit Association.
Men's Mutual Benefit Association of Fourth Presbyterian Church.
Retail Clothing Salesmen's Benefit Association.
St. Joseph Societe de Secours Mutuels.
St. Michael Mutual Benefit Society.
St. John the Baptist Benevolent Society.
St. Jean the Baptist Society.
Wenham Mutual Benefit Association.
Whitman's Firemen Relief Association.
Economic Accident Insurance Company.

The following foreign corporations doing business in this Commonwealth, and reported to this department by the Commissioner of Corporations for violation of the provisions of section 1, chapter 341 of the Acts of 1891, have been required to file the returns due under the provisions of said act: —

Auto Vending Company.
Brooks Bank Note Company.
Bufford Lithographic Company.
Campbell Electrical Supply Company.
Cocoa Coffee Company.
Cunard Steamship Company Limited.
E. J. Hickey Company.
Electrical Gas Machine Company.
Essex Chair Company.
Five Cent Parcel Delivery Company.
General Electric Company.
George F. Blake Manufacturing Company.
Goodyear Shoe Machinery Company.
Guastavino Fire Proof Construction Company.
Hartford Cold Spring Company.
Haverhill District Messenger Company.
Hot Water Fountain Company.
Houston Cure Company.
Hudson and Chester Granite Company.
Hughes Water Tower and Life Saving Company.
Knox & Percheron Horse Company.
Lamson Consolidated Store Service Company.

Metropolitan Construction Company.
Miles Pneumatic Tube Company.
Morse Manufacturing Company.
Moxie Nerve Food Company.
New England Automatic Gas Company.
New England Engineering Company.
Noble Stove Company.
Peabody Trading Company.
Perkins & Mundy Company.
Puritan Publishing Company.
Seth Norwood Shoe Company.
Shooting and Fishing Publishing Company.
Smith Vegetable Compound Company.
Standard Boot and Shoe Lasting Company.
Standard Glass Insulator Company.
Thomson-Houston Electric Company.
Thomson-Houston Motor Company.
United States Mailing Case Company.

The following corporations, reported to this department by the Commissioner of Corporations for failure to file their certificate of condition, as provided by section 54, chapter 106, of the Public Statutes, have been required to make the returns in question: —

Chelsea Wire Fabric Rubber Company.
Thorp & Martin Manufacturing Company.
Childs & Kent Express Company.
Johnson Manufacturing Company.
Lynn Ice Company.
Hoxie Mineral Soap Corporation.
Monson Woolen Company.

The following corporations, reported to this department by the Tax Commissioner for delinquency in making their tax returns under section 38, chapter 13 of the Public Statutes, have been compelled, without the necessity of a suit at law, to comply with the statute: —

Adams Drug Company.
Albany Street Freight Railway Company.
Albermark Slab Company.
American Confectionery Company.
American Gospel Publishing Company.

Amesbury Opera House Company.
Amawam Manufactory.
Arena Newspaper Company.
Arlington Co-operative Association.
Baker & Gay Company.
Bankers and Merchants Telegraph Company of Massachusetts.
Barnaby Manufacturing Company.
Belmont Manufacturing Company.
Boston Advertising Company.
Boston & Revere Electric Street Railway Company.
Boston Lighterage and Towing Company.
Boston Marble and Granite Company.
Brookfield Brick Company.
Cambridge Baking Company.
Cape Poge Ferry Company.
Carew Freestone Company.
Cassino Art Company.
Century Stove Company.
Cochichewick Lake Ice Company.
Coleman Cotton Mill.
Columbia Rubber Company.
Day Cordage Company.
Eastern Construction Company of Boston.
Elastic Box Toe Co-operative Association.
Engraver and Printer Company (Corporation).
Essex County Street Railway Company.
Everett Herald Publishing Company.
Every Saturday Publishing Company.
Fairhaven Water Company.
Fall River Collateral Loan Association.
Fall River Daily Globe Publishing Company.
Fall River Loan and Trust Company.
Franklin Water Company.
Gloucester, Essex & Beverly Street Railway Company.
H. A. Lothrop Manufacturing Company.
Haverhill Gazette Company.
Haverhill Hat Company.
Haverhill Iron Works Company.
Haverhill Paper Company.
Hero Cough Syrup Company.
Highland Ice Company.
Holyoke Bar Company.
Hood Brothers Company.

J. G. Boutell Company.
J. W. Richardson Shoe Company.
James Russell Boiler Works Company.
Knowles Freeman Fish Company.
Lawrence Flyer and Spindle Works.
Lawrence Improvement Company.
Lawrence Trust Company.
Marlborough Times Publishing Company.
Massachusetts Publishing Company.
Meigs Elevated Railway Construction Company.
Merrimac Paper Company.
Metacomet Manufacturing Company.
Middlesex Land Company.
Mitchell Manufacturing Company.
Mrs. C. H. King Company.
Mutual Gas Light Company of West Springfield.
Nantucket Electric Street Railway Company.
National Fire Works Company.
Naukeag Water Company.
New England Folding Box Company.
New Nation Publishing Company.
Norton Iron Company.
Onset Water Company.
Odd Fellows Hall Association.
Pearson Box and Moulding Company.
Pierson Fruit and Produce Company.
Postal Telegraph Cable Company.
Prang Educational Company.
Quaboag Steamboat Company.
Rogers & Osgood Hat Company.
Roxbury Central Wharf Company.
S. Worthington Paper Company.
Salem, Beverly and Danvers Towboat Company.
Scituate Water Company.
Southern Berkshire Cheese Company.
Sparrell Print, The.
Spencer Hotel Corporation.
Standard Worsted Company.
Strange Forged Twist Drill Company.
Studly Investment Company.
Subterranean Cable Company of Boston.
Suburban Railroad Company.
Union Glass Company.

Union Publishing Company of Boston.
United States Tubular Ball Company.
United States Watch Company.
Wamesit Steam Mill Company.
West Chop Steamboat Company.
Westfield Brick Company.
Wheeler Cotton Mills.
Williamsburg Co-operative Creamery Association.

CASES ARISING UNDER THE COLLATERAL INHERITANCE TAX ACT.

[Statutes 1891, chapter 425.]

Minot *v.* Winthrop; West *v.* Phillips; Williams *v.* Bowditch; — Argued together before the full court, and the act decided to be constitutional. See 162 Mass.

Henry Storrs, executor of will of Julia Brannan, *v.* New Jerusalem Tract Society *et al.* Petition to probate court of Hampden County. Answer filed. Decree.

Evelyn Emerson, petitioner, *v.* Henry M. Phillips, treasurer of the Commonwealth, *et als.* Petition to the supreme judicial court of Norfolk County. Notice of petition acknowledged, and answer filed.

Inhabitants of the town of Essex *v.* Francis A. Brooks, executor. Motion by defendant in the superior court, Suffolk County, that the treasurer of the Commonwealth interplead. Motion denied, after hearing.

Joseph H. Curtis, executor of the will of Mary A. Blood, *v.* Henry M. Phillips, treasurer of the Commonwealth, *et al.* Petition to the probate court of Suffolk County.

Otis Norcross, *et al.* executors and trustees under the will of Andrew Cushing, *v.* Henry M. Phillips, treasurer of the Commonwealth. Petition to the probate court of Suffolk County.

Francis A. Brooks, executor, *v.* Henry M. Phillips, treasurer, *et al.* Petition to the probate court of Suffolk. Notice of petition acknowledged and answer filed. Decree.

William H. Anderson *et al.*, executors and trustees, *v.* Henry M. Phillips, treasurer. Petition to probate court of Middlesex. Answer filed. Decree.

Joseph W. Stevens, administrator, *v.* Henry M. Phillips, treasurer. Petition to the probate court of Franklin. Answer filed. Decree.

John D. Bryant, administrator, *v.* Henry M. Phillips, treasurer. Petition to the Suffolk probate court. Answer filed. Decree.

Frederick A. Schermerhorn, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petition to the Berkshire probate court. Answer filed. Decree.

B. F. Kendrick, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petition to the Middlesex probate court. Notice of petition acknowledged and right to hearing waived. Decree.

John F. Brown *et als.*, executors, petitioners, *v.* Henry M. Phillips, treasurer. Petition to Norfolk probate court. Answer filed.

Horace E. Ware, executor, petitioner, *v.* Henry M. Phillips, treasurer, *et als.* Petition to Norfolk probate court. Answer filed and decree.

Edward P. Loring, administrator, petitioner, *v.* Attorney-General *et als.* Petition to the Middlesex probate court. Notice of petition acknowledged and hearing waived. Decree.

Charles F. Homer, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petitioner to the Middlesex probate court. Notice of petition acknowledged and hearing waived. Decree.

George A. Craig *et al.*, executors, petitioners, *v.* Henry M. Phillips, treasurer. Petition to the Worcester probate court. Answer filed. Decree.

Charles P. Bowditch, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petition to Suffolk probate court. Answer filed. Decree.

Frederick P. Stearns, trustee, petitioner, *v.* Henry M. Phillips, treasurer. Petition to the Middlesex probate court. Notice of petition acknowledged and hearing waived. Decree.

Francis C. Welch, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petition to the Suffolk probate court. Notice of petition acknowledged and hearing waived. Decree.

Moses Williams, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petition to Suffolk probate court. Notice acknowledged and hearing waived. Decree.

George S. Hyde, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petition to Suffolk probate court. Notice acknowledged and hearing waived. Decree.

Charles H. Barrows, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petition to Hampden probate court. Hearing waived. Decree.

John P. Smith, executor, petitioner, *v.* Henry M. Phillips, treasurer. Petition to Hampden probate court. Hearing waived. Decree.

PUBLIC CHARITABLE TRUSTS.

City of Quincy *v.* Attorney-General. Decree in favor of the charity. See 160 Mass. 431.

McAlister *v.* Burgess, executor, *et al.* Decree in favor of the charity. See 161 Mass. 269.

Holmes *et al. v.* Coates. Decree in favor of the charity. See 159 Mass. 226.

Niles, Thomas, *et als. v.* Attorney-General *et als.* Pending.

St Paul's Church, wardens and vestry of, *v.* Attorney-General *et al.* Argued before the full court, and not yet decided.

Worcester City Missionary Society, petitioner, *v.* Attorney-General *et al.* Petition to the probate court of Worcester County for instructions as to the administration of a public charity. Notice of the petition acknowledged and hearing waived. Decree.

Thomas F. Scully, petitioner, *v.* John J. Williams. Petition to the supreme judicial court of Middlesex for leave to convey real estate. Notice of the petition acknowledged and hearing waived. Decree.

The Trustees of Donations to the Protestant Episcopal Church, petitioners. Petition to the supreme judicial court of Norfolk County to release lands held in trust. Notice of petition acknowledged and hearing waived. Decree.

Albert Weber *v.* John J. Bryant *et al.* Bill in equity in supreme judicial court of Suffolk. Argued, and decree in favor of the charity. See 161 Mass. 400.

Julia M. Moseley *et al.*, executors, petitioners, *v.* Henry M. Phillips, treasurer. Petition to the probate court of Essex. Notice of petition acknowledged and right of hearing waived.

Trustees of Donations to the Protestant Episcopal Church, petitioners. Petition to the supreme judicial court of Suffolk for leave to release land. Notice of petition acknowledged and right to hearing waived.

John Oscar Teele, trustee, *v.* Bishop of Derry *et al.* Bill in equity in supreme judicial court of Suffolk. Answer filed. Pending.

Nelson S. Bartlett, *et al.*, executors and treasurers, *v.* Attorney-General *et al.* Bill in equity in supreme judicial court in Essex. Answer filed. Pending.

The Lamson Home, petitioner. Bill in equity in supreme judicial court of Suffolk. Pending.

MISCELLANEOUS CASES.

American Ballot Box Association *v.* Commonwealth. Petition to the superior court in Suffolk County for the price of ballot boxes. Pending.

Henry J. Winde, executor, *v.* Suffolk Savings Bank, the Commonwealth *et al.* Bill in equity. Suffolk supreme judicial court. T. H. Tyndale, public administrator, has become a party to the suit. A hearing has been had before a justice of the supreme judicial court. Pending.

Joseph N. Friedman *et al.* *v.* Charles Harrington. Circuit court of the United States, district of Massachusetts. In equity. Bill to restrain the respondent, as milk inspector of the city of Boston, from enforcing the provisions of Statutes 1891, chapter 58, against the complainants. Heard and continued to await decision *in re* Plumley, pending in supreme court of the United States.

Ellen M. Reardon, petitioner, *v.* Commonwealth.

Edmund Reardon, petitioner, *v.* Same.

Same, petitioner, *v.* Same.

Michael J. Egan, petitioner, *v.* Same. Petitions in the superior court in Middlesex County for the assessment of damages for the taking of land by the Metropolitan Sewerage Commissioners. Referred to the district attorney for the Northern District.

Titcomb, George H., *v.* Cape Cod Ship Canal Company, George A. Marden, treasurer, *et al.* Petition for injunction to restrain the treasurer of the Commonwealth from the payment of money under Statute 1883, chapter 259, and Statute 1891, chapter 397. Answer filed. Pending.

Commonwealth, by Board of Commissioners of Savings Banks, *v.* Suffolk Trust Company. Petition for injunction and receiver. Granted. J. Haskell Butler, Esq., appointed receiver. Pending.

Commonwealth *ex rel.* Savings Bank Commissioners *v.* Stockbridge Savings Bank. Petition for injunction and appointment of a receiver. Injunction issued, and F. A. Hobbs appointed receiver. First dividend of thirty-three and one-third per cent. paid. Second dividend of sixteen and two-thirds per cent. decreed by the court. F. A. Hobbs was removed from the

office of receiver by the court, and after a hearing was sentenced to six months' imprisonment in the jail at Boston for contempt of court. He is now under bond to answer to an indictment for embezzlement found against him by the grand jury of Berkshire County. William C. Spaulding, Esq., of West Stockbridge, was appointed by the court receiver in place of Mr. Hobbs. The new receiver has declared a dividend of fifteen per cent.

Calvin S. Crowell and Hiram Crowell *v.* The Cape Cod Ship Canal Company and the treasurer of the Commonwealth. Bill in equity. Supreme judicial court of Barnstable. Answer filed and hearing before single justice in Boston. Pending.

Theodore E. Davis *v.* Commonwealth. Petition to recover for services rendered in securing the passage of an act of Congress refunding to Massachusetts the direct tax imposed on the Commonwealth during the late civil war. Demurrer filed, argued and overruled. An appeal has been taken, and has not yet been argued before the full court.

Richard Brennan, petitioner. Petition to the superior court in Bristol County for discharge from State lunatic asylum. Notice of petition acknowledged and hearing waived. Petition granted.

Marcus M. Towle *v.* American Building, Loan and Investment Society. Petition of the receiver of the said society in the circuit court of the United States for a transfer of a deposit made under the provisions of chapter 310 of the Acts of 1890. After hearing a decree was made that the money be transferred to the receiver by the treasurer of the Commonwealth.

Falmouth National Bank *v.* The Cape Cod Ship Canal Company *et al.* Bill in equity in the supreme judicial court in Suffolk. Answer filed. Hearing. Application for receiver denied.

Stephen A. Brownell *et al.* *v.* Attorney-General *et al.* Bill in equity in supreme judicial court in Bristol to enforce provisions of chapter 392 of the Acts of 1894. Answer filed. Pending.

John P. H. Thomas, plaintiff in error, *v.* Commonwealth. Writ of error in supreme judicial court of Suffolk. Pending.

Stephen A. Brownell *et al.* *v.* Railroad Commissioners *et al.* Petition for *certiorari* in supreme judicial court of Suffolk. Reported to the full court and not yet argued.

City of Chelsea *v.* Commonwealth. Petition to superior court in Suffolk to assess damages for acts of Metropolitan Sewerage Commissioners, under chapter 439, Acts of 1890. Referred to the district attorney for Suffolk.

Alonzo V. Lynde *v.* Commonwealth. Petition to superior court in Middlesex to assess damages for land taken by Metropolitan Sewerage Commissioners. Referred to the district attorney for the Northern District.

North Packing and Provision Company *v.* Commonwealth. Petition to the superior court in Middlesex to assess damages for land taken by the Metropolitan Sewerage Commissioners. Referred to the district attorney for Northern District.

Ellis F. Miller *et al.*, petitioners, *v.* Commonwealth. Petition to the superior court in Suffolk to assess damages for land taken by the Metropolitan Sewerage Commissioners. Referred to the district attorney for Suffolk.

Andrew J. Browne, petitioner, *v.* Commonwealth. Petition to the superior court in Suffolk to assess damages for land taken by the Metropolitan Sewerage Commissioners. Referred to the district attorney for Suffolk.

Henry P. Nawn, petitioner, *v.* Commonwealth. Petition to the superior court in Suffolk to assess damages for land taken by the Metropolitan Park Commissioners. Referred to the district attorney for Suffolk.

Moses Williams, trustee, petitioner, *v.* Commonwealth. Petition to the superior court in Suffolk to assess damages for land taken by the State House Construction Commissioners. Referred to the district attorney for Suffolk.

Thomas Dingley, petitioner, *v.* Commonwealth. Petition to the superior court in Middlesex to assess damages for land taken by the Metropolitan Park Commissioners. Referred to the district attorney for the Northern District.

Mary Coogin *et al.*, petitioners, *v.* Commonwealth. Petition to the superior court in Suffolk, to assess damages for land taken by the Metropolitan Sewerage Commissioners. Referred to the district attorney for Suffolk.

Joseph C. Blaine, petitioner, *v.* Commonwealth. Petition to the superior court in Middlesex to assess damages for land taken by the Metropolitan Park Commissioners. Referred to the district attorney for the Northern District.

Martha McLain, petitioner, *v.* Commonwealth. Petition to the superior court in Middlesex to assess damages for land taken by the Metropolitan Sewerage Commissioners. Referred to the district attorney for the Northern District.

Commonwealth *v.* Lehigh and Wilkesbarre Coal Company. Failure to file returns under section 3, chapter 330, Acts 1884. Referred to the district attorney of Suffolk County.

Commonwealth *v.* Amesbury and Salisbury Gas Company. Violation of section 14, chapter 61, Public Statutes. Referred to the district attorney of Essex County.

The following cases, standing upon the docket of the supreme judicial court at the date of the last annual report, have been placed on file, without prejudice, however, to the plaintiff's right to replace them upon the docket in case further action should become necessary. Many of these cases have been satisfactorily settled out of court; in others the defendant corporation has either ceased to do business in this Commonwealth or has been dissolved by act of the Legislature: —

Common Law.

Attorney-General *v.* Boston & Maine Railroad.
" *v.* Fitchburg Railroad Company.
" *v.* Connecticut River Railroad Company.

In Equity.

Attorney-General *v.* People's Benefit Association of Boston.
" *v.* Hoosac Valley Street Railway.
" *v.* W. T. M. Injector Company.
" *v.* U. S. Mutual Accident Relief Company.
" *v.* American Mutual Life Insurance Company.
" *v.* Suffolk County Democrat.
" *v.* Wentworth Carpet Lining Company.
" *v.* Security Associates.
" *v.* Lawson Manufacturing Company.
" *v.* Bay State Manufacturing Company.
" *v.* Massachusetts Pulsion Telegraph Company.
" *v.* Roxbury Electric Light Company.
" *v.* Danvers Electric Company.
" *v.* Stoneham and Wakefield Light and Power Company (case No. 1).
" *v.* Framingham Union Street Railway Company.
" *v.* Gardner Gas Light Company (case No. 1).
" *v.* Citizens' Gas Light Company of Quincy.
" *v.* Wentworth Carpet Lining Company.
" *v.* Rex Liquid Stove Polish Company (case No. 1).
" *v.* Lord & Gale Manufacturing Company (case No. 1).
" *v.* Longley Machine Company (case No. 1).
" *v.* Duralite Manufacturing Company (case No. 1).
" *v.* Co-operative Workingmen's Corporation.
" *v.* Charles W. Copeland Manufacturing Company (case No. 1).
" *v.* Brockton Gazette Company.
" *v.* Bee Newspaper Company.
" *v.* Allen & Rowell Company.
" *v.* Massachusetts and Southern Construction Company (case No. 1).
" *v.* Gardner Gas Light Company (case No. 2).
" *v.* Charles W. Copeland Manufacturing Company (case No. 2).

Attorney-General *v.* Hotel Rebate Association.
" *v.* Lord & Gale Manufacturing Company (case No. 2).
" *v.* Equitable Trust and Investment Company.
" *v.* Martha's Vineyard Railroad Company (case No. 1).
" *v.* Metallic Splice Manufacturing Company.
" *v.* International Cigar Makers Co-operative Association.
" *v.* Duralite Manufacturing Company (case No. 2).
" *v.* Longley Machine Company (case No. 2).
" *v.* Martha's Vineyard Railroad Company (case No. 2).
" *v.* Morley Paper Company.
" *v.* Rex Liquid Stove Polish Company (case No. 2).
" *v.* Boston Car Spring Company.
" *v* Consolidated Folding Bed Company (case No. 1).
" *v.* Mechanical, Electrical, Scientific and Railway News Bureau (case No. 1).
" *v.* Stoneham and Wakefield Electric Power Company (case No. 2).
" *v.* Charles River Electric Light and Power Company.
" *v.* Duralite Manufacturing Company (case No. 3).
" *v.* Freeman Manufacturing Company.
" *v.* Longley Machine Company (case No. 3).
" *v.* Old Spain Co-operative Society.
" *v.* Times Newspaper Company.
" *v.* Cosmopathic Medical Institute (case No. 1).
" *v.* American Co-operative Boot and Shoe Company.
" *v.* Gardner Gas Light Company (case No. 3).
" *v.* Alta Manufacturing Company.
" *v.* Boston Ball Club.
" *v.* Boston Oakum Company.
" *v.* Commonwealth Pottery Company (case No. 1).
" *v.* Cosmopathic Medical Institute (case No. 2).
" *v.* Foote Refrigerator Company.
" *v.* Massachusetts and Southern Construction Company (case No. 2).
" *v.* McDonnell Bros. Printing and Publishing Company.
" *v.* Nantucket Electric Street Railway Company (case No. 1).
" *v.* N. E. Wire Goods Company.
" *v.* Pard Co-operative Shoe Company.
" *v.* Salem Press Publishing and Printing Company (case No. 1).
" *v.* Haverhill Roller Toboggan Company.
" *v.* Damon Narrow Fabric Company.
" *v.* Bay State Leather Coat Manufacturing Company.
" *v.* Baker Telegraph Index and Tablet Company.
" *v.* Chicopee Electric Light Company.
" *v.* Gardner Gas Light Company (case No. 4).
" *v.* Le National Publishing Company.
" *v.* Riverside Manufacturing Company.

Attorney-General *v.* Raymond Skate Company.
" *v.* Pequag Soapstone Company.
" *v.* Nashua, Acton & Boston Railroad Company.
" *v.* Nantucket Electric Street Railway (case No. 2).
" *v.* N. Rich Fish Weir Company.
" *v.* Somerville Trust Company.
" *v.* Burt Chace Company.
" *v.* Choate Drug and Chemical Company.
" *v.* Hull Street Railway Company.
" *v.* Leach & Grant Company.
" *v.* Little Giant Hussar Wrecking Company (case No. 1).
" *v.* New York and Boston Inland Company.
" *v.* Pike Manufacturing Company.
" *v.* Beacon Cycle Manufacturing Company.
" *v.* Boston Last Manufacturing Company.
" *v.* Commonwealth Pottery Company (case No. 2).
" *v.* Consolidated Folding Bed Company (case No. 2).
" *v.* Dorchester Chemical Company.
" *v* Gardner Gas Light Company (case No. 5).
" *v.* Hopkinton Electric Company.
" *v.* Imperial Metal Company.
" *v.* Light Publishing Company.
" *v.* Little Giant Hussar Wrecking Company (case No. 2).
" *v.* Merrimac Electric Company.
" *v* Mitchell Fish Company.
" *v.* Morse Manufacturing Company.
" *v.* Nantucket Electric Street Railway Company (case No. 3).
" *v.* Salem Press Publishing and Printing Company (case No. 2).
" *v.* Winthrop Gas and Electric Company.

COLLECTIONS.

Collections as follows have been made by this department during the year: —

Corporation taxes for the year 1893, overdue and referred by the treasurer of the Commonwealth to the Attorney-General's department for collection,	$40,569 70
Interest on same at penal rate of twelve per cent.,	1,438 15
Costs,	567 81
Fines under chapter 263, Acts 1892,	345 00
Miscellaneous,	1,662 97
Total,	$44,583 63

The following tables show a detailed statement of the above-mentioned collections: —

	Corporation Tax for 1893.	Interest.	Total.
A. M. Gardner Hardware Company,	$841 50	$32 26	$873 76
A. M. McPhail Piano Company,	918 00	64 26	982 26
American Bedstead Company,	125 46	5 10	130 56
American Confectionery Company,	38 25	1 06	39 31
American Cultivator Publishing Company,	153 00	5 50	158 50
American Publishing Company,	107 10	3 75	110 85
Arlington Hotel Company,	30 60	1 00	31 60
Bacon Paper Company,	1,071 00	19 46	1,090 46
Berkshire Courier Company,	168 30	6 20	174 50
Berkshire Tack Company,	22 95	0 69	23 64
Blair Camera Company,	1,582 02	101 25	1,683 27
Boston Advertising Company,	73 44	9 29	82 73
Boston Incandescent Lamp Company,	137 70	3 80	141 50
Boston Times Company,	110 16	8 30	118 46
C. W. Mutell Manufacturing Company,	239 50	5 96	245 64
Cantelo Manufacturing Company,	19 13	0 25	19 38
Cassino Art Company,	153 00	11 42	164 42
Chelsea Express Despatch Company,	61 20	2 45	63 65

	Corporation Tax for 1893.	Interest.	Total.
Chequasset Lumber Company,	$420 75	$25 24	$445 99
Child Acme Cutter and Press Company,	367 20	16 52	383 72
Choate Drug and Chemical Company,	76 50	14 47	90 97
Coburn Stationery Company,	183 60	-	183 60
Commonwealth Jewelry Company,	122 40	7 60	130 00
Connecticut Steam Stone Company,	153 00	4 50	157 50
Cornelius Callahan Company,	535 50	16 06	551 56
Crystal Emery Wheel Company,	9 56	0 67	10 23
D. C. Storr Furniture Company,	61 20	-	61 20
E. P. Sanderson Company,	175 95	1 82	177 77
E. W. Noyes Company,	114 75	4 60	119 35
Engraver and Printer Company,	76 50	5 35	81 85
Eureka Ruling and Binding Company,	137 70	9 60	147 30
Evening Gazette Company,	459 00	30 46	489 46
F. E. Young Company,	306 00	10 40	316 40
Foundry Supply Company,	38 25	4 97	43 22
Franklin Educational Company,	306 00	18 50	324 50
George H. Wood Company,	238 68	6 98	245 66
Globe Investment Company,	4,210 87	138 96	4,349 83
H. A. Williams Manufacturing Company,	172 13	11 48	183 61
H. B. Stevens Company,	109 01	-	109 01
Hampden Watch Company,	1,673 21	-	1,673 21
Haverhill & Amesbury Street Railroad Company,	1,072 53	30 79	1,103 32
Hercules Foundry Company,	153 00	4 59	157 59
Highland Foundry Company,	1,093 95	27 35	1,121 30
Hull Street Railroad Company,	108 02	-	108 02
J. A. Cummings' Printing Company,	94 86	2 47	97 33
Knitted Mattress Company,	328 95	7 68	336 63
L. O. May Company,	179 20	-	179 20
Lakeview Printing Company,	96 39	4 49	100 88
Lamprey Boiler Mouth Furnace Protector Company,	172 13	11 92	184 05
Lexington Print Works,	149 94	6 50	156 44
Lowell Suburban Street Railroad Company,	2,713 53	75 07	2,788 60
Malden Lumber Company,	21 42	0 50	21 92

	Corporation Tax for 1893.	Interest.	Total.
Lynn Ice Company,	$470 48	$37 15	$507 63
Manufacturers' Gazette Publishing Company,	55 08	1 97	57 05
Millis Water Company,	229 50	8 66	238 16
Mitchell Manufacturing Company,	153 00	4 22	157 22
Morning Mail Corporation,	154 53	4 88	159 41
Moulton Leather Company,	573 75	-	573 75
Natick Electric Street Railroad Company,	810 90	22 30	833 20
Neograph Publishing Company,	76 50	6 38	82 88
New England Folding Box Company,	180 54	12 82	193 36
New England Printing Telegraph Company,	229 50	-	229 50
New England Provision and Grocery Company,	50 00	-	50 00
New England Rattan Company,	122 40	3 67	126 07
Newburyport Herald Company,	40 79	1 10	41 89
Newton & Boston Street Railway Company,	550 80	14 87	565 67
North Shore Electric Company,	244 80	13 46	258 26
Norton Iron Company,	191 25	13 25	204 50
Old Spain Co-operative Society,	22 95	2 90	25 85
Pearson Box and Moulding Company,	76 50	6 92	83 42
People's Steamboat Company,	229 50	6 88	236 38
Phœnix Manufacturing Company,	131 11	7 04	138 15
Phœnix Rattan Company,	80 33	2 22	82 55
Post Publishing Company,	116 74	2 72	119 46
Pranker Manufacturing Company,	535 50	21 06	556 56
Queen Hotel Company,	26 78	-	26 78
Robinson Printing Company,	192 78	9 64	202 42
Rouillard Reid Company,	60 60	-	60 60
Sander Musical Instrument Company,	183 60	14 68	198 28
Scandinavian Co-operative Mercantile Company,	126 87	3 80	130 67
Simpson Spring Company,	765 00	6 88	771 88
Smith Carleton Iron Company,	948 60	27 22	975 82
Sterling Emery Wheel Company,	38 25	2 68	40 93
Suburban Parcel Delivery Company,	76 50	5 09	81 59
Sumner Drug and Chemical Company,	183 60	5 50	189 10
T. F. Little Oil Company,	93 33	6 47	99 80

	Corporation Tax for 1893.	Interest.	Total.
Thompson & Odell Company,	$382 50	$32 49	$414 99
Traveller Publishing Company,	99 83	-	99 83
Union Loan and Trust Company,	107 10	10 74	117 84
Union Street Railroad Company,	4,964 85	119 15	5,084 00
W. B. Witherell Company,	229 50	9 18	238 68
W. C. Young Manufacturing Company,	351 90	19 77	371 67
W. E. Howe Company,	137 70	9 10	146 80
Wakefield & Stoneham Street Railroad Company,	765 00	35 70	800 70
Waltham Watch Tool Company of Springfield,	198 90	0 31	199 21
Wheelman Company,	114 75	3 15	117 90
Whitman Electric Company,	160 65	14 46	175 11
Whittemore Woodbury Company,	67 32	2 84	70 16
Woodward & Brown Piano Company,	872 10	53 16	925 26
Worcester & Shrewsbury Street Railroad Company,	153 00	-	153 00
Worcester Co-operative Meat Market Company,	61 20	7 59	68 79
Worcester Steam Heating Company,	279 99	8 67	288 66
Haverhill Roller Toboggan Company,	91 80	6 40	98 20
Childs & Kent Express Company,	344 25	10 11	354 36
Brookfield Brick Company,	116 28	11 36	127 64
Henry Woods Sons Company,	994 50	20 00	1,014 50
Quaboag Steamboat Company,	70 23	6 00	76 23
Total,	$40,569 70	$1,438 15	$42,007 85

Under the provisions of chapter 263 of the laws of 1892, penalties were imposed and collected from the following corporations reported to this department by the Board of Gas and Electric Light Commissioners for failure to comply with the provisions of section 7, chapter 314 of the Acts of 1885: —

For 1893 —

Easthampton Gas Company,	$30 00
Jamaica Plain Gas Light Company,	5 00
Northampton Gas Light Company,	30 00
Pittsfield Coal Gas Company,	5 00
Stoughton Gas and Electric Company,	5 00
Chicopee Electric Company,	15 00

Edison Electric Illuminating Company of Brockton,	$35 00
Milton Light and Power Company,	5 00
Northampton Electric Lighting Company,	5 00
Orange Electric Light Company,	30 00
South Hadley Falls Electric Light Company,	115 00
Taunton Electric Lighting Company,	15 00
Ware Electric Company,	5 00
For 1894 —	
Amesbury Electric Heat and Power Company,	5 00
Leominster Electric Light and Power Company,	25 00
Weymouth Light and Power Company,	15 00
	$345 00

Miscellaneous Collections.

The L. A. May Company, tax for 1892,	$520 80
Union Loan and Trust Company, tax for 1892,	117 70
Weymouth Light and Power Company, tax for 1892,	188 71
Cottage City Street Railway Company, Railroad Commissioners' tax, 1893,	2 50
Wakefield & Stoneham Street Railway Company, Railroad Commissioners' tax, 1893,	102 62
Adams Electric Light and Power Company, Gas Commissioners' tax, 1893,	13 87
American Loan and Trust Company of Duluth, Commissioner of Foreign Mortgage Corporations' tax,	63 31
Minnesota Loan and Trust Company, Commissioner of Foreign Mortgage Corporations' tax,	90 84
J. L. & H. K. Potter, displacement of tide water, 1890-93,	300 00
Geo. H. Johnson (chapter 19, Public Statutes), displacement of tide water,	5 00
American Sugar Refining Company (chapter 341, Laws 1891),	207 00
Cassino Art Company,	5 00
Instant Freezer Company,	5 00
Neograph Publishing Company,	5 00
O. D. Pillsbury Company,	5 00
Oak Hill Hotel Company,	5 00
Old Spain Co-operative Society,	5 00
Athol Gas and Electric Company, Gas and Electric Light Commissioners' tax, 1894,	15 23
Martha's Vineyard Railroad Company, Railroad Commissioners' tax, 1894,	2 26
Nantucket Railroad Company, Railroad Commissioners' tax, 1894,	3 13
Total,	$1,662 97

EXTRADITION AND INTERSTATE RENDITION.

The following applications for requisitions for fugitives from justice have been referred by His Excellency the Governor to this department, during the year ending Jan. 16, 1895, for examination and report thereon: —

Date of Reference.	State or Country upon whose Executive Requisition was made.	Name of Fugitive.	Crime Charged.	Venue of Prosecution.	Report.
1894.					
Feb. 12,	New York,	William Virtue, *alias* J. G. King,	Larceny,	Hampden,	Lawful and in proper form.
Feb. 13,	Illinois,	John W. Lake, *alias* Herbert L. Stockbridge.	Conspiracy with intent to cheat,	Suffolk,	" " "
Feb. 13,	Ohio,	August Begalke,	Forgery and uttering,	Suffolk,	" " "
March 3,	New Hampshire,	John S. Jenness,	Larceny. Breaking and entering,	Plymouth,	" " "
March 6,	New York,	Delamore C. Brown,	Larceny by embezzlement,	Hampden,	" " "
March 6,	"	George A. Freeland and Frederick H. Davis, *alias* Frederick H. Myers,	Breaking and entering with intent to steal,	Suffolk,	" " "
March 17,	Dominion of Canada (Nova Scotia).	Wilkins Miller,	Embezzlement,	Essex,	" " "
April 4,	New York,	Michael Sherlock,	Burglary,	Berkshire,	" " "
April 11,	"	Samuel Goodman, *alias* S. H. Boyd, *alias*, etc., and Henry Parker, *alias* Henry Morton.	Larceny,	Hampden,	" " "
April 18,	"	Gottlieb Frankle, *alias* Levi Twinkle, *alias* Levi Haskell, *alias* Charles Myers, *alias* Levi Myers.	Larceny in a building,	Berkshire,	" " "
April 28,	"	Lewis Savage,	Assault upon an officer,	Suffolk,	" " "
May 2,	"	Philip Behan,	Embezzlement and larceny,	Suffolk,	" " "

May 12,	Maine,	Everett Stearns,	Embezzlement,	Barnstable,	"	"	"
May 24,	Maine,	William D. McGregor,	Cheating by false pretences,	Essex,	"	"	"
May 25,	Dominion of Canada,	Samuel Alexander,	Murder,	Hampden,	"	"	"
June 12,	Ohio,	Michael Fitzgerald and Patrick Lynch.	Larceny in a building,	Hampden,	"	"	"
July 9,	New York,	Horace C. Michael,	Breaking and entering a dwelling-house in the night time	Suffolk,	"	"	"
July 9,	Connecticut,	Norman R. Poist,	Carnally knowing a female child,	Hampshire,	"	"	"
July 25,	New York,	Frederick D. Brown,	Breaking and entering in the night time with intent to commit larceny.	Berkshire,	"	"	"
Aug. 3,	"	Edmund Baker, *alias* Ernest Brown, *alias* Erwin B. Root.	Absconding and failing to perform a contract for the support and maintenance of his child. (Statute 1882, chapter 270, section 1.)	Hampden,	"	"	"
Aug. 3,	"	Alice Raymond, *alias* Jane S. Brown, *alias* Alice J. Carpenter, *alias* Jennie Root.	For aiding and abetting the above-named Baker in his offence.	Hampden,	"	"	"
Sept. 1,	Illinois,	Frank A. Mansfield,	Forgery,	Middlesex,	"	"	"
Sept. 18,	New York,	Thomas J. McCullough,	Breaking and entering a building with intent to steal,	Suffolk,	"	"	"
Sept. 27,	Connecticut,	E. H. Burr,	Obtaining money by false pretences,	Hampden,	"	"	"
Oct. 5,	New York,	Richard Shehan,	Breaking and entering in night time,	Hampden,	"	"	"
Oct. 5,	"	Timothy Carney,	Breaking and entering in night time,	Hampden,	"	"	"
Oct. 5,	"	Maurice Funberg,	Breaking and entering in night time,	Hampden,	"	"	"
Oct. 8,	New Jersey,	Ida Wilcox, *alias* Marie E. Gordon, *alias* Emogene Kelseax, *alias* Harriett Johnson.	Cheating by false pretences with intent to defraud,	Suffolk,	"	"	"
Nov. 13,	New York,	Edmund A. Lawler,	Uttering forged bond. (Public Statutes, chapter 204, section 2.)	Hampden,	"	"	"
Nov. 20,	Washington,	John F. Dore,	Forgery and uttering forged instruments,	Suffolk,	"	"	"
Nov. 20,	New York,	John F. McMenamin,	Embezzlement,	Norfolk,	"	"	"
Dec. 21,	Louisiana,	Henry Hahr, *alias* John Henry Wood,	Forgery,	Bristol,	"	"	"

Extradition and Interstate Rendition — Continued.

Date of Reference.	State or Country upon whose Executive Requisition was made.	Name of Fugitive.	Crime Charged.	Venue of Prosecution.	Report.
1895. Jan. 8,	Dominion of Canada (Province of Quebec).	John Brigandi,	Assault with intent to kill,	Middlesex,	Lawful and in proper form.
Jan. 10,	Florida,	George E. Warring,	Larceny,	Suffolk,	" " "
Jan. 10,	Louisiana,	Henry B. Spalding, *alias* Henry J. Leonard, etc.	Embezzlement,	Suffolk,	" " "
Jan. 14,	New York,	Robert J. Simpson, *alias* Robert J. McClusky.	Embezzlement and larceny,	Suffolk,	" " "
Jan. 14,	New York,	Henry Babcock, *alias* Harry Campe, *alias* B. M. Morris.	Unlawfully selling personal property held upon a conditional contract of sale.	Suffolk,	" " "

The following requisitions upon His Excellency the Governor for the surrender of fugitives from the justice of other States have been referred by him to this department, during the year ending Jan. 16, 1895, for examination and report thereon: —

Date of Reference.	State making the Requisition.	Name of Fugitive.	Crime Charged.	Report.
1894.				
Jan. 18,	New Jersey,	Charles R. Kirby,	Extortion,	Lawful and in proper form.
Jan. 26,	New York,	William Hanor,	Burglary. Third degree,	" " " "
Jan. 29,	" "	Annie D. Bellah,	Grand larceny. Second degree,	" " " "
Jan. 31,	Rhode Island,	Charles T. Bray,	For procuring and inducing a girl under the age of eighteen years, and not of known immoral character, to have carnal connection with himself.	" " " "
March 12,	Iowa,	Gus Pearson,	Uttering a forged instrument,	" " " "
March 19,	Nebraska,	Walter Clark,	Grand larceny,	" " " "
April 3,	New York,	Herbert H. Steele,	Forgery. Second degree,	" " " "
April 9,	Wyoming,	George G. Smith,	Grand larceny,	" " " "
April 18,	Maryland,	John R. Hicks,	False pretences,	" " " "
May 9,	Pennsylvania,	John F. Kane,	Assault with intent to kill,	" " " "
May 17,	Vermont,	William Shepard,	Burglary,	" " " "
May 29,	Pennsylvania,	William E. Ashton,	Larceny,	" " " "
June 11,	New Hampshire,	Matthew Cunningham,	Breaking and entering. Larceny,	" " " "

Extradition and Interstate Rendition — Concluded.

Date of Reference.	State making the Requisition.	Name of Fugitive.	Crime Charged.	Report.
1894.				
June 15,	Pennsylvania,	John C. Stanton, Jr.,	Embezzlement, larceny and larceny as bailee,	Lawful and in proper form.
Aug. 2,	New Jersey,	Charles R. Kirby,	Conspiracy,	" " " "
Sept. 11,	New York,	Charles McClure,	Grand larceny. Second degree,	" " " "
Sept. 29,	" "	George B. Thatcher,	Grand larceny. Second degree,	" " " "
Oct. 5,	" "	Thomas Riordan,	Burglary. Third degree,	" " " "
Oct. 22,	" "	George D. Morris, *alias* F. W. Marston, *alias* F. N. Marston.	Grand larceny. Second degree,	" " " "
Oct. 26,	" "	Edwin C. Lewis and Corinne M. Cleveland.	Larceny,	Sufficiency of affidavits referred to discretion of His Excellency the Governor.
Nov. 14,	Illinois,	Paschal R. Smith,	Obtaining money by false pretences,	Lawful and in proper form.
Nov. 15,	New York,	Henry Grundman,	Grand larceny. Second degree,	" " " "
Nov. 17,	New Hampshire,	John H. Crowly,	Larceny,	" " " "
Nov. 21,	New York,	William Smith and James Berans,	Grand larceny. Second degree,	Report withheld to allow officer to cure defect.
Nov. 22,	New Hampshire,	Benjamin Sanders,	Rape,	Lawful and in proper form.
Dec. 31,	New York,	Thomas McMahon,	Selling a horse having the glanders,	" " " "
1895.				
Jan. 14,	Connecticut.	George E. Whitten,	Murder. Second degree,	" " " "

RULES OF PRACTICE IN INTERSTATE RENDITION.

Every application to the governor for a requisition upon the executive authority of any other State or Territory, for the delivery up and return of any offender who has fled from the justice of this Commonwealth, must be made by the district or prosecuting attorney for the county or district in which the offence was committed, and must be in duplicate original papers, or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney : —

(*a*) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled.

(*b*) That, in his opinion, the ends of public justice require that the alleged criminal be brought to this Commonwealth for trial, at the public expense.

(*c*) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(*d*) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(*e*) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(*f*) If the fugitive is known to be under either civil or criminal arrest in the State or Territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(*g*) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever; and that, if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(*h*) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(*i*) If the offence charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretences, embezzlement or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason given for the absence of such affidavit.

2. Proof by affidavit of facts and circumstances satisfying the Executive that the alleged criminal has fled from the justice of the State, and is in the State on whose Executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found by a grand jury, the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a magistrate. (A notary public is not a magistrate within the meaning of the Statutes.) It must also be shown that a complaint has been made, copies of which must accompany the requisition, such complaint to be accompanied by affidavits to the facts constituting the offence charged by persons having actual knowledge thereof, and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. The official character of the officer taking the affidavits or depositions, and of the officer who issued the warrant must be duly certified.

6. Upon the renewal of an application, — for example, on the ground that the fugitive has fled to another State, not having been found in the State on which the first was granted, — new or certified copies of papers, in conformity with the above rules, must be furnished.

7. In the case of any person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailer, sheriff or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction and sentence upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules.