

Commonwealth of Massachusetts
ATTORNEY-GENERAL'S REPORT

1910



The Commonwealth of Massachusetts

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE

YEAR ENDING JANUARY 18, 1911.

Compliments of

DANA MALONE,

Attorney-General.

BOSTON:
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1911.

The Commonwealth of Massachusetts

OFFICE OF THE ATTORNEY-GENERAL,
BOSTON, Jan. 18, 1911.

To the Honorable Senate and House of Representatives.

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

Very respectfully,

DANA MALONE,
Attorney-General.

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
State House.

Attorney-General.

DANA MALONE.

Assistants.

FREDERIC B. GREENHALGE.

FRED T. FIELD.

ANDREW MARSHALL.

Engineer of Grade Crossings.

HENRY W. HAYES.

Chief Clerk.

LOUIS H. FREESE.

STATEMENT OF APPROPRIATION AND EXPENDITURES.

Appropriation for 1910,	\$45,000 00
<i>Expenditures.</i>	
For law library,	468 40
For salaries of assistants,	10,000 00
For expert services,	827 67
For collection of Spanish war claims against national government,	10,000 00
For clerks,	3,364 00
For office stenographers,	2,400 00
Telephone operator,	480 00
For messenger,	1,200 00
For expenses in the abolition of grade crossings:—	
Salary of engineer,	\$3,600 00
Other expenses incidental thereto,	571 62
	4,171 62
For office expenses,	1,728 55
For court expenses,	3,536 25
	838,176 49
Total expenditures,	\$38,176 49
Costs collected,	1,881 16
	\$36,295 33
Net expenditures,	\$36,295 33

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
BOSTON, Jan. 18, 1911.

To the Honorable Senate and House of Representatives.

In compliance with Revised Laws, chapter 7, section 8, I submit my report for the year ending this day.

The cases requiring the attention of the office during the year, to the number of 3,363, are tabulated below:—

Corporation returns filed without suit,	30
Dissolutions of corporations, voluntary petitions for,	47
Extradition and interstate rendition,	72
Grade crossings, petitions for abolition of,	128
Informations at the relation of the Tax Commissioner,	351
Informations at the relation of the Commissioner of Corporations,	483
Informations at the relation of the Treasurer and Receiver-General under corporation and inheritance tax laws,	758
Other inheritance tax cases,	787
Indictments for murder,	33
Land Court petitions,	11
Land-damage cases arising from the taking of land by the Armory Commissioners,	2
Land-damage cases arising from the alteration of grade crossings,	6
Land-damage cases arising from the taking of land by the Harbor and Land Commission,	4
Land-damage case arising from the taking of land by the Charles River Basin Commission,	63
Land-damage cases arising from the taking of land by the Massachusetts Highway Commission,	15
Land-damage cases arising from the taking of land by the Metropolitan Park Commission,	12
Land-damage cases arising from the taking of land by the Metropolitan Water and Sewerage Board,	15
Land-damage cases arising from the taking of land by the State Board of Insanity,	3

Land-damage cases arising from the taking of land by the Wrentham School,	1
Land-damage cases arising from the taking of land by the Mt. Tom State Reservation Commission,	2
Land-damage cases arising from the taking of land by the Greylock Reservation Commission,	2
Legislative counsel and agents,	41
Miscellaneous cases arising from the work of the above-named commissions,	27
Miscellaneous cases,	192
Public charitable trusts,	91
Public administrators' petitions,	205
Savings bank accounts, withdrawal of,	1
Settlement cases for support of insane paupers,	14

CAPITAL CASES.

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

HENRI FERROX, indicted in Middlesex County, September, 1909, for the murder of Florida LaRiviere, at Lowell, on Aug. 27, 1909. He was arraigned Oct. 4, 1909, and pleaded not guilty. William H. Bent, Esq., and Albert O. Hamel, Esq., were assigned by the court as counsel for the defendant. On Jan. 25, 1910, the defendant was adjudged insane, and was committed to the Bridgewater State Hospital. The case was in charge of District Attorney John J. Higgins.

WILLIAM C. HOWARD, indicted in Bristol County, November, 1908, for the murder of Ida Howard. He was arraigned Nov. 24, 1908, and pleaded not guilty. James J. Morton, Jr., Esq., and Edward T. Bannon, Esq., were assigned by the court as counsel for the defendant. In February, 1909, the defendant was tried by a jury before Crosby and Sander-son, JJ. The result was a verdict of murder in the second degree, and the defendant was thereupon sentenced to State Prison for life. Exceptions were taken to the verdict of the jury, which exceptions were overruled by the Supreme Judicial Court. The case was in charge of District Attorney James M. Swift.

MARY KELLEHER, indicted in Middlesex County, March, 1909, for the murder of Annie T. Kelleher, at Somerville, on March 1, 1906. She was arraigned March 23, 1909, and pleaded not guilty. Hugh Bancroft, Esq., and Harry N. Stearns, Esq., were assigned by the court as counsel for the defendant. In April, 1910, the defendant was tried by a jury before Stevens and Dana, JJ. The result was a verdict of not guilty, by consent of the district attorney. The case was in charge of District Attorney John J. Higgins.

GIACINTO PELOSI, indicted in Suffolk County, June, 1909, for the murder of Mariana Pelosi, at Boston, on May 19, 1909. He was arraigned July 16, 1909, and pleaded not guilty. A. H. Weed, Esq., was assigned by the court as counsel for the defendant. Later the defendant retracted his former plea, and pleaded guilty to manslaughter. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for a term of not more than twenty nor less than eighteen years. The case was in charge of District Attorney Joseph C. Pelletier.

RAYMOND PLOUFFE, indicted in Worcester County, October, 1909, for the murder of Henry N. Stone, at Harvard, on Sept. 13, 1909. He was arraigned Nov. 5, 1909, and pleaded not guilty. David F. O'Connell, Esq., John M. Maloney, Esq., and George E. O'Toole, Esq., were assigned by the court as counsel for the defendant. In February, 1910, the defendant was tried by a jury before Sanderson and Jenney, JJ. The result was a verdict of guilty of murder in the second degree, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney George S. Taft.

NAPOLEON J. RIVET, indicted in Middlesex County, June, 1908, for the murder of Joseph Gailloux, at Lowell, on Feb. 29, 1908. He was arraigned June 17, 1908, and pleaded not guilty. William H. Bent, Esq., and Joseph H. Guillett, Esq., were assigned by the court as counsel for the defendant. In January, 1909, the defendant was tried by a jury before

Harris and Hitchcock, JJ. The result was a verdict of guilty of murder in the first degree. Defendant's motion for a new trial was denied and exceptions overruled by the Supreme Judicial Court. On June 10, 1910, the defendant was sentenced to death, and on July 29, 1910, sentence was duly executed. The case was in charge of District Attorney John J. Higgins.

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

DOMENICO BENEDETTO, indicted in Suffolk County, February, 1910, for the murder of Luigo Colonic, at Boston, on Jan. 1, 1910. He was arraigned June 24, 1910, and pleaded not guilty. P. S. Maher, Esq., was assigned by the court as counsel for the defendant. Later the defendant retracted his former plea, and pleaded guilty to manslaughter. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for a term of not more than eighteen nor less than fifteen years. The case was in charge of District Attorney Joseph C. Pelletier.

JENNIE BERGQUIST, indicted in Hampden County, September, 1910, for the murder of Mable Elizabeth Bergquist, at Springfield, on May 20, 1910. On Sept. 30, 1910, the defendant was adjudged insane, and was committed to the Northampton State Hospital. The case was in charge of District Attorney Stephen S. Taft.

EDWARD J. CONROY, indicted in Suffolk County, March, 1910, for the murder of Bridget Conroy, at Boston, on Feb. 18, 1910. He was arraigned April 22, 1910, and pleaded not guilty. Joseph Lyons, Esq., was assigned by the court as counsel for the defendant. Later the defendant retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Joseph C. Pelletier.

GEORGE G. CRELEY, indicted in Hampden County, September, 1910, for the murder of Eleanor Shepherd, at Springfield, on July 23, 1910. On Sept. 30, 1910, the defendant was adjudged insane, and was committed to the Bridgewater State Hospital. Dec. 31, 1910, suggestion of the death of the defendant was filed, and the indictment in this case was nolle prossed. The case was in charge of District Attorney Stephen S. Taft.

SABATINO FANTASIA, indicted in Worcester County, May, 1910, for the murder of Hovannes Menzoian, at Worcester, on April 11, 1910. He was arraigned Nov. 3, 1910, and pleaded not guilty. George A. Gaskill, Esq., was assigned by the court as counsel for the defendant. Later the defendant retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney George S. Taft.

HENRIETTA LABLANC, indicted in Middlesex County, January, 1910, for the murder of Clarence F. Glover, at Waltham, on Nov. 20, 1909. She was arraigned Feb. 1, 1910, and pleaded not guilty. Melvin M. Johnson, Esq., and A. Farley Brewer, Esq., were assigned by the court as counsel for the defendant. In November, 1910, the defendant was tried by a jury before Bond, J. The result was a verdict of not guilty. The case was in charge of District Attorney John J. Higgins.

ADOLFO MATTACHIONI, indicted in Worcester County, January, 1910, for the murder of Alfonso Mattachioni, at Leominster, on Jan. 4, 1910. He was arraigned Feb. 3, 1910, and pleaded not guilty. James H. P. Dyer, Esq., was assigned by the court as counsel for the defendant. On June 1, 1910, the defendant retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was thereupon sen-

tenced to State Prison for life. The case was in charge of District Attorney George S. Taft.

LUIGI G. RESTELLI, indicted in Norfolk County, September, 1910, for the murder of Henry E. Hardwick and Marianne Restelli, at Quincy, on July 29, 1910. The defendant is dead in fact, but his death is not suggested of record. The case was in charge of District Attorney Alfred F. Barker.

ANTONIO SCALLI and VINCENZO IEMELLO, indicted in Berkshire County, July, 1910, for the murder of Giovanni Canizzo, at North Adams, on Sept. 18, 1909. They were arraigned July 19, 1910, and pleaded not guilty. M. E. Couch, Esq., and John E. Magenis, Esq., were assigned by the court as counsel for the defendants. On Dec. 17, 1910, the defendants retracted their former pleas, and pleaded guilty to murder in the second degree. These pleas were accepted by the Commonwealth, and the defendants were sentenced to State Prison for life. The case was in charge of District Attorney Stephen S. Taft.

BERTRAM G. SPENCER, indicted in Hampden County, May, 1910, for the murder of Martha B. Blackstone, at Springfield, on March 31, 1910. He was arraigned May 16, 1910, and pleaded not guilty. R. P. Stapleton, Esq., and C. L. Young, Esq., were assigned by the court as counsel for the defendant. On Sept. 17, 1910, the defendant was adjudged insane, and was committed to the Bridgewater State Hospital. The case was in charge of District Attorney Stephen S. Taft.

HRISTOS TSAPAS, indicted in Essex County, May, 1910, for the murder of Constantinus Chasoides, at Haverhill, on Oct. 3, 1909. He was arraigned May 20, 1910, and pleaded not guilty. John P. S. Mahoney, Esq., and Daniel J. Linehan, Esq., were assigned by the court as counsel for the defendant. In November, 1910, the defendant was tried by a jury before Aiken, C.J. On Nov. 23, 1910, during the

progress of the trial, the defendant retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, the case was withdrawn from the jury, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney W. Scott Peters.

The following indictments for murder are now pending: —

PETER DELOREY and JAMES MANTIR, indicted in Middlesex County, March, 1909, for the murder of Annie Mullins, at Arlington, on March 27, 1908. They were arraigned June 16, 1909, and pleaded not guilty. Frank McDermott, Esq., Henry H. Winslow, Esq., and John A. E. Maroney, Esq., were assigned by the court as counsel for the defendants. In November, 1909, the defendants were tried by a jury before Fox and White, JJ. The result was a verdict of guilty of manslaughter against Peter Delorey, and a verdict of guilty of murder in the second degree against James Mantir. Motion of defendants for a new trial was denied, and defendants' exceptions are now pending. The case was in charge of District Attorney John J. Higgins.

SARAH S. ELMES, indicted in Plymouth County, October, 1910, for the murder of an infant child, at Bridgewater, on June 4, 1910. No action has been taken in this case. The case is in charge of District Attorney Alfred F. Barker.

WALTER G. FALL, indicted in Suffolk County, November, 1910, for the murder of Frank A. Rees, at Boston, on Nov. 10, 1910. He was arraigned Nov. 14, 1910, and pleaded not guilty. William A. Morse, Esq., and Francis J. Geogan, Esq., were assigned by the court as counsel for the defendant. The case is in charge of District Attorney Joseph C. Pelletier.

WALTER G. FALL, indicted in Suffolk County, November, 1910, for the murder of Frederick Schlehber, at Boston, on

Nov. 10, 1910. The defendant has not yet been arraigned on this indictment. The case is in charge of District Attorney Joseph C. Pelletier.

CARMELLO FERRO, indicted in Middlesex County, June, 1910, for the murder of Antonio DeLellis, at Framingham, on April 17, 1910. He was arraigned on June 20, 1910, and pleaded not guilty. Thomas J. Grady, Esq., and Maxham E. Nash, Esq., were assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney John J. Higgins.

GEORGE ROBERT FREEMAN, indicted in Hampden County, May, 1910, for the murder of Herbert E. White, at Ludlow, on Feb. 13, 1910. He was arraigned May 16, 1910, and pleaded not guilty. William H. McClintock, Esq., was assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney Christopher T. Callahan.

GEORGE GIANAKOS, indicted in Middlesex County, September, 1910, for the murder of Aristides Georgopoulos, at Lowell, on July 30, 1910. He was arraigned Sept. 29, 1910, and pleaded not guilty. D. J. Donahue, Esq., and J. C. Johnston, Esq., were assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney John J. Higgins.

WASSILI IVANKOWSKI and ANDREI IPSEN, indicted in Essex County, September, 1910, for the murder of Thomas A. Landregan, at Lynn, on June 25, 1910. They were arraigned Oct. 6, 1910, and pleaded not guilty. John P. S. Mahoney, Esq., was assigned by the court as counsel for Wassili Ivankowski, and William D. Chapple, Esq., was assigned by the court as counsel for Andrei Ipsen. In November, 1910, the defendants were tried by a jury before Aiken, C.J. The result was a verdict of guilty of murder in the first degree, and on Nov. 18, 1910, the defendants were

sentenced to death during the week beginning March 5, 1911. The case was in charge of District Attorney W. Scott Peters.

CHESTER S. JORDAN, indicted in Middlesex County, March, 1909, for the murder of Honora C. Jordan, at Somerville, Sept. 1, 1908. He was arraigned April 15, 1909, and pleaded not guilty. Charles W. Bartlett, Esq., Harvey H. Pratt, Esq., and Jeremiah S. Sullivan, Esq., were assigned by the court as counsel for the defendant. In April, 1909, the defendant was tried by a jury before Stevens and Bell, JJ. The result was a verdict of guilty of murder in the first degree. The defendant's motion for a new trial was denied, and exceptions were overruled by the Supreme Judicial Court. The case is in charge of District Attorney John J. Higgins.

EDWARD J. MCNANLEY, indicted in Hampden County, December, 1910, for the murder of Margaret E. McNanley, at Springfield, on Nov. 6, 1910. The defendant has not yet been arraigned. The case is in charge of District Attorney Christopher T. Callahan.

PETER MANITI, indicted in Worcester County, May, 1910, for the murder of Charles W. Potter, at Douglas, on Dec. 28, 1909. He was arraigned May 16, 1910, and pleaded not guilty. Michael T. Flaherty, Esq., Walter B. Kennedy, Esq., William A. Parshley, Esq., and Michael Hennebery, Esq., appeared as counsel for the defendant. In November, 1910, the defendant was tried by a jury before Harris, J. The result was a verdict of guilty of murder in the second degree. On Nov. 22, 1910, the defendant filed a motion for a new trial, which motion is now pending. The case is in charge of District Attorney George S. Taft.

HARRY MARSHALL and LENA CUSUMANO, indicted in Plymouth County, October, 1910, for the murder of Francisco Cusumano, at Hull, on Sept. 18, 1910. They were arraigned Nov. 29, 1910, and pleaded not guilty. Thomas J.

Grady, Esq., and William J. Coughlan, Esq., were assigned by the court as counsel for the defendants. No further action has been taken in this case. The case is in charge of District Attorney Alfred F. Barker.

CHARLES MAZZOLA, indicted in Plymouth County, October, 1910, for the murder of Salvatore Morrelli, at Brockton, on Aug. 21, 1910. He was arraigned Oct. 10, 1910, and pleaded not guilty. William F. Kane, Esq., was assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney Alfred F. Barker.

EDWARD E. MELVIN, indicted in Suffolk County, December, 1910, for the murder of John W. Carey, at Boston, on Dec. 10, 1910. The defendant has not yet been arraigned. The case is in charge of District Attorney Joseph C. Pelletier.

VAHAN NALBANDIAN, indicted in Essex County, January, 1910, for the murder of Minas K. Moomjian, at Lynn, on July 18, 1909. He was arraigned April 22, 1910, and pleaded not guilty. James H. Sisk, Esq., was assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney Henry C. Attwill.

SILAS N. PHELPS, indicted in Franklin County, July, 1910, for the murder of Emmet F. Haskins, at Monroe, on June 12, 1910. He was arraigned July 12, 1910, and rearraigned July 21, 1910, and pleaded not guilty. William A. Davenport, Esq., and Harry E. Ward, Esq., were assigned by the court as counsel for the defendant. In November, 1910, the defendant was tried by a jury before Schofield, J. The result was a verdict of guilty of murder in the first degree, and defendant's exceptions are now pending. The case is in charge of District Attorney Richard W. Irwin.

ELIZABETH RICHMOND, indicted in Middlesex County, September, 1909, for the murder of Stewart MacTavish, at

Cambridge, on July 23, 1909. She was arraigned Sept. 20, 1909, and pleaded not guilty. Ralph W. Gloag, Esq., and Benjamin A. Lockhart, Esq., were assigned by the court as counsel for the defendant. In May, 1910, the defendant was tried by a jury before Crosby and Dana, J.J. The result was a verdict of guilty of murder in the second degree, and the defendant was sentenced to the Reformatory Prison for Women for life. Exceptions were taken to the verdict of the jury, which exceptions have been overruled by the Supreme Judicial Court. The case is in charge of District Attorney John J. Higgins.

HOWARD STEWARD, indicted in Hampden County, December, 1910, for the murder of Thomas Donlin, at Springfield, on Oct. 1, 1910. No action has been taken in this case. The case is in charge of District Attorney Christopher T. Callahan.

GRADE CROSSINGS.

By St. 1908, c. 372, the Attorney-General was authorized to employ a competent engineer to examine, under his direction, the plans submitted to commissions for the abolition of grade crossings, the actual work of construction and the accounts of expenditures submitted to auditors therein. The saving resulting by reason of the employment of an engineer has been much greater than the expenditures for his salary and expenses, and it is necessary that his employment be continued. There is, however, at present not work enough to occupy all his time. The Board of Railroad Commissioners have a large amount of work for an engineer, and I would recommend that the engineer of grade crossings be made available for use by that Board, under the title of "State Engineer," or such other designation as the General Court may see fit to give him.

Construction has been in progress during the year at Fitchburg, Worcester, Malden, Lynn, Neponset, Lanesborough, Somerville, Lowell, North Reading and Gloucester, and the engineer of grade crossings has made fifty-three visits of inspection in connection therewith. He has prepared

plans relating to the abolition of certain crossings in Sharon and Leominster, and has compiled and issued a statement of the total expenditures for all work of grade-crossing elimination up to and including Nov. 30, 1909. The engineer of grade crossings has also been in attendance at forty-three hearings before special commissions and auditors; and statements of expenditures, numbering fifty-six and amounting to \$2,193,112.50, have been examined. Objection to items amounting to \$86,906.61 has been made, \$49,038.25 of which has been disallowed; and decisions as to \$12,477.21 are pending.

PUBLIC ADMINISTRATORS.

It seems to me advisable to allow probate courts to appoint public administrators in small cases without the expense and delay attendant upon the present method of petition and publication. There are cases in which the Commonwealth is interested, where the expense for publication is a considerable per cent. of the whole amount of the estate. The commonest case of public administrators is where it becomes necessary to get a small deposit from a savings bank in order to pay burial expenses, the amount often being inadequate because reduced by expenses. I would therefore recommend that the probate courts be allowed to appoint a public administrator on petition, but without publication, in cases where the petition recites that the estate amounts to less than \$300.

I can also see no good reason for taking out new administration in cases where an estate has been fully settled and all debts paid by a public administrator. I therefore recommend that sections 12 and 14 of chapter 138 of the Revised Laws be amended, so that the Treasurer and Receiver-General may pay to parties having a lawful claim thereto the balance of an estate deposited with him without the appointment of an administrator in cases where the estate has been fully settled and all debts paid by a public administrator.

ENTRY FEE IN CIVIL ACTIONS.

R. L., c. 204, § 6, provides that "in civil actions in which the commonwealth or a county is the plaintiff no entry fee shall be paid, but if the plaintiff prevails it shall be taxed against the defendant." There are numerous cases in which the Commonwealth is interested, in which, by a technical construction, the Commonwealth is required by the clerk to pay an entry fee. This is clearly not within the intent of the statute, though very likely within its literal meaning. I therefore suggest that an amendment be made, so that in all civil actions which are entered by the Commonwealth or a county no entry fee shall be paid.

ORDER FOR THE REDUCTION OF THE PRICE OF GAS.

The case of *Haverhill Gas Light Company v. Barker and Others*, a bill in equity to restrain the Board of Gas and Electric Light Commissioners and the Attorney-General from enforcing an order of the commissioners made Feb. 1, 1900, and which has been pending in the courts since that time, fixing the price at which gas should be sold by the Haverhill Gas Light Company at 80 cents per 1,000 cubic feet, has been settled. Pending the hearing of said cause before a master appointed therein, the municipal council of the city of Haverhill voted to acquire a municipal gas plant, said vote being the first vote required by section 2 of chapter 34 of the Revised Laws; and thereupon the Haverhill Gas Light Company entered into negotiations with said municipal council relative to the purchase of its plant in said Haverhill and to the price of gas to be thereafter charged by the Haverhill Gas Light Company, and any company which might acquire its property in case said plant should continue to be privately owned and operated; and said council and said Haverhill Gas Light Company reached an agreement relative thereto, duly expressed in a franchise and consent granted by said council to the Haverhill Gas Light Company on June 30, 1910, whereby the said Haverhill Gas Light Company undertook and agreed to charge not exceeding 90 cents per

1,000 cubic feet for all gas furnished to private consumers from and after July 1, 1910, 85 cents net from and after July 1, 1911, 80 cents net to the city of Haverhill throughout said period, and 80 cents net to all consumers when the annual sales should amount to 450,000,000 cubic feet, and to rebate all amounts in excess of 90 cents paid for gas furnished by the Haverhill Gas Light Company subsequent to July 1, 1909; and, with the assent of the Board of Gas and Electric Light Commissioners, a final decree was entered in accordance with said agreement.

THE MASSACHUSETTS AGRICULTURAL COLLEGE.

On June 15, 1910, a resolve of the House of Representatives, adopted in concurrence by the Senate, was transmitted to me, being chapter 157 of the Resolves of 1910, which reads as follows:—

Resolved, That the attorney-general of the commonwealth be requested to consider and report to the next general court what action, if any, on the part of the commonwealth and of the trustees of the Massachusetts Agricultural College is desirable and requisite in order to establish the position of the college as a state institution in the strict sense, and as shall beyond question vest title to its property in the commonwealth. The attorney-general is requested to annex to his report drafts of such bills as he may consider to be necessary or desirable.

As I stated to the Honorable House of Representatives on June 13, 1910 (House Document, No. 1793), in reply to an order as to whether the Massachusetts Agricultural College at Amherst is a State institution, "the words 'State institution' are susceptible of various meanings. Very likely the college is a State institution within the meaning of some statutes. In the strict sense of the words, however, it is not, in my opinion, a State institution. To be a State institution implies that the institution and the work it carries on is directly under the control of the State, that its officers are agents of the State and its property is the property of the State. The Massachusetts Agricultural College does not answer these requirements. The fact that it is subject to legislative government and control, and the fact that the Common-

wealth has contributed to its support, do not constitute it a State institution," although the Legislature, as appears from the statutes, seems often to have treated it as such.

In compliance with the resolve of the Honorable House of Representatives, I annex herewith a tentative draft of a bill which I consider to be necessary and desirable to make the Massachusetts Agricultural College a State institution in the strict sense of the words: —

SECTION 1. The Massachusetts Agricultural College, incorporated by chapter two hundred and twenty of the acts of the year eighteen hundred and sixty-three, and acts in amendment thereof and in addition thereto, may transfer all its property, real and personal, and all its assets of every kind, whether held by it for its general purposes or upon trust for specific purposes, to the commonwealth, to be held by the commonwealth upon the trusts upon which it is now held by said corporation. Such transfer shall be made by an instrument in the form of a conveyance of real estate executed by said corporation and recorded in the registry of deeds for the county of Hampshire. Upon the recording of such instrument such transfer shall be complete and title to said property shall vest in the commonwealth.

SECTION 2. Upon the transfer of the property of The Massachusetts Agricultural College, as herein authorized, said corporation shall be dissolved and the college heretofore maintained by said corporation shall be maintained by the commonwealth as a state institution under the name of The Massachusetts Agricultural College, and the commonwealth shall settle the affairs of and shall be subject to all the legal obligations and be liable for the debts of said corporation legally incurred.

SECTION 3. The present trustees of the corporation, The Massachusetts Agricultural College, shall be the trustees of the state institution hereby created, and shall hold office as such until the expiration of the several terms for which they were appointed trustees of said corporation, unless sooner removed.

SECTION 4. The powers and duties heretofore conferred and imposed upon the trustees of the corporation, The Massachusetts Agricultural College, are hereby conferred and imposed upon the trustees of the state institution, The Massachusetts Agricultural College. The trustees of said institution shall be a corporation under said name for the purpose of taking and holding, by them and their successors, in behalf of the commonwealth, any grant or devise of land, and any gift or bequest of money or other personal property.

made for the use of said institution, and for carrying out said trusts, and for the purpose of preserving and investing the proceeds thereof in notes or bonds secured by good and sufficient mortgages or other securities, with all the powers necessary to carry said purposes into effect. All personal property now held by the corporation, The Massachusetts Agricultural College, upon trust for specific purposes and transferred by it to the commonwealth in accordance with the provisions of section one of this act, shall be held by said trustees in behalf of the commonwealth upon trust for such purposes in accordance with the provisions of this section.

SECTION 5. All money received by said institution shall be paid into the treasury of the commonwealth as often as once in three months; but this shall not affect the right of the trustees to regulate or control the expenditure of any funds held by them in trust for the use of said institution, and section ninety-five of chapter five hundred and four of the acts of the year nineteen hundred and nine shall apply to said institution so far as applicable. The laws relating to civil service shall not apply to the employment of the students of said institution who, while students therein, perform work for said institution.

SECTION 6. All acts and parts of acts which apply to The Massachusetts Agricultural College incorporated by chapter two hundred and twenty of the acts of the year eighteen hundred and sixty-three, and acts in amendment thereof and in addition thereto, shall continue in force and apply to The Massachusetts Agricultural College hereby created so far as they are not inconsistent with this act. All acts and parts of acts inconsistent herewith are hereby repealed.

SECTION 7. This act shall take effect upon its passage.

PROSECUTION OF CORPORATIONS BY COMPLAINT.

The recent case of *Commonwealth v. New York Central and Hudson River Railroad*, 206 Mass. 417, has been called to my attention. In that case the court held that, under existing laws, a corporation may be prosecuted for and convicted of a misdemeanor upon complaint in a district, police or municipal court. In reaching this conclusion, the court, at pages 427 and 428, referred to the method of prosecution prescribed for the lower courts, and said (page 428):—

Many of these provisions are wholly inapplicable to the case of a corporation; some of them were neither complied with nor attempted to be complied with in the case at bar. It is by no means

impossible that perplexing questions may arise in the prosecution of corporations before the inferior courts in the present state of our legislation.

I suggest for your consideration the question of the advisability of further legislation in respect to such prosecutions, to remove the difficulties which at present exist.

DEPARTMENT OF THE ATTORNEY-GENERAL.

During the five years of my incumbency the amount of business requiring attention has consistently increased. The number of cases standing upon the dockets of the department in 1906 for the year 1905 was 2,534; in 1906 the number was 2,858; in 1907, 2,610; in 1908, 3,398; in 1909, 3,321; and in 1910, 3,363.

The amount annually collected during the same period was \$133,018.75 in 1906, \$120,641.07 in 1907, \$359,532.61 in 1908, \$226,419.75 in 1909 and \$376,179.41 in 1910.

Opinions in writing to the number of 122 were given in 1906, to the number of 113 in 1907, 99 in 1908, 100 in 1909 and 165 in 1910.

Since Jan. 17, 1906, 80 cases have been prepared and presented to the Supreme Judicial Court for the Commonwealth, 2 cases have been presented to the Supreme Court of the United States, and 1 is now pending in that court.

From the fact that most of the suits for damage caused by the exercise of the power of eminent domain by the several State boards and commissions have been concluded, less trial work has been required of the department during the last few years; but, upon the other hand, the work connected with other matters, such, for instance, as suits to secure the filing of various returns required by law and the collection of taxes and other sums of money due the Commonwealth, and consultations with and oral advice to State officers, boards and commissions, has become very much heavier; and it is apparent that, although the nature of the work to be performed by the department may change from time to time, to accord with legislative requirements, its volume is not likely to diminish.

In retiring from office, I desire to express my obligation to

my assistants, Frederic B. Greenhalge, Esq., Fred T. Field, Esq., and Andrew Marshall, Esq., who, during the five years of my incumbency, have performed the duties assigned to them with ability, and their fidelity to the interests of the Commonwealth deserves high praise.

Annexed to this report are the principal opinions submitted during the current year.

Respectfully submitted,

DANA MALONE,
Attorney-General.

OPINIONS.

Industrial Education — Independent Industrial Schools — State Board of Education — Public Schools — Cities and Towns.

The provisions in sections 2 and 3 of chapter 505 of the Acts of 1906 for the establishment of independent industrial schools, for the maintenance of which the Commonwealth has in part to reimburse the municipalities by which such schools are established, do not create distinct classes of schools after establishment, but rather prescribe methods by which such schools may be created, and contemplate industrial schools, the establishment of which has been initiated and superintended by the Commission on Industrial Education, or by its successor, the State Board of Education, or has been provided for by the municipality in which such school is located.

An independent industrial school, so established, must be in addition to, and not a part of, the public school system of the city or town where such school is located.

JAN. 8, 1910.

HON. FREDERICK P. FISH, *Chairman, State Board of Education.*

DEAR SIR:— You request my opinion upon the question whether or not schools which had been maintained in certain cities as evening schools, in which industrial education had to some extent been introduced, and which were abandoned by such cities and then established by the Commission on Industrial Education as independent industrial schools, to be carried on in cooperation with the respective cities, are independent industrial schools within the meaning of St. 1906, c. 505, and acts in amendment thereof or addition thereto.

St. 1906, c. 505, was inartificially drawn in the first instance, and has been frequently amended without apparent effort to bring such amendments into harmony with the existing provisions of law. It seems to me, however, that chapter 505 contemplated that the commission should initiate and superintend the establishment of, and the municipalities should provide, industrial schools which should be independent of and in addition to the public or common schools required by law to be established and maintained by the various cities and towns of the Commonwealth, and that the commission should have a general superintendence over the whole field of industrial education, and should

have full power with respect to the disbursement of all money, whether appropriated by a municipality or by the Commonwealth, for industrial education. See St. 1908, c. 572.

St. 1909, c. 540, amended section 5 of chapter 505 of the Acts of 1906, which now reads as follows:—

Upon certification by the board of education to the auditor of the commonwealth that a city, town or district, either by moneys raised by local taxation or by moneys donated or contributed, has maintained an independent industrial school, the commonwealth, in order to aid in the maintenance of such schools, shall pay annually from the treasury to such cities, towns or districts a sum equal to one half the sum raised by local taxation for this purpose: *provided*, that no payment to any city or town shall be made except by special appropriation by the legislature.

Chapter 457 of the Acts of 1909 provides for the consolidation of the Board of Education and the Commission on Industrial Education, and there appear to be no provisions in the statute which affect the powers of the Board of Education, as successor to the Commission on Industrial Education, with respect to that branch of its work.

After some consideration of the subject, I am of opinion that the independent industrial schools for the maintenance of which the Commonwealth is in part to reimburse the municipalities by which such schools are established, are industrial schools the establishment of which has been initiated and superintended by the commission in the first instance, or by its successor, the State Board of Education, or has been provided for by the municipality in which it is located; and that the provisions of sections 2 and 3 of said chapter 505, with respect to initiating the establishment of and providing for such schools, do not refer to distinct classes of schools after establishment, but to the methods by which independent schools may be set in motion. I am further of opinion that our legislation clearly contemplates a course of instruction and a class of schools in addition to the public school system as established by law in this Commonwealth, and that an independent industrial school cannot be a part of the public school system of any municipality. What was apparently done by the Commission on Industrial Education was to arrange with a municipality that a part of the public school system, in which more or less industrial education had been introduced, should be abandoned by the city and taken over by the commission as an inde-

pendent industrial school. In no case does it appear that an independent school was established in addition to the educational facilities already maintained in any municipality, but, on the contrary, such municipality discontinued a branch of its public school system, which was then, with some changes in courses of instruction, taken over as an independent school. This, in my opinion, was not the intent of the statute, since in no case was an independent school established. The only effect of the action so taken was to transfer the control and the responsibility for the maintenance of an existing school or educational institution; and where the statute contemplated opportunities in the direction of industrial studies in addition to the educational opportunities offered by the public schools, it results that the industrial courses are offered more or less at the expense of the instruction in the public schools, as such. I am of opinion that this course was not what the statute contemplated when it authorized the commission to initiate and superintend the establishment of industrial schools. If schools such as you describe are independent schools within the meaning of the statute, the cities and towns by which they are maintained may, of course, be reimbursed, and this reimbursement would extend to section 4 of chapter 572 of the Acts of 1908. If they are not, and from the facts presented to me they appear not to be, no reimbursement can be had.

Very truly yours,

DANA MALONE, *Attorney-General.*

*Savings Bank — National Bank or Trust Company — Connected
Offices — Elevator or Dumb-waiter.*

A connection between a savings bank having an office upon the second floor of a building and a national bank or trust company upon the floor below by means of a small lift or dumb-waiter, is forbidden by the provision of St. 1908, c. 590, § 19, that "no savings bank shall occupy the same office or suite of offices with a national bank, trust company or other bank of discount, nor any office directly connected by means of doors or other openings in partitions with the office or suite of offices used or occupied by any such national bank, trust company or other bank of deposit."

JAN. 18, 1910.

HON. ARTHUR B. CHAPIN, *Bank Commissioner.*

DEAR SIR: — You ask my opinion as to whether section 19 of chapter 590 of the Acts of 1908 is violated where there is a connection between a savings bank, having an office on the second

floor of a building, and a national bank or trust company underneath, occupying the first floor, by means of a dumb-waiter or small lift, sufficiently large for the transportation of money or securities by an opening through the floor, but not large enough for the use of a person.

St. 1908, c. 590, § 19, is as follows:—

No savings bank shall occupy the same office or suite of offices with a national bank, trust company or other bank of discount, nor any office directly connected by means of doors or other openings in partitions with the office or suite of offices used or occupied by any such national bank, trust company or other bank of discount. Any such corporation violating the provisions of this section shall be punished by a fine of not more than five hundred dollars.

The law provides that a savings bank shall not have an office directly connected by means of doors or other openings in partitions with the office occupied by a national bank or trust company.

I am of opinion that in the case described by you there is such a connection, and that the law was intended to, and does, prohibit such connection. I do not see how such an opening can be made in the ceiling of the room, so as to connect the two institutions, if it cannot be made in the sides. I think the word "partition" is broad enough to cover both cases, and such connection is therefore prohibited by the statute.

Very truly yours,

DANA MALONE, *Attorney-General.*

Building Regulations — City of Boston — Boston State Hospital.

The Boston State Hospital, of which the custody, control and management are vested, under the provisions of St. 1909, c. 504, §§ 14-23, in the State Board of Insanity and the trustees of said institution, is not subject to the inspection and regulation of the officials of the city of Boston with relation to gas, electric lighting and plumbing therein.

JAN. 27, 1910.

OWEN COPP, M.D., *Executive Officer, State Board of Insanity.*

DEAR SIR:— You have requested my opinion as to whether the Boston State Hospital is subject to the regulation and inspection of the officials of the city of Boston with relation to gas, electric lighting and plumbing connected with the institution.

By the provisions of St. 1909, c. 504, §§ 14–23, the custody, management and control of the Boston State Hospital are entrusted to the State Board of Insanity and to the trustees of the hospital. Upon the State Board of Insanity are also imposed the duties of supervision, of approving plans and specifications for buildings, of making frequent visitations and careful inspections.

Since the Commonwealth has taken upon itself the entire custody and management of the property in question, and has by the provisions of the statute referred to regulated the conduct of its officers and agents in that custody and management, it must be considered to have retained these matters within its special and peculiar jurisdiction.

The statutes providing for regulation and inspection by officials of the city of Boston constitute a delegation of the police power of the Commonwealth, and that delegation is to be strictly construed. It is a presumption of law that the Legislature, in delegating that power, had primarily in view the regulation of the conduct of the citizen and not that of the Commonwealth. Therefore, while the provisions of the statutes with reference to regulation and inspection by city officials are general in their terms, and do not expressly exclude from their scope any property within the limits of the city, there is an implied exception of the property owned and controlled by the Commonwealth itself, and retained, through the provisions of the special statute cited, under its own jurisdiction. See I Op. Atty.-Gen., 290; *Teasdale v. Newell, etc., Construction Co.*, 192 Mass. 440.

I am therefore of opinion that your question is to be answered in the negative.

Very truly yours,

DANA MALONE, *Attorney-General.*

Taxation — Property omitted from Annual Assessment — Removal of Taxpayer from the Commonwealth.

Under the provisions of St. 1909, c. 490, part I, § 85, an assessment of taxes upon property omitted from the annual assessment may be made, although the person assessed has removed from the Commonwealth prior to December 15.

FEB. 7, 1910.

HON. WILLIAM D. TREFRY, *Tax Commissioner.*

DEAR SIR: — You request my opinion as to whether the assessment of taxes authorized by St. 1909, c. 490, part I, § 85, upon

property omitted from the annual assessment, may be made if the person assessed has removed from the Commonwealth prior to December 15th. I assume, of course, that such person was a resident of the Commonwealth on the preceding 1st of May.

The statute is as follows:—

If the real or personal estate of a person, to an amount not less than one hundred dollars and liable to taxation, has been omitted from the annual assessment of taxes in a city or town, the assessors shall between the fifteenth and twentieth days of December next ensuing assess such person for such estate. The taxes so assessed shall be entered on the tax list of the collector who shall collect and pay over the same. Such additional assessment shall not render the tax of such city or town invalid although its amount, in consequence thereof, shall exceed the amount authorized by law to be raised.

In my opinion, the assessment may be made. It is made as of May 1, and “is not to be considered as a new and independent assessment, but simply as the correction of a mistake in the regular taxation; . . . the tax of a tax-payer for the year is but a single tax, and a single assessment.” *Noyes v. Hale*, 137 Mass. 266, 271; *Harwood v. North Brookfield*, 130 Mass. 561. I find no jurisdictional objection to the correction of a tax assessment in the fact of a change of residence by the person assessed.

Very truly yours,

DANA MALONE, *Attorney-General*.

*Constitutional Law — Constitution of the United States —
Amendment — Income Tax.*

A proposed amendment to the Constitution of the United States, vesting in Congress “the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration,” was intended to empower Congress to lay and collect taxes on incomes without the restriction imposed by the Constitution of the United States in article I., § 8, that “all duties, imposts and excises shall be uniform throughout the United States,” and § 9, that “no capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.”

FEB. 9, 1910.

C. H. BROWN, Esq., *House Chairman, Committee on Federal Relations.*

DEAR SIR:— I am in receipt of a communication from you, dated February 7, in which, by direction of the committee on federal relations, you submit certain questions with relation to a joint resolution of the Congress of the United States proposing an amendment to the Constitution of the United States, which amendment is now before that committee, and is as follows:—

ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Your communication states that the committee on federal relations requires my opinion upon the “interpretation of the phraseology of the proposed amendment,” and also requests me “to furnish an outline of the probable effect and operation of such tax, if levied, especially with reference to the existing laws of this Commonwealth on the subject.” I am advised that the precise point to which your inquiry is directed is to so much of the proposed amendment as purports to authorize Congress to lay and collect taxes on incomes “without apportionment among the several States, and without regard to any census or enumeration.”

The Constitution of the United States, in article I., section 8, among other provisions, empowers Congress “to lay and collect taxes, duties, imposts and excises,” but imposes a limitation that “all duties, imposts and excises shall be uniform throughout the United States.” By section 9 of the same article it is provided that “No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.” By section 2 of article I. it is provided that:—

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct.

Taxes levied by Congress, therefore, if direct taxes, must be levied in proportion to the census or enumeration provided for in section 2 of article I. of the Constitution of the United States; and if indirect taxes, they must be subject to the qualification imposed by section 8 of the same article, — that they shall be uniform throughout the United States. The distinction between the two classes of taxes is well expressed in the case of *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, where, in an opinion by Chief Justice Fuller (page 557), it is stated: —

Thus, in the matter of taxation, the Constitution recognizes the two great classes of direct and indirect taxes, and lays down two rules by which their imposition must be governed, namely: the rule of apportionment as to direct taxes; and the rule of uniformity as to duties, imposts and excises.

The first question to be considered is whether a tax on the rents or income of real estate is a direct tax within the meaning of the Constitution. . . . but a tax upon property holders in respect of their estates, whether real or personal, or of the income yielded by such estate, and the payment of which cannot be avoided, are direct taxes.

The court, in this case, decided that a tax levied by Congress upon the income from real estate, like a tax upon the realty itself, was a direct tax, and that the statute under consideration (28 Stat. 509, c. 349), so far as it purported to levy a tax upon income so derived, was unconstitutional.

Upon a rehearing of the same case (158 U. S. 601), the court held that the tax laid by the statute above referred to, upon income derived from real estate and from invested personal property, was invalid, for the reason that it constituted a direct tax, which could not be levied without apportionment among the several States, as provided in the Constitution.

The purpose of the proposed amendment to the Constitution is, therefore, as it expressly states, to empower Congress to lay and collect taxes on incomes, without the restriction imposed by the constitutional provisions above stated, — that there shall be an apportionment among the several States, according to their inhabitants, to be determined by an enumeration made by the United States.

The effect and operation of an income tax laid by Congress under authority of the proposed amendment, if adopted, must be matter of pure conjecture, and must remain such until the pas-

sage of an act upon which an opinion may be based. It may be said, however, that the only effect which such an act could have with reference to the existing laws of this Commonwealth on the subject, would be the imposition of an added burden of taxation upon those persons who fell within its provisions.

Very truly yours,

DANA MALONE, *Attorney-General.*

Hours of Labor — Mercantile Establishment — Employment of Women — Manager of Department.

St. 1909, c. 514, § 47, which provides that “no child and no woman shall be employed in laboring in a mercantile establishment more than fifty-eight hours in a week,” does not prohibit the employment in such establishment of a woman as the manager of a large department, entrusted with the control and supervision of numerous persons employed therein, and whose duties require the exercise of judgment and discretion, and do not necessarily involve either manual labor or labor performed within fixed hours.

FEB. 14, 1910.

Gen. J. H. WHITNEY, *Chief, Massachusetts District Police.*

DEAR SIR: — In your letter dated February 3 you request my opinion on the question whether or not section 47 of chapter 514 of the Acts of 1909, which, so far as material, provides that “no child and no woman shall be employed in laboring in a mercantile establishment more than fifty-eight hours in a week,” extends to and includes “a woman employed by a mercantile establishment as the manager and superintendent of a special department in such establishment, said woman being the buyer for such department, and having, at times, as many as four hundred employees under her direction, consisting of men, women and minors; she having no special hours for arriving at or leaving such establishment, the times necessary for her to be present being determined by herself.”

I have no hesitation in advising you that the statute to which you refer is not applicable to a woman who is a manager and superintendent of a large department, entrusted with the control and supervision of numerous persons employed therein, and whose duties require the exercise of judgment and discretion, and do not necessarily involve either manual labor or labor performed within any fixed and definite hours.

Very truly yours,

DANA MALONE, *Attorney-General.*

*Civil Service — State Boards, Departments or Commissions —
Authority to require Special Qualifications in Applicants for
Appointment or Employment.*

No State board, department or commission is authorized to require of applicants for appointment or employment qualifications other than those required by the civil service law and rules, and the Civil Service Commission in its discretion may or may not accede to a requisition calling for special qualifications.

FEB. 21, 1910.

To the Hon. JOSEPH WALKER, *Speaker of the House of Representatives.*

SIR: — I have the honor to acknowledge the receipt of an order adopted by the House of Representatives, which reads as follows: —

Ordered, That the Attorney-General inform the House of Representatives what boards, departments and commissions, if any, of the Commonwealth can specially require of applicants for positions under them qualifications other than required by the Civil Service Commission, and to what extent they may go in those qualifications; also, to what extent the Civil Service Commission are bound to accede to requisitions made for certain qualifications by boards, departments and commissions in making up or advertising notices of examinations for applicants for positions so qualified by departments, boards and commissions.

In reply thereto I would inform the Honorable House of Representatives that section 6 of chapter 19 of the Revised Laws provides: —

The commissioners shall from time to time prepare rules regulating the selection of persons to fill appointive positions in the government of the commonwealth and of the several cities thereof and the selection of persons to be employed as laborers or otherwise in the service of the commonwealth and said several cities, and altering, rescinding, amending or adding to the rules now established. Such rules may be of general or limited application and shall take effect only when approved by the governor and council.

In pursuance of the authority given the Civil Service Commission by said section, said commission has adopted certain rules. The rule relating to special qualifications, under which the commission acts, is Rule 22, section 1: —

Whenever any appointing officer shall make requisition not expressly calling for women, the commission shall certify from such list as it shall deem suitable only the names of all veterans who have passed the examination for the position sought, in the order of the respective standing of such veterans upon the eligible list, and the position, if filled, must be filled by the appointment and employment of some veteran so certified, and in case there is no such veteran upon the list, then the commission shall certify, from such list as it shall deem suitable, the names of the three persons most eligible. If in any requisition a request shall be made for the certification of persons possessing a special qualification or experience, the commission may in its discretion include in the list of names certified the name of one or more persons possessing such special qualification or experience.

I am informed that the practice of the Civil Service Commission is as follows: when a requisition is received from an appointing official to fill a vacancy, the commission certifies from such list as it deems most suitable, first certifying the names of all veterans, and if there are no veterans, next the names of the three persons standing highest on the list, who have signified a willingness to accept such position at the rate of pay stated in the requisition. If the appointing official states in his requisition that he desires persons possessing special qualifications, the commission acts upon his request, either granting or refusing it, after consideration of the reasonableness of the request, the public needs in general, the special needs of the vacant position, the respective rights of the other eligibles on the list, and the question whether such request appears to be an attempt to reach some particular person on the list, in evasion of the intent of the civil service law. If appointing officials ask for more extreme special qualifications than the commission considers reasonable, or than it is advised by its experts are reasonable, it prepares its examinations irrespective of such requests. Examination papers, when upon technical subjects, are prepared by experts, or persons technically or specially fitted by training or experience to perform the task. Thus, civil engineering papers are prepared largely by civil engineers outside of the office of the commission; visitors' papers are prepared by persons specially trained in charitable work; papers for architectural positions are prepared by architects.

In reply to the specific questions asked by the Honorable House of Representatives, as to what boards, departments and commissions, if any, of the Commonwealth, can specially require of appli-

cants for positions under them qualifications other than required by the Civil Service Commission, and to what extent they may go in those qualifications, I would say that no boards, departments and commissions of the Commonwealth can specially require of applicants qualifications other than those required by the civil service law and rules; and as to what extent the Civil Service Commission is bound to accede to requisitions made for certain qualifications by boards, departments and commissions in making up or advertising notices of examinations for applicants for positions so qualified by departments, boards and commissions, I would inform the Honorable House of Representatives that the civil service law and rules do not in any case bind or make it compulsory upon the Civil Service Commission to accede to such requisitions. The law and rules give the commission the right and authority to so accede at its discretion; and in the exercise of its discretion it should be governed by the needs of the public service, as presented by the appointing officials or by others specially fitted to advise with it in the matter.

Very truly yours,

DANA MALONE, *Attorney-General.*

Constitutional Law — Great Pond — Right of Legislation to determine Height at which Water shall be maintained.

It is within the constitutional power of the Legislature to pass an act establishing a point upon the shores of a great pond below which the waters therein shall not be drawn by persons entitled to the use thereof, if adequate provision is made for compensation if the condition thus established interferes with vested rights of riparian owners, or affects prescriptive or granted rights to lower the waters of such ponds.

MARCH 10, 1910.

HON. CLIFFORD B. BRAY, *Senate Chairman, Joint Standing Committee on Harbors and Public Lands.*

DEAR SIR:— You inquire, on behalf of the joint standing committee on harbors and public lands, whether or not a proposed act, entitled “An Act relative to establishing a low-water mark in Lake Attitash in the towns of Amesbury and Merrimac,” would be legal and constitutional.

This bill provides, in section 1, that:—

The low-water mark in Lake Attitash, situated in the towns of Amesbury and Merrimac, is hereby established at the low-water mark

where the lake originally discharged into Powow river at the flume at Tuxbury's pond; the low-water mark being the bed of the brook at the bridge, so called, the original discharge of the lake into Tuxbury's pond.

In sections 2 and 3 it is in substance provided that the Board of Harbor and Land Commissioners shall fix the elevation of such low-water mark with reference to some suitable base, and duly record the same; and that such Board, subject to the approval of the Governor and Council, shall take, by eminent domain or otherwise, such land at the outlet of the lake as may be necessary, and shall construct a suitable dam to prevent the drawing of the water below the mark so established.

Section 4 provides, in part, that:—

The commonwealth shall pay all damages to property sustained by any person or corporation by the taking of any land, right of way, water right or easement or by any other thing done under the authority of this act.

and due provision is made for the determination of such damage and for the vesting of title of the property so taken in the Commonwealth.

By section 6 it is provided that all expenses incurred by said Board under the provisions of this act shall be reimbursed to the Commonwealth by the towns of Amesbury and Merrimac, the proportion to be determined apparently by the Board of Harbor and Land Commissioners.

Your letter further states that the passage of this act is opposed by the Hamilton Woolen Company, located in the town of Amesbury, on the ground that it is the owner and assignee of a grant made by said town of the right to draw the waters of Lake Attitash below the level to be established, and that it has acquired further rights in the premises by prescription.

The form of the proposed act appears to have been copied from chapter 539 of the Acts of 1909, which was an act to establish a low-water mark in Lake Quannapowitt in the town of Wakefield. The determination of the precise location of the "low-water mark" upon the shores of a great pond, in its ordinary signification, is ordinarily a question of fact as to where upon such shores may be found the point below which the waters are not accustomed to fall. See *Paine v. Woods*, 108 Mass. 160, 171;

Waterman v. Johnson, 13 Pick. 261, 265; *West Roxbury v. Stoddard*, 7 Allen, 158, 167; *East Boston Co. v. Commonwealth*, 203 Mass. 68.

It appears, however, from section 3 of the proposed act, that its real purpose is to establish a point upon the shores of Lake Attitash below which the waters therein shall not be drawn by persons entitled to the use thereof. This, in my opinion, is within the power of the Legislature. See *Attorney-General v. Jamaica Pond Aqueduct*, 133 Mass. 361. It follows, therefore, that the passage of an act establishing the height at which the water in a great pond must be permanently maintained, so far as concerns the use thereof, which is, in my opinion, the true purpose and effect of the act under consideration, is within the constitutional power of the Legislature, if adequate provision is made for compensation if the condition thus established interferes with vested rights of riparian owners, or affects prescriptive or granted rights to draw lower the waters of the pond. See *Attorney-General v. Revere Copper Co.*, 152 Mass. 444; R. S., c. 119, § 12; St. 1867, § 275. In this instance the proposed act undoubtedly contains a clause which provides compensation for damage occasioned by anything which may be done under its provisions, which would apply if private rights in land or water rights were affected by the establishment of the so-called "low-water mark."

I desire to point out, however, that if, as I am advised, the Hamilton Woolen Company claims to have prescriptive or other rights to draw the water of Lake Attitash below the low-water mark now to be designated, the Commonwealth would undoubtedly be required to engage in extensive litigation for the determination of such claim, which, if established, might require the towns of Amesbury and Merrimac to reimburse to the Commonwealth a very considerable sum as damages for the interference therewith. In view of the fact that the existing rights of the Hamilton Woolen Company, or of any other persons who may claim the right to use the waters of Lake Attitash, might be determined by an information brought by the Attorney-General, and any unwarranted use thereof be terminated (*Attorney-General v. Jamaica Pond Aqueduct*, *supra*; *Attorney-General v. Revere Copper Co.*, *supra*), it should be carefully considered whether or not it is expedient to pass statutes like St. 1909, c. 539, or the act now proposed, which provide compensation for damages, without ascertaining to what extent the Commonwealth

or the several towns interested therein may be called upon to reimburse persons or corporations for damages to property sustained by anything done under the authority of their provisions.

Very truly yours,

DANA MALONE, *Attorney-General.*

Constitutional Law — Constitution of the United States — Discrimination — Proposed Act forbidding Women under Twenty-one to enter Chinese Restaurants.

A bill providing that "it shall be unlawful for any woman under twenty-one years of age to enter a Chinese restaurant or hotel or to be served with food or drink therein," and that "it shall be unlawful for the proprietor of any such hotel or restaurant to admit any woman under twenty-one years of age thereto or to serve her with food or drink therein," and further providing that "violations of this act shall be punished by fine or imprisonment, at the discretion of the court," is in effect a discrimination against the Chinese by reason of their nationality, and therefore, if enacted, would be in violation of the Fourteenth Amendment to the Constitution of the United States, and therefore unconstitutional and void.

APRIL 11, 1910.

CHANNING H. COX, Esq., *Chairman of the Committee on Bills in the Third Reading.*

DEAR SIR: — I have to acknowledge the receipt of a communication in which you state that the committee on bills in the third reading desires my opinion upon the constitutionality of House Bill 1372, entitled, "An Act relative to the admission of women under twenty-one to certain restaurants." This act provides, in section 1, that: —

It shall be unlawful for any woman under twenty-one years of age to enter a Chinese restaurant or hotel, or to be served with food or drink therein; and it shall be unlawful for the proprietor of any such hotel or restaurant to admit any woman under twenty-one years of age thereto, or to serve her with food or drink therein.

Section 2 is as follows: —

Violation of this act shall be punished by fine or imprisonment, at the discretion of the court.

The proposed act does not define what constitutes "a Chinese restaurant or hotel," but I assume that by the words quoted it was intended to designate a restaurant or hotel maintained by Chinese, in which food is prepared and served in the Chinese manner, and that it does not extend to or include restaurants or hotels kept by others than Chinese.

If the proposed act is to be sustained, it must be as an exercise of the police power, which includes all matters "which affect the lives, limbs, health, comfort and welfare of all in their persons and their property" (*Commonwealth v. Bearnse*, 132 Mass. 542); and of these matters the Legislature must, in the first instance, be the judge. As was said by Chief Justice Shaw, in *Commonwealth v. Alger*, 7 Cush. 52, at page 102:—

Having once come to the conclusion that a case exists, in which it is competent for the Legislature to make a law on the subject, it is for them, under a high sense of duty to the public and to individuals, with a sacred regard to the rights of property and all other private rights, to make such reasonable regulations as they may judge necessary to protect public and private rights, and to impose no larger restraints upon the use and enjoyment of private property, than are in their judgment strictly necessary to preserve and protect the rights of others.

The exercise of this power is, however, subject to certain limitations. The purpose for which it is invoked must fall within those above enumerated, and the means and manner of its application must be reasonable, and must affect equally all persons and property under the same circumstances and conditions. The Legislature may not, under the guise of the police power, enact statutes which operate for or against any particular persons within the same general class and under the same circumstances. *Barbier v. Connolly*, 113 U. S. 27; *Soon Hing v. Crowley*, 113 U. S. 703. Legislation which discriminates against any person in respect of his freedom of action or enjoyment of property is in violation of that part of the Fourteenth Amendment of the Constitution of the United States which provides:—

nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The protection afforded by this provision extends to all persons within the Commonwealth, and may be enforced by appro-

priate legislation of Congress. As was stated in *Yick Wo v. Hopkins*, 118 U. S. 356, at page 369:—

These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. It is accordingly enacted by § 1977 of the Revised Statutes, that “all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

If the proposed act results in an unfair or unreasonable limitation upon the rights and privileges of Chinese within the Commonwealth to hold property and to do business therein, or unjustly discriminates against them as a class, it is in contravention of the amendment above quoted, and is, therefore, void.

To justify the bill now before me, it would be necessary to show that restaurants or hotels kept by Chinese may, as a class, be distinguished from all other restaurants or hotels, with respect to the danger to women under the age specified who may resort to them for food or entertainment. It is not enough that in individual cases restaurants or hotels kept by Chinese, by reason of the manner in which they were maintained, have been found to be dangerous to the morals of such women, and therefore, to the public; for without doubt as much may be said of some hotels or restaurants kept by others than Chinese. The statutes already require innholders and common victualers to secure a license before transacting business, and in individual cases this license may be withheld if the public good does not require its issuance. R. L., c. 102, §§ 1, 2. In order to justify a restriction applicable alone to restaurants or hotels kept by Chinese, it must appear that such restaurants or hotels, as a class, by reason of being maintained by Chinese, are more dangerous to the morals of the public than all other restaurants or hotels. If such is not the fact, the proposed act in operation and effect discriminates against the Chinese as such, and is unconstitutional. There are no facts before me from which such a distinction may properly be drawn; and I am constrained to the opinion that the pro-

posed bill, in effect, discriminates against the Chinese by reason of their nationality, and therefore, if passed, would be unconstitutional and void.

Very truly yours,

DANA MALONE, *Attorney-General.*

Firemen's Relief Fund — Injuries suffered in the Performance of Duty — Drill or Exercise of Horses.

R. L., c. 32, § 73, as amended by St. 1903, c. 253, creating a firemen's relief fund, to be used "for the relief of firemen . . . who may be injured in the performance of their duty at a fire or in going to or returning from the same," does not authorize the use of such fund for the relief of firemen who may be injured while taking part in drill, or while exercising the horses of the department by order of the superior officers.

APRIL 21, 1910.

D. ARTHUR BURT, Esq., *Secretary, Board of Commissioners of the Firemen's Relief Fund.*

DEAR SIR: — You have asked my opinion as to whether section 73 of chapter 32 of the Revised Laws, as amended by chapter 253 of the Acts of 1903, may properly be interpreted to authorize payments from the firemen's relief fund for the relief of firemen who are injured, not in the performance of their duty at a fire or in going to or returning from the same, but in the performance of their duty at a fire drill, which has been instituted for the purpose of increasing the efficiency of the fire department, or in exercising the horses of the department, or in doing similar things by order of the superior officers of the department.

The statute provides as follows: —

Such fund shall be used for the relief of firemen, whether members of said association or not, who may be injured in the performance of their duty at a fire or in going to or returning from the same, and for the relief of the widows and children of firemen killed in the performance of such duty, in the manner and to the amount determined by a board of five persons, . . .

In my opinion, the statute may not be so interpreted. Its language is clear, and the scope of its provisions is definitely limited by that language.

Firemen who are injured while taking part in a drill, or while exercising the horses of the department by order of the superior

officers, may undoubtedly be considered as having been injured in the performance of their duties as firemen; but the statute, as it stands, makes provision for the relief of those only who are injured in the performance of certain specified duties, namely, duties performed at a fire or in going to or returning from the same.

Very truly yours,

DANA MALONE, *Attorney-General.*

Constitutional Law — Taxation — Boston Railroad Holding Company — Excise — Bonds — Exemption from Local Taxation.

A bill which establishes a special and distinct method for the taxation of the Boston Railroad Holding Company, incorporated under the provisions of St. 1909, c. 519, for the sole purpose of acquiring and holding the capital stock, bonds and other evidences of indebtedness of the Boston & Maine Railroad, and of voting upon the stock and collecting and receiving dividends and interest upon the stock, bonds and other evidences so acquired and held, by imposing an excise tax upon such corporation and exempting its bonds from local taxation, is objectionable upon constitutional grounds; first, because the franchise to acquire and hold stock, bonds and other securities, exercised by such corporation, is not to be distinguished from the franchises of other corporations which have been or may be organized for similar purposes, and the imposition of such excise upon a single corporation, therefore, would not be reasonable, within the meaning of article IV., section I., chapter I., part the second of the Constitution of Massachusetts, which authorizes the Legislature to impose and levy reasonable duties and excises; and second, because there is no valid distinction between the bonds of such corporation and the bonds of any other business corporation which may hold securities of like character, and the exemption from taxation of such bonds would have an effect to render the general tax on property throughout the Commonwealth unequal and disproportionate, and so be obnoxious to the Constitution; and the creation of such exemption, therefore, would exceed the constitutional authority of the Legislature "to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth," as defined in the Constitution of Massachusetts, part the second, chapter I., section I., article IV.

APRIL 22, 1910.

HON. JOSEPH WALKER, *Chairman of the House Committee on Rules.*

SIR:— I am in receipt of your communication of April 4, which is as follows:—

The committee on rules on the part of the House has decided to submit to you the enclosed bills. They wish your opinion upon their constitutionality. If these particular bills are not constitutional, can you suggest such modification, carrying out the purpose of the bills, as will render them constitutional, either by making the bills general, or in any other way?

The bills to which you refer are alternative drafts of an act relating to the taxation of the Boston Railroad Holding Company. This company was incorporated under the provisions of St. 1909, c. 519, "for the sole purpose of acquiring and holding the whole or any part of the capital stock, bonds and other evidences of indebtedness of the Boston and Maine Railroad, and of voting upon all certificates of stock so acquired and held, and of receiving and collecting dividends and interest upon said stock, bonds and other evidences of indebtedness." (Section 1.)

The corporation so organized was expressly made subject to substantially all the provisions of St. 1903, c. 437, known as the Business Corporation Law, and acts in amendment thereof, so far as applicable to domestic corporations, including the provisions therein which relate to taxation, which now appear in St. 1909, c. 490, part III. The act of incorporation above cited imposes certain limitations upon the powers of the Boston Railroad Holding Company which do not apply generally to business corporations. Such are the provisions that a majority of the officers and directors of the Boston Railroad Holding Company shall be citizens of Massachusetts, that the principal office and place of business of such corporation shall be in the city of Boston, and that all meetings of the directors shall be held in this Commonwealth (section 2); that the stock of the Boston & Maine Railroad which may be acquired by the Boston Railroad Holding Company shall not be sold by it without express authority from the Legislature, and that the bonds, notes or other evidences of indebtedness of such railroad acquired by such company shall not be disposed of without the approval of the Board of Railroad Commissioners (section 3); and that the shares of stock of such company shall not be sold or transferred until they have been guaranteed by a railroad corporation incorporated under the laws of the Commonwealth (section 4). The Boston Railroad Holding Company is therefore a corporation organized under special law for a specific and limited purpose, subject to substantially all the provisions of the Business Corporation Law and to certain further express restrictions; and the single purpose for

which it was organized is doubtless one for which, apart from the prohibition in St. 1907, c. 585, § 1, which in my opinion, does not affect the question herein under consideration, a corporation might have been organized under the Business Corporation Law.

The bills submitted to me make special provision for the taxation of the Boston Railroad Holding Company by name, and cannot apply to any other corporation now existing or which may hereafter be created. I quote them in full.

One draft is as follows: —

SECTION 1. The Boston Railroad Holding Company shall annually between the first and tenth days of April make a return to the tax commissioner, under oath of its treasurer, setting forth as of the first day of April of the year in which the return is made: —

First, the total authorized amount of the capital stock of said Boston Railroad Holding Company; the amount issued and outstanding and the amount then paid thereon; the classes, if any, into which it is divided; the par value and number of its shares; the market value of the shares of its stock and of each class of its stock, if there are two or more classes;

Second, the total amount outstanding of the bonds, notes and other evidences of indebtedness of said Boston Railroad Holding Company;

Third, the market value of all the shares of stock in other corporations held by said Boston Railroad Holding Company which, if owned by a natural person resident in this commonwealth, would not be liable to taxation.

SECTION 2. The tax commissioner shall estimate from the returns or otherwise the fair cash value of all of the shares constituting the capital stock of said Boston Railroad Holding Company. To such value there shall be added the total amount outstanding of the bonds, notes and other evidences of indebtedness of said Boston Railroad Holding Company, and from the sum thereof there shall be deducted the market value of securities owned by it which if owned by a natural person resident in this commonwealth would not be liable to taxation. The remainder shall be taken for the purposes of this act as the true value of the corporate franchise of the said Boston Railroad Holding Company.

SECTION 3. The said Boston Railroad Holding Company shall annually pay an excise upon the value of its corporate franchise as determined above at the rate determined in the manner provided in section forty-three of part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine; provided, however, that the total amount of tax to be paid by the said Boston

Railroad Holding Company in any year shall amount to not less than one-tenth of one per cent of the fair cash value of its capital stock at the time of said assessment as found by the tax commissioner.

SECTION 4. No taxes shall be assessed in a city or town upon the shares in the capital stock, bonds or other evidences of indebtedness of the said Boston Railroad Holding Company for state, county, city, town or other purposes, for any year for which the said Boston Railroad Holding Company shall pay to the treasurer and receiver general the excise upon its corporate franchise as herein provided.

SECTION 5. This act shall take effect upon its passage.

The other draft, which contains a more detailed method of valuation, is as follows:—

SECTION 1. The Boston Railroad Holding Company shall annually between the first and tenth days of April make a return to the tax commissioner under oath of its treasurer setting forth as of the first day of April of the year in which the return is made:—

First, The total authorized amount of the capital stock of the corporation; the amount issued and outstanding and the amount then paid thereon; the classes, if any, into which it is divided; the par value and number of its shares; the market value of the shares of its stock or of each class of its stock if there are two or more classes.

Second, The total amount of the bonds, notes and other evidences of indebtedness of said Boston Railroad Holding Company and a statement of the market value of such bonds, notes or other evidences of indebtedness upon the said first day of April.

Third, A statement in such detail as the tax commissioner may require of the market value as of said first day of April of all the shares of stock of other corporations owned by said Boston Railroad Holding Company which shares if owned by a natural person resident in this Commonwealth would not be liable to taxation.

SECTION 2. The tax commissioner shall ascertain from the returns or otherwise the true market value of the shares of said Boston Railroad Holding Company and shall estimate therefrom the fair cash value of all of said shares constituting its capital stock on the preceding first day of April. The tax commissioner shall also ascertain from the returns or otherwise the true market value of all the bonds, notes and other evidences of indebtedness of said Boston Railroad Holding Company and shall estimate therefrom the fair cash value of all of such bonds, notes and other evidences of indebtedness as of the preceding first day of April. The sum of such

fair cash value of the shares of stock and such fair cash value of the bonds, notes and other evidences of indebtedness of the Boston Railroad Holding Company shall for the purposes of this act be taken as the true value of its corporate franchise. From the value of the corporate franchise determined as above there shall be deducted the value as found by the tax commissioner of the securities owned by the Boston Railroad Holding Company which securities if owned by a natural person resident in this Commonwealth would not be liable to taxation. The value remaining after making the deduction herein provided shall be taken for the purposes of this act as the true value of the corporate excess of the Boston Railroad Holding Company.

SECTION 3. Said Boston Railroad Holding Company shall annually pay to the treasurer and receiver-general an excise upon the value of its corporate excess as determined above at the rate provided for in section forty-three of part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine; provided, however, that the total amount of the tax to be paid by said Boston Railroad Holding Company in any year shall amount to not less than one-tenth of one per cent of the value of the corporate franchise determined as is herein provided.

SECTION 4. No taxes shall be assessed in a city or town for State, county or town purposes upon the shares in the capital stock or upon the bonds, notes and other evidences of indebtedness of said Boston Railroad Holding Company in any year in which said company shall pay to the treasurer and receiver-general the tax provided for by this act.

SECTION 5. This act shall take effect upon its passage.

The material difference between the two bills is that the minimum limit of taxation under the second is one-tenth of one per cent. of the value of the corporate franchise, which is the sum of the fair cash value of the shares of stock and the fair cash value of the bonds, notes and other evidences of indebtedness of the corporation. The minimum limit in the first bill is one-tenth of one per cent. of the fair cash value of the capital stock alone. It would result from this difference that if the Boston Railroad Holding Company should issue large amounts of bonds, the minimum limit of taxation under the second bill would be much higher than under the bill first quoted; and this difference is important, for the reason that it is unlikely, under either bill, that the tax will be in excess of the minimum therein established.

It is to be observed that neither bill provides a method for the collection of the tax imposed; but I assume that this defect will

be remedied, and that the question may be considered as if due provision therefor had been made. It is to be further observed that no express provision is made in either bill for the repeal of existing provisions of law relating to taxation to which the Boston Railroad Holding Company is now subject. In the event that either bill was enacted in its present form, the court would doubtless hold, however, that the taxes were not cumulative, and that the existing provisions of law were repealed by implication. See *Metropolitan Life Insurance Co. v. Commonwealth*, 198 Mass. 466.

The proposed act, under either draft, will accomplish two results: first, it will impose an excise upon the Boston Railroad Holding Company; and second, it will exempt from local taxation the bonds issued by that company. The question submitted involves a consideration of the constitutionality both of the excise and of the exemption from local taxation. I consider first the question of the constitutionality of the excise.

The burden sought to be established by the proposed act is clearly not proportional, and does not fall within the constitutional requirement that taxes be "proportional and reasonable." Constitution of Massachusetts, part the second, chapter I., section I., article IV. It can be sustained, if at all, only under the provision of the Constitution authorizing the Legislature to "impose and levy reasonable duties and excises." Constitution of Massachusetts, part the second, chapter I., section I., article IV. The power to impose an excise upon corporations under this provision is well settled. *Portland Bank v. Apthorp*, 12 Mass. 252; *Commonwealth v. Hamilton Manfg. Co.*, 12 Allen, 298; *Minot v. Winthrop*, 162 Mass. 113, 120. The only limitation upon the power of the Legislature in the premises is that the excise must be "reasonable". As was said in *Connecticut Insurance Co. v. Commonwealth*, 133 Mass. 161, at page 163:—

The power to determine what callings, franchises or privileges, or, to use the language of the Constitution, "commodities," shall be subjected to an excise, and the amount of such excise, belongs exclusively to the Legislature. The provision that it must be "reasonable" was not designed to give to the judicial department the right to revise the decisions of the Legislature as to the policy and expediency of an excise. Great latitude of discretion is given to the Legislature in determining not only what "commodity" shall be subjected to excise, but also the amount of the excise and the standard or measure to be adopted as the foundation of the proposed

excise. The court cannot declare a tax or excise illegal and void, as being unreasonable, unless it is unequal, or plainly and grossly oppressive, and contrary to common right.

In my opinion, the basis of computation provided for in the draft submitted to me furnishes a fair and proper method of valuing the franchise. See *Connecticut Insurance Co. v. Commonwealth*, *supra*, p. 166; see also *Commonwealth v. Berkshire Life Insurance Co.*, 96 Mass. 25. And, apart from the question of inequality, it would seem to be unobjectionable.

The test of equality, which must be satisfied in order that an excise may be reasonable, is that it “operates alike upon all corporations or associations which exercise the franchise or function which is intended to be taxed.” *Connecticut Insurance Co. v. Commonwealth*, *supra*. As was said by Chief Justice Parker in *Portland Bank v. Apthorp*, *supra*:—

Taxes of this sort must undoubtedly be equal; that is, they must operate upon all persons who exercise the employment which is so taxed. A tax upon one particular moneyed capital would unquestionably be contrary to the principles of justice, and could not be supported; but a tax upon all banks we think justifiable, upon the grounds we have stated.

See *Oliver v. Washington Mills*, 11 Allen, 268.

The franchise or function exercised by the Boston Railroad Holding Company upon which the proposed excise is to be based is the power to acquire and hold as a corporation the stock, bonds and other evidences of indebtedness of a single corporation, the Boston & Maine Railroad. The power to acquire and hold stock, bonds and other securities, as I am advised, is now enjoyed by many corporations formed under the Business Corporation Law, and may be contained in the articles of incorporation of any corporation hereafter formed under such law. There is no reason why a corporation might not be organized for the sole purpose of acquiring and holding this form of property; and, as I have already said, the Boston Railroad Holding Company might have been incorporated under the general law. See, however, St. 1907, c. 585, cited *supra*.

I am constrained to say that I can perceive no valid distinction between the Boston Railroad Holding Company and other corporations organized for similar purposes, which would serve to justify a distinction in the method of taxation. The question

in this case, as in all similar cases, is one of degree. Different classes of corporations have been subjected to different forms of excise without contravening the constitutional requirements hereinbefore referred to; thus, for example, one form of excise is applicable to savings banks, another to insurance companies and a third to business corporations. In each case, however, the difference has been based upon some distinction in the extent or character of the franchise or function which it was intended to tax. In the case before me I am unable to discover such a distinction between this corporation and others which have been or may be formed with like powers, as to justify a distinct method of taxation.

It remains to consider the provision to be found in the fourth section of each of the bills, exempting the bonds of the Boston Railroad Holding Company from local taxation.

All taxes must be proportional and reasonable in their application, under the constitutional authority of the Legislature "to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth" (Constitution of Massachusetts, part the second, chapter I., section I., article IV.); and if an exemption from taxation of this nature did not have the effect to "render the general tax on property throughout the Commonwealth unequal and disproportionate" (*Commonwealth v. The People's Five Cents Savings Bank*, 5 Allen, 428, 437), it would be unobjectionable. As was pointed out in the Opinion of the Justices, 195 Mass. 607, at page 611:—

If a reasonable excise tax is lawfully imposed upon a corporation, according to the amount of its property or business, it is in the power of the Legislature, for the purpose of avoiding double taxation, to exempt its property held and used in the business for which the excise tax is paid, and to exempt the stockholders or owners of the beneficial interest in this property, from liability to a property tax upon it.

The exemption must, however, apply to and include all property of the same general class, for otherwise similar property which is not exempted will be unequally and disproportionately taxed.

If the excise upon the Boston Railroad Holding Company to be established by the proposed act is held to be unconstitutional, in accordance with the view which I have already expressed, I

am unable to distinguish between the bonds of that corporation and the bonds of any other business corporation which may hold or be authorized to hold securities under like circumstances. Even if such excise is held to be constitutional, it will not, in my opinion, furnish a sufficient justification for the exemption of the bonds from local taxation. As has already been pointed out, the excise to be levied upon the Boston Railroad Holding Company will not exceed the minimum amount, which is one-tenth of one per cent., in the one case, of the fair market value of the aggregate shares of stock and bonds, and in the other, the fair market value of the capital stock. The burden so imposed, which alone distinguishes the bonds of this corporation from bonds issued by other business corporations of the class already mentioned, cannot, it seems to me, justify an exemption of the bonds from a local taxation which is many times greater in amount, and to which the bonds of such other business corporations will be subjected. In other words, apart from the imposition of the excise, I am unable to discover any valid distinction between the bonds of the Boston Railroad Holding Company and the bonds of any other business corporation which may hold securities of like character; and, even if constitutional, I do not deem that the imposition of such an excise is sufficient to create a distinction which would warrant the exemption provided for in the bills submitted to me.

The communication from the committee on rules contains a request that, if in the opinion of the Attorney-General the drafts of legislation submitted are unconstitutional, he suggest such modification, to accomplish the purpose of the bills by making them of general application or otherwise, as may overcome the objection. In this respect I am unable to comply with the desire of the committee, for the reason that, in my opinion, the only method by which the purpose of the bills may be constitutionally accomplished would be by the enactment of general legislation applying to all business corporations authorized to hold securities which have been directly or indirectly subjected to taxation; and such legislation would, as I am advised and believe, work fundamental changes in the present tax laws of the Commonwealth, which I assume cannot be within the contemplation of the committee at this time.

Very truly yours,

DANA MALONE, *Attorney-General*.

Insane Person — Mental Disease — Temporary Care and Treatment — Certificate of Physician — Oath — Natural Guardian.

Under St. 1909, c. 504, § 44, providing for the temporary care, treatment and observation at the McLean Hospital of any person suffering from mental disease, "on the written application of his natural or legal guardian . . . , together with the certificate of a physician qualified as provided in section thirty-two, that such temporary care is necessary by reason of mental disease," the physician must set forth, under oath, the same qualifications as those required under section 32.

The term "natural guardian," as used in section 44 of chapter 504 of the Statutes of 1909, includes the father, and, upon the death of the father, the mother until she remarries.

APRIL 25, 1910.

OWEN COPP, M.D., *Executive Officer, State Board of Insanity.*

DEAR SIR:— By your communication dated April 20 you submit to me two questions relative to the construction of section 44 of chapter 504 of the Acts of 1909.

(1) "Whether it is necessary that the physician should take oath to the certificate of mental disease which he makes under the provisions of said section?"

Section 44 provides for the temporary care, treatment and observation at the McLean Hospital, for a period not exceeding seven days, of any person suffering from mental disease, "on the written application of his natural or legal guardian, or, if there be none, upon the written application of a chief or captain of police, any member of the district police, a selectman, the state board of charity or the state board of insanity, together with the certificate of a physician qualified as provided in section thirty-two, that such temporary care is necessary by reason of mental disease." Section 32 provides that the physician who makes the certificate thereunder shall make oath that he possesses certain qualifications set forth in the statute. It follows, therefore, that in preparing a certificate under section 44 the physician must set forth under oath the same qualifications as those required under section 32.

(2) "What is the meaning of 'natural guardian' in this connection? May it be construed as referring to the person who is most interested or is concerned in the reception of a mental patient for temporary care under the provisions of said section?"

When applied to a minor, the term "natural guardian" includes the father, and, upon the death of the father, the mother,

at least until she remarries. See *Worcester v. Marchant*, 14 Pick. 510. It was doubtless intended that it should have the same signification when applied to an insane person under the provisions of section 44 above referred to.

Very truly yours,

DANA MALONE, *Attorney-General*.

Clerks of Court — Money paid into Court — Interest.

A clerk of the courts may not appropriate to his own use interest upon money which under a rule of court or under a statute has been paid into court for the benefit of the prevailing party in a suit brought to determine the right to the possession of such money, and such interest is to be added to the principal sum so deposited.

APRIL 26, 1910.

CHARLES R. PRESCOTT, Esq., *Controller of County Accounts*.

DEAR SIR: — You have requested my opinion as to whether a clerk of the courts may properly appropriate to his own use the interest upon money which has been paid into court, and which, under the rules of the court, has been deposited by the clerk in his name in a bank or trust company.

I understand your question to have reference not to the money to which R. L., c. 21, § 22, applies, but to money which, under the rules of the court or under a statute, has been paid into court for the benefit of the party who prevails in the suit brought to determine the right to the possession of the money.

In my opinion, a clerk of courts may not properly appropriate the interest upon such deposits to his own use. There is no statute and no rule of court which would authorize or justify such appropriation. The duties of the clerk of courts with reference to such deposits are fixed by the rules of both the Supreme Judicial Court and the Superior Court. Common Law Rule XI. of the Supreme Judicial Court provides that: —

In all cases in which money is paid into court, the money shall be considered in the custody of the clerk, who shall receive it, and pay it to the party entitled thereto, on request. And if such party is not ready to receive the same of the clerk as soon as paid, the clerk shall deposit it in some bank, and not draw it, except for the purpose of paying it over to the party entitled thereto; and in such case the money shall be deemed to be at the risk of the person

entitled thereto, from the time of the deposit to the time when the same is drawn for. And in all such cases the clerk shall be entitled to a fee of one dollar, together with a commission of one per cent on sums not exceeding five hundred dollars, and one half of one per cent on any amount beyond that sum, as a compensation for receiving and paying out the money, to be paid by the party paying the money into court.

Common Law Rule XXVI. of the Superior Court provides as follows:—

In cases in which money is paid into court, the money shall be in the custody of the clerk, whose duty it shall be to receive it, and to pay it to the party entitled thereto, on request. If such party is not ready to receive the same of the clerk as soon as paid, it shall be the duty of the clerk to deposit it in some bank in his name as clerk and not to draw it, except for the purpose of paying it over to the party entitled thereto unless otherwise specially ordered by the court; and in such case the money shall be deemed to be at the risk of the person entitled thereto, from the time of such deposit to the time when the same shall be so drawn.

The statutes and the rules of court, therefore, make the receiving and depositing of money paid into court part of the official duties of the clerk of courts. The rule of the Supreme Judicial Court provides for a special compensation for the performance of this particular duty. The rule of the Superior Court does not provide for special compensation. In the absence of provision for special compensation, full force must be given to R. L., c. 165, § 37, which provides as follows:—

The annual salaries of clerks shall be in full compensation for all services rendered by them in the civil or criminal courts, to the county commissioners, in making any returns required by law or in the performance of any other official duty except for such clerical assistance as may be allowed under the provisions of the following section.

The statutes, therefore, make it clear that a clerk of courts is not entitled to the interest in question.

You have also asked my opinion as to who is entitled to the interest, if the clerk of courts is not entitled to it. That is a question which is not strictly within your province to decide, since it is a question of private rights, which properly should be

raised by the persons interested in the fund, and should be presented by them to the court for determination.

Without assuming to pass upon the question with reference to the rights of the parties in any particular case, however, it may be of assistance to you in the performance of your duties if I state that, in my opinion, a clerk of courts is to be considered as holding the deposit of money paid into court as trustee of the person who is finally determined to be entitled to it, and that as fast as interest accumulates it becomes impressed with the same trust and belongs to the same beneficiary as the principal.

Very truly yours,

DANA MALONE, *Attorney-General.*

Fees — State Board of Health — Food and Drug Inspectors — Employees of Commonwealth — Witness Fees and Allowances for Travel.

Food and drug inspectors appointed by the State Board of Health are employees of the Commonwealth within the meaning of R. L., c. 204, § 47, as amended by St. 1910, c. 311, providing in part that "any employee receiving regular compensation from the commonwealth shall not be entitled to a witness fee before any court or trial justice... in a cause in which the commonwealth is a party," and are not entitled to witness fees for attendance at court or allowances for travel in any cause in which the Commonwealth is a party.

APRIL 27, 1910.

MARK W. RICHARDSON, M.D., *Secretary, State Board of Health.*

DEAR SIR: — You have requested my opinion upon the questions whether or not, under the provisions of St. 1910, c. 311, food and drug inspectors of the State Board of Health are forbidden to receive the witness fees provided for by R. L., c. 204, § 21, for attendance at the various courts; and whether, if they are forbidden to receive the prescribed amount of 50 cents per day for attendance before a trial justice, or police, district or municipal court, they may properly receive 5 cents per mile for travel out and home, as provided by said section 21.

R. L., c. 204, § 47, as amended by St. 1910, c. 311, provides as follows: —

A district police officer or an officer of the commonwealth whose salary is fixed by law, or any employee of the commonwealth receiving regular compensation from the commonwealth shall not be

entitled to a witness fee before any court or trial justice of this commonwealth in a cause in which the commonwealth is a party. An officer whose compensation is derived solely from fees shall not be entitled to receive more than one fee as a witness for a day's attendance on court under one or more summonses in behalf of the commonwealth, and the said fee shall be apportioned by the clerk among the cases in which he is so summoned.

The food and drug inspectors of the State Board of Health are paid a regular compensation, fixed by the State Board of Health, and they devote all their time to the performance of their duties as inspectors. Although appointed by the Board, and although their salaries are fixed in amount by the Board, they are none the less the employees of the Commonwealth, receiving their compensation from the Commonwealth. They are, therefore, by the provisions of St. 1910, c. 311, not entitled to witness fees for attendance at court in a cause in which the Commonwealth is a party.

The allowance of 5 cents a mile for mileage, as provided in section 21, is a part of the fees of the witness, and the receiving of it is therefore forbidden by the same statute. That it was not the intention of the Legislature that any distinction should be made as to the receiving of the fee for attendance and the receiving of the allowance for mileage, is evidenced by the enactment of section 48 of said chapter 204, which provides for the reimbursement of the officers of the Commonwealth who are forbidden by section 47 to receive fees, to the extent of the amount by which their necessary expenses have been increased by attendance at court.

Very truly yours,

DANA MALONE, *Attorney-General.*

Constitutional Law — Taxation — Uniform Rate upon All Personal Estate within the Commonwealth.

A proposed act designed to tax personal estate at a uniform rate throughout the Commonwealth, such uniform rate being the average of the annual rates for the preceding three years, is objectionable upon constitutional grounds, because it subjects personal estate to taxation at a rate different from the rate applicable to real estate, and because the rate so established does not bear any relation to the amount to be raised by taxation.

MAY 3, 1910.

FRANK X. QUIGLEY, Esq., *Clerk of the Committee on Taxation.*

DEAR SIR:—The committee on taxation desires my opinion upon the constitutionality of a proposed act which shall tax personal estate at a uniform rate throughout the Commonwealth, such uniform rate being the average of the annual rates for the preceding three years.

The last decision on the subject of proportional taxation is contained in the Opinion of the Justices, 195 Mass. 607, which deals with the question of the constitutionality of a uniform tax of three mills upon certain classes of intangible personal property, and the opinion was expressed that such tax would be unconstitutional. The proposed tax differs, first, in applying to all personal property; and second, in imposing a tax at a rate not fixed by statute, but obtained by finding the average of three annual rates throughout the Commonwealth, and consequently, a rate which approximates the local rate, although it may differ materially from such rate.

In my judgment, the principles stated in the Opinion of the Justices are as applicable to a tax upon all personal property as upon the classes referred to in the opinion; and I believe that the method of finding the rate according to the proposed act does not differentiate it from the act considered by the justices. The effect of the act is to subject personal estate to taxation at a rate different from the rate applicable to real estate, in most instances. This, in itself, is objectionable under the cases cited in the opinion, where the proposition is clearly stated that the requirement that taxes be proportional forbids the imposition of a tax upon one class of property at a different rate from that which is applied to other classes. Another objection is that the rate imposed by this act does not bear a relation to the amount of tax to be raised. In *Oliver v. Washington Mills*, 11 Allen, 268, 275, it was pointed out that:—

In assessing the needful amount it should be laid on property, real and personal, within the Commonwealth, so that, taking “all the estates lying within the Commonwealth” as one of the elements of proportion, each taxpayer should be obliged to bear only such part of the general burden as the property owned by him bore to the whole sum to be raised.

It will be noticed that the tax under the proposed act bears no relation to the amount to be raised during the tax year, the rate

being just as arbitrary as if the Legislature had prescribed a fixed rate, not by the amount to be raised in a given year, but by the average of the rates for the preceding years. For instance, suppose in a given town the expenses for a given year are very low; the result is a low tax rate for that year upon the real estate. The tax rate upon personalty, however, being fixed by the average rate throughout the Commonwealth for the preceding three years, would probably be much higher. If in the following year the expenses of the town were greatly increased, the local tax rate would necessarily be increased; but this would not affect the rate on personalty, which would have been fixed by the Commonwealth rates for the preceding three years. The following year the Commonwealth rate would be slightly increased, because of the increase in the local rate; but, unless the increase in the local rate extended throughout the Commonwealth, the increase in the rate of taxation for personal estate would be hardly noticeable. Not only would the burden of the greater increased expenses of the town fall almost entirely upon real estate, but the rate upon personalty would hardly be affected either in the year when the expenses were increased or in any subsequent year.

An act might prescribe the place in which personal property may be taxed, within reasonable limits. See *Northampton v. County Commissioners*, 145 Mass. 108. But this act cannot, in my opinion, be said to deal merely with the place at which personal property is to be taxed, and, even if it could, the objection is still valid that the rate of tax bears no relation to the amount to be raised.

In my opinion, therefore, the proposed act is unconstitutional.

Very truly yours,

DANA MALONE, *Attorney-General*.

*Statutes — General and Particular — Repeal — Civil Service —
Heads of Departments — Sealers of Weights and Measures
— City Charter of City of Boston.*

St. 1909, c. 486, which established a new charter for the city of Boston, providing, in section 9, that heads of all departments of such city shall be recognized experts in such work as may devolve upon the incumbents of such offices, or persons specially fitted by education, training or experience to perform the same, and shall be appointed without regard to party affiliation; and, in section 10, that in making such appointments the mayor shall sign a certificate of appointment and file the same with the city clerk, who shall thereupon for-

ward a certified copy to the Civil Service Commission, who shall make a careful inquiry into the qualifications of the nominee under such rules as they may establish, with the consent of the Governor and Council, and, if they find such qualifications sufficient to meet the requirements of the law, such commission shall file a certificate with the city clerk stating that they have made the requisite examination and that they approve the appointment; and, in section 62, that all acts and parts of acts so far as inconsistent with such act are repealed, — does not repeal the provisions of St. 1909, c. 382, authorizing the Civil Service Commissioners to prepare a rule, to be approved by the Governor and Council, for including within the classified service all principal or assistant sealers of weights and measures holding office by appointment under any city or town of over ten thousand inhabitants, “whether such officers are heads of principal departments or not;” and the latter statute is still applicable to sealers of weights and measures in the city of Boston.

MAY 4, 1910.

HON. CHARLES WARREN, *Chairman, Civil Service Commission.*

DEAR SIR: — The Civil Service Commission asks my opinion on the following: —

Under chapter 382 of the Acts of 1909, the Civil Service Commissioners are authorized to prepare a rule, which shall take effect when approved by the Governor and Council in the manner provided by law, for including within the classified service all principal or assistant sealers of weights and measures, etc., “whether such officers are heads of principal departments or not.” This act was approved May 13, 1909, and took effect on its passage.

Under this act the commission prepared a rule, as follows, which went into operation Sept. 1, 1909: —

RULE 7.

Class 6. All principal or assistant sealers of weights and measures holding office by appointment under any city, or any town of over ten thousand inhabitants, whether such officers are heads of principal departments or not, and also the inspectors of weights and measures of the Commonwealth.

By decision of the Supreme Judicial Court, the civil service rules, when duly in force, have the effect of statute law.

Under section 9 of chapter 486 of the Acts of 1909 (the city charter of Boston), it is provided that heads of all departments of the city of Boston shall be recognized experts in such work as may devolve upon the incumbents of the offices, or persons specially fitted by education, training or experience to perform the duties;

that they shall be appointed without regard to party affiliations or residence at the time of appointment.

Under section 10 of the act, it is provided that in making appointment the mayor shall sign a certificate, etc., and that the Civil Service Commission shall make careful inquiry into the qualifications of the nominee, under such rules as they may with the consent of the Governor and Council establish; and if the applicant is qualified under the requirements of the law, the commission shall file with the city clerk a certificate, signed by at least a majority of the commissioners, that they have made careful inquiry into the qualifications of the appointee, and that in their opinion he is qualified by education, training or experience, etc., for said office.

By the provisions of section 62 of the city charter, it is provided that all acts and parts of acts, so far as inconsistent with this act, are hereby repealed.

Sections 1 to 14 (including sections 9 and 10), by the provisions of section 63 of the city charter act, took effect on the first Monday of February, 1910.

Section 62 of the city charter took effect June 11, 1909.

Questions.—First: are the provisions of said chapter 382 of the Acts of 1909 inconsistent with the provisions in the city charter above referred to, and is said chapter 382, and the civil service rule prepared thereunder, repealed so far as relates to the principal sealer of weights and measures of Boston?

Second: if not, is it sufficient if the commission, in filling a vacancy in the position, shall hold a competitive examination of applicants under the provisions of the civil service rules, or is the commission obliged also to make careful inquiry and certificate of qualifications, as required by section 10 of the city charter?

The question submitted is, whether section 9 of chapter 486 of the Acts of 1909 repealed chapter 382 of the Acts of 1909.

The general rule relative to repeal of acts is stated in Black on the Interpretation of Laws, p. 116. See also Endlich on Interpretation of Statutes, §§ 223, 225, 228. Chief Justice Shaw, in *Brown v. Lowell*, 8 Met. 172, summarizes the rule as follows:—

In general, we should think it would require pretty strong terms in the general act, showing that it was intended to supersede the special acts, in order to hold it to be such a repeal.

See, also, *Copeland v. Springfield*, 166 Mass. 498, and cases cited.

In *Brooks v. Fitchburg & Leominster Ry. Co.*, 200 Mass. 8, 17, Mr. Justice Rugg says:—

The principle of interpretation is well established that statutes alleged to be inconsistent with each other, in whole or in part, must be so construed as to give reasonable effect to both, unless there be some positive repugnancy between them.

The force of this rule is not diminished even when the general act contains a clause repealing acts inconsistent with it. See Endlich on Interpretation of Statutes, § 223.

With this rule in mind, I am of opinion that section 9 of chapter 486 of the Acts of 1909 did not repeal chapter 382 of the Acts of 1909. Both acts were under consideration by the Legislature at the same time. The act to include sealers and inspectors of weights and measures within the classified civil service was approved May 13, while the act for the city charter of Boston was approved June 11, 1909, to take effect on the first Monday of February, 1910, so far as section 9 is concerned. Section 62 of chapter 486 of the Acts of 1909 repealed all acts and parts of acts so far as inconsistent with that act; but it does not seem to me that by these words it was intended to repeal a general act which had been enacted less than a month before the approval of this special act, without expressly repealing it. Chapter 382, being a general law applying to all cities and to towns having a population of more than ten thousand, it seems to me is still in force; and that the rule made by your commission, which went into operation Sept. 1, 1909, is still in force, and applies to the city of Boston as well as to other cities and such towns, and is not inconsistent with the provisions of the city charter, and must be construed so as to give reasonable effect to both that statute and to chapter 382. I think it sufficient if the commission, in filling a vacancy in the position, hold a competitive examination of applicants under the provisions of the civil service rules, and proceed as is usual in such cases.

Very truly yours,

DANA MALONE, *Attorney-General*.

Constitutional Law — Taxation — Income Tax.

A general income tax, imposed upon the income from real and personal property, as well as upon income from annuities and from professions, trades and employments, which is in addition to and not in substitution for existing taxes, would probably be held unconstitutional as a property tax, as not being within the requirement of the Constitution of Massachusetts, part II., section I., Article IV., that taxes shall be "proportional and reasonable," upon the ground that

thereby a greater burden is imposed upon property from which income is derived than upon property of equal value from which no income is derived, and would be unconstitutional as an excise tax for the reason that the mere right to own and hold property cannot be made the subject of an income tax.

MAY 11, 1910.

FRANK X. QUIGLEY, Esq., *Clerk, Committee on Taxation.*

DEAR SIR:— In behalf of the committee on taxation, you submit for my consideration the following question: “Is it possible to frame a general income tax bill that will be compatible with our State Constitution?”

I assume that by a “general income tax” you mean a tax upon the income from real and personal property, as well as upon income from annuities and from professions, trades and employments. I further assume that you desire my opinion as to the validity of such a tax in addition to existing taxes, and not in substitution therefor.

There are undoubtedly certain forms of income which are, by reason of our federal form of government, exempt from taxation by the State. I refer to salaries of federal officials (*Dobbins v. Commissioners of Erie County*, 16 Pet. 435) and interest upon federal securities. See *Weston v. City Council of Charleston*, 2 Pet. 449; *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429; 158 U. S. 601. Such income would be exempt from a general income tax, though not expressly excepted therefrom.

The Constitution of this Commonwealth contains two provisions authorizing taxation, which are to be found in Part II., chapter 1, section 1, article IV. The General Court is authorized to “impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise, and commodities, whatsoever, brought into, produced, manufactured, or being within the same: . . .” In substance, the first provision authorizes proportional and reasonable taxes upon property; the second, reasonable excises upon privileges.

The statutes now provide that “personal estate for the purpose of taxation shall include:— . . . The income from an annuity, and the excess above two thousand dollars of the income from a profession, trade or employment” during the preceding year, but that “incomes derived from property subject to taxation

shall not be taxed." St. 1909, c. 490, part I., § 4. This provision in substantially the same form is found in all the codifications of the general tax laws of the Commonwealth. R. S., c. 7, § 4; Gen. Sts., c. 11, § 4; Pub. Sts., c. 11, § 4; R. L., c. 12, § 4. Prior to the passage of a general tax act, both before and after the adoption of the Constitution, a similar provision was usual to the annual tax acts.

The constitutionality of the existing provision for taxation of incomes has not been expressly affirmed, but the justices of the Supreme Judicial Court, in the Opinion of the Justices, 195 Mass. 607, seemed to assume its validity. They say, at page 610:—

It is proper that one's income, to a reasonable amount, should be treated as necessarily consumed for the support of himself or of his family, so that only the excess above such amount should be regarded as property increasing his ability to pay taxes.

But on page 612 say further that:—

The constitutionality of some of the statutes to which we have referred has not been affirmed, and may be questionable. But nearly all of them are consistent with the view that all available property should be taxed according to its value, for the purpose of establishing the proportional ability and duty of individual owners to bear their burdens as citizens.

The natural conclusion from this language of the justices is not only that the tax is constitutional, but that it is constitutional as a tax upon property. This conclusion is in accord with the form of the statute which provides, as I have stated, that personal property shall include certain incomes. In two cases (*Melcher v. Boston*, 9 Met. 73, and *Wilcox v. County Commissioners*, 103 Mass. 544) the income tax was before the court, but the decisions do not help us in this inquiry.

If the existing tax on incomes is a property tax, there is even more reason for considering a tax upon incomes derived directly from property to be a property tax. A majority of the United States Supreme Court, in the Income Tax Cases (*Pollock v. Farmers' Loan & Trust Co.*, *supra*), held the federal tax on incomes from real and personal property to be a direct tax on such real and personal property.

Assuming that a general income tax is a tax on property, its constitutionality depends, of course, upon whether it is propor-

tional and reasonable. I see no reason why a general income tax bill could not be framed which would be reasonable. Whether such a tax would be proportional is a more difficult question. If the property, real or personal, has once been taxed as such, a tax on the income therefrom will result in double taxation. This, of itself, though perhaps theoretically objectionable, is not necessarily constitutionally objectionable. *Frothingham v. Shaw*, 175 Mass. 59, 61. Where, however, double taxation results in disproportionate taxation, it is constitutionally objectionable. There is much reason to believe, although there is no decision thereon, that the imposition of a tax on incomes from property otherwise taxable would be regarded as unconstitutional, on the ground that thereby a greater burden is imposed upon property from which income is derived than upon property of equal intrinsic value from which no income is derived.

If a general income tax cannot be sustained as a tax on property, it probably cannot be sustained at all. It was pointed out in the Opinion of the Justices, 195 Mass. 607, 614, that "the mere right to own and hold property such as is referred to in the question [the question being in regard to certain forms of personalty] cannot be made the subject of an excise tax." The same principle must apply to the right to own and hold realty and other forms of personalty. A tax upon income from property construed as an excise, it seems to me, would be nothing more than an excise on the privilege of holding such property, and, in accordance with this expression of opinion of the justices, would be unconstitutional.

I have stated to you certain conclusions, but there is no authoritative decision upon this question in this Commonwealth, and, before the enactment of so important a measure, it would be most desirable that the opinion of the justices of the Supreme Judicial Court be asked.

Very truly yours,

DANA MALONE, *Attorney-General*.

Water Supply — Great Ponds — State Board of Health — Control and Regulation — Wright's Pond and Ashley's Pond in the City of Holyoke — Regulation of Public Rights.

The State Board of Health, under the provisions of R. L., c. 75, § 112, and § 113 as amended by St. 1907, c. 467, vesting in such board the "oversight and care of all inland waters and of all streams and

ponds used by any city, town or public institution . . . as sources of water supply," and providing that it may regulate and control the exercise of the public rights of fishing, boating, skating or taking ice, and may delegate the power of granting or withholding permits to the local authority, — may regulate the exercise of such public rights on Wright's Pond and Ashley's Pond in the city of Holyoke, used by said city as a source of water supply under the provisions of St. 1872, c. 62, provided such regulation or prohibition is reasonably necessary to secure the sanitary protection thereof.

MAY 12, 1910.

MAURICE KANE, Esq., *Clerk of the Joint Standing Committee on Water Supply.*

DEAR SIR:— On behalf of the committee on water supply, you inquire whether or not, under existing laws, the State Board of Health now has authority to regulate or prohibit the public use of a great pond, and to delegate the enforcement of such regulation or prohibition to the authorities of a city or town. In connection with such inquiry you have submitted to me a draft of a proposed act, entitled, "An Act relative to public rights in Ashley's Pond and Wright's Pond in the city of Holyoke," and have directed my attention to the second section of such draft, which is as follows:—

Fishing, boating, skating or riding upon the ice, taking water for domestic purposes or the arts, the cutting or harvesting of ice, and all other uses of the waters of said ponds, except under such regulations as may be established by the board of water commissioners of said city of Holyoke after the passage of this act, shall be unlawful; and any person who shall be found guilty of fishing, boating, skating or riding upon the ice, taking water for domestic purposes or the arts, or cutting or harvesting ice, shall be liable to a fine of not less than ten nor more than fifty dollars for each offence.

By section 2 of chapter 62 of the Statutes of 1872, the town of Holyoke was authorized "to take and hold the entire waters of Ashley's and Wright's ponds, so called" (which I assume to be great ponds), "and the waters which flow into and from the same, and also the waters of such brooks as may be conveniently diverted and conducted into said ponds," with other powers necessary or convenient for the purpose of supplying such town with pure water. It is fair to assume, although it does not appear, that the authority so conferred was exercised by the town, and that all the rights or interests acquired thereunder are now held and enjoyed by the city of Holyoke.

The authority of the State Board of Health in the premises is derived from R. L., c. 75, § 112, and § 113 as amended by St. 1907, c. 467. Section 112 vests in the State Board of Health the general oversight and care of all inland waters, and of all streams and ponds used by any city, town or public institution or by any water or ice company in this Commonwealth, as sources of water supply, and of all springs, streams and water courses tributary thereto.

The power and authority of the State Board of Health to protect sources of water supply by reasonable rules and regulations is both comprehensive and conclusive, and often has been exercised under this or similar provisions of law. *Sprague v. Dorr*, 185 Mass. 10; *Nelson v. State Board of Health*, 186 Mass. 330.

If, in the discretion of that Board, the proper protection of the purity of a source of water supply requires that the public be regulated and controlled in its use of a great pond whose waters form a part of such source of supply, or that the public use be discontinued altogether, it would undoubtedly be within the authority of such Board to make reasonable rules and regulations for that purpose. See *Sprague v. Minon*, 195 Mass. 581. In other words, the Board may take such measures as are reasonably necessary to secure the proper sanitary protection of a source of water supply, notwithstanding that thereby the use by the public of a great pond which is a part of such water supply may be greatly impaired and restricted, or even entirely destroyed.

Replying specifically to the question of the committee, therefore, it is my opinion that, under the provisions of R. L., c. 75, § 113, as amended by St. 1907, c. 467, the State Board of Health may regulate and control the exercise of the public rights of fishing, boating, skating on or taking ice from Ashley's Pond and Wright's Pond, even to the extent of prohibiting them altogether; and may delegate the power of granting or withholding any permits which may be required by the rules and regulations made for such purpose to the board of health, or the water board, or the water commissioner, as the case may be, of the city of Holyoke. This authority, however, must be predicated upon a determination by the State Board of Health that the exercise of the public rights regulated or prohibited endangers the purity of the waters of such ponds as a source of water supply and that such regulation or prohibition is reasonably necessary to secure the sanitary protection thereof.

Very truly yours,

DANA MALONE, *Attorney-General*.

Constitutional Law — Money raised by Taxation — Public Purpose — Relief of Persons out of Employment by Construction of Highways in Times of Industrial Distress.

The expenditure of money raised by taxation must be limited to a public purpose, and it is not, therefore, within the power of the Legislature to authorize the Governor and Council to issue and sell bonds and to expend the proceeds in the construction of highways, where the primary purpose of such construction was to furnish relief to persons out of employment in times of industrial distress.

JUNE 9, 1910.

HON. FRANK P. BENNETT, JR., *Senate Committee on Ways and Means.*

DEAR SIR:— You have submitted to me, on behalf of the Senate committee on ways and means, an inquiry as to whether or not “it is within the power of the Legislature to authorize the Governor and Council to issue bonds and to construct public highways for the purpose of creating employment in times of industrial distress;” or, in other words, whether or not it is constitutional to undertake public work, not primarily because such work is required for the public safety or convenience, but in order to provide employment for those whose circumstances require it.

It is well established that the expenditure of money raised by taxation must be limited to a public purpose. *Lowell v. Oliver*, 8 Allen, 247, 253; *Mead v. Acton*, 139 Mass. 341, 344; *Kingman et al., petitioners*, 153 Mass. 566. And the relief of persons who have suffered loss by fire or by any other great and general calamity has been held not to be a public purpose. *Lowell v. Boston*, 111 Mass. 454; Attorney-General’s Report, 1908, p. 19.

It is clear, therefore, that the Legislature may not employ money raised by taxation for the relief of persons who have suffered loss either by some great calamity or by industrial conditions which have deprived them of employment, unless the relief so provided is in the nature of pauper aid; and, in my opinion, the fact that the contemplated relief is to be furnished by means of employment upon public works, as, for instance, public highways, does not serve to render constitutional an appropriation therefor of money raised by taxation, if the primary purpose of such appropriation was to furnish relief to persons out of employment, rather than the construction of highways required by public convenience or safety. In such a case the construction of high-

ways is only incidental to the purpose of affording relief by means of an appropriation of public money.

You have further requested me to examine House Bill No. 403, with a view to determining whether such bill "is free from objectionable provisions of any other nature." You have not sought my opinion as to whether the bill is objectionable upon the ground set forth in the inquiry which I have already answered, and I therefore express no opinion upon the application of the principle above stated thereto.

The second section of House Bill No. 403 contains provisions for the issuance of bonds, to be described as "The State Highway Emergency Fund Loan," and provides for their sale at such times and prices, and in such amounts and at such rates of interest, not exceeding 4 per cent., as may be deemed best. It then continues:—

The sinking fund established by chapter four hundred and ninety-seven of the acts of the year eighteen hundred and ninety-four shall also be maintained for the purpose of providing for the payment of the bonds issued under authority of this act, and the treasurer and receiver-general shall apportion thereto from year to year an amount sufficient with the accumulations of said fund to extinguish at maturity the debt incurred by the issue of said bonds. The amount necessary to meet the annual sinking fund requirements and to pay the interest on said bonds shall be raised by taxation from year to year.

If this section is to be construed as imposing any new liability or obligation upon a sinking fund already established to meet bonds issued under the provisions of St. 1894, c. 497, I am of opinion that it is objectionable as constituting an interference with the obligations of a contract already established and in force. See 2 Op. Atty.-Gen., 505.

Section 5 provides that in case the Highway Commission is directed to undertake the work of constructing highways in any city or town, "they shall employ as laborers and mechanics such persons as shall be recommended to them by the mayor of the city or the selectmen of the town, giving preference to men out of work, and especially to men having persons dependent upon them for support," provided that such employees are citizens of Massachusetts. This preference, which is based upon the necessity of the employee rather than of the public service, cannot be sustained upon the ground that it is a reward for distinguished

public service in the past, or will serve as encouragement for such service in the future. It is therefore, in my opinion, objectionable for constitutional reasons, in that it purports to fix as a basis for employment something which does not bear such a relation to the duties to be performed as to show special fitness for the performance of those duties. *Brown v. Russell*, 166 Mass. 14; Opinion of the Justices, 166 Mass. 589.

A further provision which is at least of doubtful validity is that contained in section 1, which in effect requires the Governor and Council to determine when a time of industrial distress, arising from scarcity of work, exists among laborers, and to direct the Treasurer and Receiver-General to issue bonds, scrip or certificates of indebtedness to an amount not exceeding the sum of \$100,000 in any one year. The powers and duties of the Executive are prescribed by the Constitution, and the Legislature is not authorized to impose upon him duties which do not properly fall within the executive functions vested in him under the Constitution. With respect to the power here sought to be conferred, the authority of the Legislature in the premises may well be questioned. See 1 Op. Atty.-Gen., 172.

Very truly yours,

DANA MALONE, *Attorney-General*.

Massachusetts Agricultural College — State Institution — Trustees — Sale of Land to Institution at a Profit.

To be a State institution implies that the institution, and the work it carries on, is directly under the control of the Commonwealth; that its officers are the agents of the Commonwealth, and that its property is the property of the Commonwealth; and the Massachusetts Agricultural College at Amherst, a public charitable corporation organized under the provisions of St. 1863, c. 220, for educational purposes, and having a distinct corporate existence, does not answer these requirements, and is not, strictly speaking, a State institution.

The trustees of the Massachusetts Agricultural College may not legally, as individuals, purchase land and later sell it to such institution at an increased cost over the original price.

JUNE 13, 1910.

JAMES W. KIMBALL, Esq., *Clerk of the House of Representatives*.

DEAR SIR: — I have the honor to acknowledge the receipt of an order adopted by the Honorable House of Representatives on the 9th day of June, 1910, which is as follows: —

Ordered, That the Attorney-General give his opinion . . . to the House of Representatives whether or not in his judgment the Massachusetts Agricultural College at Amherst is a State institution; also, whether the trustees of the Massachusetts Agricultural College, as individuals, have a legal right to purchase land and later sell it to the Massachusetts Agricultural College at an increased price over the original cost.

The first question as to which my opinion is desired is, whether the Massachusetts Agricultural College at Amherst is a State institution.

The Massachusetts Agricultural College was incorporated by St. 1863, c. 220. By that act certain persons were "constituted a body corporate, by the name of the Trustees of the Massachusetts Agricultural College, the leading object of which" should be "without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life;" and it was provided that "they and their successors, and such as shall be duly elected members of said corporation, shall be and remain a body corporate by that name forever." The power of removing trustees from the corporation was given to the trustees, but vacancies in the board of trustees were to be filled by the Legislature. The Governor of the Commonwealth, the secretary of the Board of Education, the secretary of the Board of Agriculture, and the president of the faculty were made *ex officio* members of such corporation (section 1). The corporation was given the usual powers in regard to taking and holding of property, making by-laws, saving a common seal, suing and being sued (sections 2, 3). The Legislature reserved the right to alter, limit, annul or restrain the powers vested in the corporation, and especially to "appoint and establish overseers or visitors of the said college, with all necessary powers for the better aid, preservation and government thereof" (section 5). The corporation was required to report to the Legislature, and it was provided that its location, plan of organization, government and course of study should be subject to the approval of the Legislature (sections 5, 6). The purchase of a site was authorized, and one-tenth part of the moneys received from the State Treasurer from the sale of land scrip by virtue of the provisions of the 130th chapter of the Acts of the Thirty-seventh Congress was appropriated therefor, on the

condition that the further sum of \$75,000 should be subscribed for the purpose of erecting suitable buildings thereon (sections 6, 7). When the college was established, two-thirds of the annual income from the fund created by the sale of such land scrip was to be paid to its treasurer (section 8). This land scrip represented public land, and was granted by the United States, by the act of Congress above referred to, to the several States, to be invested by them (see sections 4, 5), other than 10 per cent. thereof, and the interest in each State to be appropriated "to the endowment, support and maintenance of at least one college where the leading object" should be "without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts." It was further provided by the act of incorporation of the college (section 9) as follows: —

In the event of a dissolution of said corporation, by its voluntary act at any time, the real and personal property belonging to the corporation shall revert and belong to the commonwealth, to be held by the same, and be disposed of as it may see fit, in the advancement of education, in agriculture, and the mechanic arts. The legislature shall have authority at any time to withhold the portion of the interest or income from said fund provided in this act, whenever the corporation shall cease or fail to maintain a college within the provisions and spirit of this act and the before-mentioned act of congress, or for any cause which they deem sufficient.

Since the original act of incorporation there has been considerable legislation in regard to the college. By St. 1864, c. 223, its corporate name was changed to "The Massachusetts Agricultural College," and it was provided that the location, plan of organization, government and course of study should be subject to the approval of the Governor and Council, instead of to the approval of the Legislature. The power to fill vacancies in the board of trustees was, by St. 1871, c. 378, conferred upon such board, but by the Resolves of 1884, chapter 50, the power of appointment and removal was conferred upon the Governor, with the advice and consent of the Council, and the term of service was fixed at seven years. By St. 1866, c. 263, the Board of Agriculture was constituted a board of overseers of the college, with powers and duties to be defined and fixed by the Governor and Council. (See P. S., c. 20, § 5; R. L., c. 89, § 10). By St. 1894, c. 143 (see St. 1895, c. 57), the Massachusetts Agricultural

Experiment Station was consolidated with the experiment department of the Agricultural College, and it was provided that the property of the former should be accepted by the trustees of the college "for said college in behalf of the commonwealth" (section 2). Other acts contain provisions in regard to the reports of the trustees of the college, in R. L., c. 19, § 7, such reports being classified under "reports of public institutions." Many appropriations in favor of the Massachusetts Agricultural College have been made, and free scholarships have been established there by the State. See, for example, St. 1909, c. 436. It has been provided that the books and accounts of the college shall be kept under the direction of the Auditor of the Commonwealth, who shall audit the expenditures and receipts at least twice a year. (See, for example, St. 1909, c. 436, § 3.) St. 1889, c. 45, provides that such trustees shall be allowed and paid from the treasury of the Commonwealth "such sum as is necessary for their personal and incidental expenses incurred in the discharge of their duties, in the same manner as the trustees of other public institutions are now paid and allowed."

From these statutes it appears that the Massachusetts Agricultural College is not a mere agency of the Commonwealth. It has a distinct corporate existence. It is a public charitable corporation organized for educational purposes. The right to control its character and location was reserved by the Legislature. The Legislature expressly reserved the right to amend and repeal the charter, though this right was undoubtedly reserved by the general law. Gen. Sts., c. 68, § 41. It also expressly reserved the visitorial power, though such power was undoubtedly in the Legislature apart from statute. *Amherst Academy v. Cows*, 6 Pick. 427, 433. Under these and other powers the Legislature has to a considerable extent controlled the affairs of the college. Much of the property which the corporation holds has come to it by appropriation by the Commonwealth, either from moneys raised by taxation or from property granted to the State by the general government to be used for such purposes. See *Massachusetts Agricultural College v. Marden*, 156 Mass. 150, 156. All the original deeds of the real estate run to the Massachusetts Agricultural College, and in one or more of them it is described as a corporation created by law. The property transferred from the Massachusetts Agricultural Experiment Station is, by express statutory provision, held "in behalf of the commonwealth." Generally speaking, however, it is apparent that under the form of organization of the college, property is held by it upon trust

for the benefit of the public, subject to reversion to the Commonwealth in the event of a voluntary dissolution of the corporation. Except for this limited reversion, the situation is that existing in the ordinary case of a public charitable corporation. As to whether the Commonwealth has any additional rights over the property, by reason of the fact that it was acquired by the expenditure of public moneys, I express no opinion.

Though these facts characterize the Massachusetts Agricultural College as a public charitable corporation, it does not follow that the college is a State institution. The words "State institution" are susceptible of various meanings. Very likely the college is such an institution within the meaning of some statutes. In the strict sense of the words, however, it is not, in my opinion, a State institution. To be a State institution implies that the institution, and the work it carries on, is directly under the control of the State, that its officers are agents of the State, and that its property is the property of the State. The Massachusetts Agricultural College does not answer these requirements. The fact that it is subject to legislative government and control, and the fact that the Commonwealth has contributed to its support, do not constitute it a State institution. *Chalfont v. State*, 37 Ohio St. 60.

Although, as I have said, the Massachusetts Agricultural College is not strictly a State institution, the Legislature, as appears from statutes to which I have referred, seems often to have treated it as such. Whether action on the part of the Commonwealth and of the corporation, which shall establish the position of the college as a State institution, in the strict sense, and shall beyond question vest the title to its property in the Commonwealth, is desirable, is not for me to determine.

The second question as to which my opinion is desired is, whether the trustees of the Massachusetts Agricultural College, as individuals, have a legal right to purchase land and later sell it to the Massachusetts Agricultural College at an increased price over the original cost.

My opinion is not sought as to the rights or liabilities of the trustees upon any specific state of facts. I can therefore merely state the general principle of law which is applicable. The trustees of the college are substantially directors of the corporation, and, like directors generally, stand in a fiduciary relation to the corporation. The rule which applies to fiduciaries is stated in *Parker v. Nickerson*, 112 Mass. 195, 196, as follows:—

As a general rule, a trustee or agent cannot purchase on his own account what he sells on account of another, nor purchase on account of another what he sells on his own account. He cannot unite in himself the opposite characters of buyer and seller. And if he does so, the *cestui que trust* or principal, unless upon the fullest knowledge of all the facts he elects to confirm the act of the trustee or agent, may repudiate it, or he may charge the profits made by the trustee or agent with an implied trust for his benefit.

See, also, *Parker v. Nickerson*, 137 Mass. 487, 497; *Old Dominion Copper Co. v. Bigelow*, 188 Mass. 315, 321, 329; S. C., 203 Mass. 159, 177, 178; *Hayes v. Hall*, 188 Mass. 510, 511; *American Circular Loom Co. v. Wilson*, 198 Mass. 182, 206.

Very truly yours,

DANA MALONE, *Attorney-General*.

Westborough State Hospital — Trustee — Appointment of Officers — Compensation — Governor and Council.

St. 1909, c. 504, § 18, providing that the trustees of the Westborough State Hospital "shall appoint or make provision . . . for appointing such officers as . . . may be necessary for conducting . . . the business of the institution; and shall determine, subject to the approval of the governor and council, the salaries of all the officers . . .," includes all persons who hold positions in such institution which are created by the trustees, and who are paid salaries, as distinguished from persons who do not hold distinct positions and are employed for wages, and requires that the proposed compensation of a person holding such position shall be approved by the Governor and Council.

JUNE 20, 1910.

GEORGE S. ADAMS, M.D., *Superintendent, Westborough State Hospital.*

DEAR SIR: — You have requested my opinion as to what appointees of the trustees, or of a superintendent by authority of the trustees, of the Westborough State Hospital are persons whose salaries must be approved by the Governor and Council under the following provisions of St. 1909, c. 504, § 18: —

They [the trustees] shall appoint a superintendent who shall be a physician and who shall constantly reside at the institution, assistant physicians, one of whom in each institution for the insane in which women are received as patients and in which more than two assistant physicians are employed shall be a woman, and a

treasurer who shall give bond for the faithful performance of his duties; shall appoint or make provision in by-laws for appointing such officers as in their opinion may be necessary for conducting efficiently and economically the business of the institution; and shall determine, subject to the approval of the governor and council, the salaries of all the officers. . . .

It is evident that the word "officers" is used in the statute in a special sense, and that for a position in the hospital to be an "office," within the meaning of the statute providing that the trustees shall appoint "such officers as in their opinion may be necessary for conducting efficiently and economically the business of the institution," it is not necessary that the position should have all the attributes of an office considered as a public office.

In my opinion, the intent of the statute is that the Governor and Council shall have submitted to them for their approval the proposed compensation of all persons who hold positions in the institution which are created as positions by the trustees, and who are paid salaries, as distinguished from those persons who do not hold distinct positions and are employed for wages.

Very truly yours,

DANA MALONE, *Attorney-General.*

Independent Industrial Schools — Non-resident Pupils — Tuition Fees — Maintenance Fund — Disposition of Revenue — Cities and Towns — Money received from Fees for granting Licenses for the Sale of Intoxicating Liquor.

St. 1908, c. 572, § 4, which permits the attendance of non-resident pupils at an independent industrial school "upon payment by the city or town of his residence of such tuition fee as may be fixed by the" State Board of Education, authorizes such Board to establish a tuition fee for such attendance which in the view of the Board is fair and reasonable under all the circumstances of the case. Tuition fees received from non-resident pupils, and revenue arising from compensation for the work of pupils or from a sale of the products of an independent industrial school, should be applied to the maintenance of such school.

Money received by a city or town from fees for the granting of liquor licenses and appropriated to the maintenance fund of an independent industrial school is not "money raised by local taxation" or "money donated or contributed," within the meaning of St. 1906, c. 505, § 5, as amended by St. 1909, c. 540, providing that where "a city, town or district, either by moneys raised by local taxation or by moneys donated or contributed, has maintained an independent in-

dustrial school, the commonwealth, . . . shall pay . . . to such cities, towns or districts a sum equal to one half the sum raised by local taxation," and no account should be made thereof in the reimbursement provided for in such section.

JUNE 27, 1910.

HON. FREDERICK P. FISH, *Chairman, State Board of Education.*

DEAR SIR:— You have submitted to me for my opinion certain questions involving the construction of St. 1906, c. 505, as amended by St. 1908, c. 572, and St. 1909, c. 457, to which I reply as follows:—

1. "May the Board fix the tuition for non-resident pupils as per section 4, chapter 572, Acts of 1908, at that figure in each case which seems to it fair and reasonable under all the circumstances, or is it bound to determine that tuition fee upon any particular principle?"

The attendance of pupils at industrial schools established in cities or towns other than that in which such pupils reside is provided for by section 4 of chapter 572 of the Statutes of 1908, which permits such attendance "upon payment by the city or town of his residence of such tuition fee as may be fixed by said commission," the commission being the Commission on Industrial Education, whose powers and duties, by the provisions of St. 1909, c. 457, devolved upon the commission created thereby by a consolidation of such commission with the Board of Education. No particular principle upon which tuition fees may be determined for non-resident pupils is provided by the act, and I am of opinion that such tuition fee should be a sum which in the view of the Board is fair and reasonable under all the circumstances of the case.

2. "Should the receipts from non-resident pupils be applied to the maintenance fund, the construction fund or the equipment fund of independent industrial schools?"

By section 5 of chapter 505 of the Statutes of 1906 it is provided that:—

Whenever any city or town . . . shall appropriate money for the establishment and equipment and maintenance of independent schools for industrial training, *the commonwealth, in order to aid in the maintenance of such schools,* shall pay annually from the treasury to such cities, towns, . . . a sum proportionate to the amount raised by local taxation and expended for the support of schools for each thousand dollars of valuation, as follows: . . .

I am of opinion that this provision of law does not contemplate that the Commonwealth should contribute toward the expense of construction or equipment of independent industrial schools, and that the tuition fee so received should be applied to the expenses of maintenance.

3. "Should the revenue arising from compensation for the work of pupils or from a sale of the products of a school be applied to the maintenance fund, the construction fund or the equipment fund?"

As I have already said, the law does not contemplate that the Commonwealth should share in any of the expenses of establishing, constructing or equipping an independent industrial school, and its responsibility in the premises begins when a city or town has appropriated money raised by taxation for the purpose of maintenance. It seems to me that the proper view to take of receipts of this character is to apply them to the maintenance of the school, so that they, together with tuition fees and other receipts which do not represent money raised by taxation, may serve to diminish both the amount to be raised by the city or town by taxation and the amount to be reimbursed by the Commonwealth. Thus, the expense of purchasing raw materials to be worked by the pupils into a salable product might well be charged against the sums received therefor, and the net profit be applied to the maintenance of the school.

4. "In the case of one independent industrial school, the city authorities have transferred liquor license money to the maintenance fund of the school. Does such money constitute a part of the sum raised by local taxation for the maintenance of the school, within the meaning of chapter 540, Acts of 1909, for which reimbursement should be made by the State?"

It is provided in St. 1906, c. 505, § 5, as amended by St. 1909, c. 540, that:—

Upon certification by the board of education to the auditor of the commonwealth that a city, town or district, either by moneys raised by local taxation or by moneys donated or contributed, has maintained an independent industrial school, the commonwealth, in order to aid in the maintenance of such schools, shall pay annually from the treasury to such cities, towns or districts a sum equal to one half the sum raised by local taxation for this purpose: *provided*, that no payment to any city or town shall be made except by special appropriation by the legislature.

Money received by a city or town from fees for liquor licenses is neither "money raised by local taxation" nor "money donated or contributed," and therefore no account should be made thereof in the reimbursement provided for under the section quoted.

Very truly yours,

DANA MALONE, *Attorney-General.*

Massachusetts Highway Commission — Motor Vehicles owned by United States Government — Certificate of Registration — Fees.

Under St. 1909, c. 534, which in section 2 requires the registration of motor vehicles, and in section 29 fixes the fees to be collected therefor, with the further provision that the Massachusetts Highway Commission "may issue certificates of registration for motor vehicles and licenses to operate the same to any member of the foreign diplomatic corps without the payment of the fees therefor," such commission is not authorized to issue a certificate of registration without the payment of fees for motor vehicles owned by the government of the United States.

JUNE 28, 1910.

F. I. BIELER, Esq., *Secretary, Massachusetts Highway Commission.*

DEAR SIR: — You request my opinion as to whether the Massachusetts Highway Commission has the power to issue for motor vehicles owned by the United States government certificates of registration and number plates without the payment of fees.

On May 8, 1908, I advised your commission as follows: —

I am of opinion that the motor vehicles in question are exempt from registration. They are means employed by the government of the United States to execute its constitutional powers, and therefore are exempt from taxation and registration in this Commonwealth.

St. 1909, c. 534, requires the registration of motor vehicles (section 2), and fixes the fees to be collected therefor (section 29). The only provision for furnishing certificates of registration for motor vehicles without the payment of fees is contained in the last paragraph of section 29, which provides that "the commission may issue certificates of registration for motor vehicles and licenses to operate the same to any member of the foreign

diplomatic corps without the payment of the fees therefor." There is, therefore, no express authority for the issuing of certificates of registration for motor vehicles owned by the United States government without the payment of fees. Since the statute requires the payment of fees in the case of all persons except members of the foreign diplomatic corps, there is no authority in the commission to issue, without the payment of fees, certificates of registration to the United States government. In view of the express provision in favor of members of the foreign diplomatic corps, no such provision can be implied in favor of the United States government.

According to the earlier ruling, certificates of registration are not required for motor vehicles owned by the United States government. If, however, certificates are desired as a matter of convenience, they must be paid for.

Of course the rule as to number plates follows the rule as to certificates, since the commission is required (see section 2) to furnish, without charge, number plates to persons whose automobiles are registered according to statutory provisions.

Very truly yours,

DANA MALONE, *Attorney-General*.

License — Intoxicating Liquors — Licensed Premises — Certificate of Inspector of Factories and Public Buildings — Hotel — Lodging House — Ten or More Rooms above the Second Story.

The provisions of R. L., c. 104, § 49, requiring that the certificate of an inspector of factories and public buildings shall be obtained before an innholder's license or a license to sell intoxicating liquors may be granted for any premises, is not applicable, under R. L., c. 104, § 25, as amended by St. 1905, c. 347, and St. 1907, c. 503, § 1, to a hotel in which not more than ten persons lodge or reside above the second story.

In section 33 of chapter 104 of the Revised Laws, providing in part, that "the owner, lessee, proprietor or manager of a hotel, which is not otherwise suitably provided with fire escapes, or a lodging house which contains ten or more rooms above the second story, shall place . . . a knotted rope . . . for use as a fire escape in every room of said hotel or lodging house used as a lodging room, except rooms on the ground floor," the words "which contains ten or more rooms above the second story" apply to and describe a lodging house, and have no reference to the word "hotel" in said section.

JUNE 29, 1910.

Gen. J. H. WHITNEY, *Chief of the Massachusetts District Police.*

DEAR SIR: — Your letter of May 27 submits for my consideration certain inquiries, of which the first is as follows: —

Is a certificate of an inspector of factories and public buildings required before an innholder's license or a license to sell intoxicating liquors can be granted by the city or town authorities (excepting city of Boston) for a hotel which is less than three stories in height, or has less than ten rooms above the second story, or in which less than ten persons lodge or reside above the second story?

I am advised that the certificate to which you refer is that required under the provisions of R. L., c. 104, § 49, which is as follows: —

A license which is required by law, ordinance or by-law to authorize any premises to be used for any purpose specified in section twenty-five shall not be granted until a certificate for such building or portion thereof shall first have been obtained from an inspector as above provided, and, when issued, shall not continue in force after the expiration of such certificate.

Section 25 of that chapter, as amended by St. 1905, c. 347, and St. 1907, c. 503, § 1, provides, so far as is material, that: —

a hotel, family hotel, apartment house, boarding house, lodging house or tenement house in which ten or more persons lodge or reside above the second story, . . . shall be provided with proper egresses or other means of escape from fire, sufficient for the use of all persons accommodated, assembled, employed, lodged or resident therein; . . .

Your question, in substance, requires my opinion as to whether the words "in which ten or more persons lodge or reside above the second story" apply to hotels, family hotels, apartment houses, boarding houses, lodging houses and tenement houses, or are limited in their application to tenement houses only.

The earliest legislation relating to the inspection of factories and public buildings is to be found in St. 1877, c. 214, which, in section 5, provided that all churches, schoolrooms, hotels, halls, theatres and other buildings used for public assemblies should have such means of egress as the inspectors of factories and public

buildings should approve; and this provision appears in Pub. Sts., c. 104, § 20. By St. 1882, c. 266, § 2, Pub. Sts., c. 104, § 20, was amended by adding thereto the following words: —

Every building three or more stories in height, in whole or in part used, occupied, leased or rented, or designed to be used, occupied, leased or rented for a tenement to be occupied by more than four families, or a lodging house, shall be provided with a sufficient means of escape in case of fire, to be approved by the inspector of factories and public buildings.

The following year an act (St. 1883, c. 251) was passed “to secure better provisions for escape from hotels and certain other buildings, in case of fire.” This provided, in part, in section 1, that the keeper of a hotel, boarding or lodging house containing one hundred or more rooms, “and being four or more stories high,” should maintain at least two competent watchmen, properly assigned, and on duty between the hours of 9 o’clock at night and 6 o’clock in the morning; and the keeper of a hotel, boarding or lodging house containing more than fifty but less than one hundred rooms, “and being three stories high,” should maintain at least one competent watchman on duty during the same hours. Section 2 provided that: —

Hotels used and occupied as public houses, for the reception and entertainment of guests, boarding or lodging houses and school buildings, being three or more stories high, and accommodating or having the means of accommodating thirty or more persons, . . . shall be supplied inside thereof with proper and sufficient means or appliances for escape, in case of fire, . . .

In 1888 the law regulating ways of egress and means of escape from fire was codified in St. 1888, c. 426, in which section 1 contains the following provision: —

Every building now or hereafter used, in whole or in part, as a public building, public or private institution, schoolhouse, church, theatre, public hall, place of assemblage or place of public resort, and every building in which ten or more persons are employed above the second story in a factory, workshop or mercantile or other establishment, and every hotel, family hotel, apartment house, boarding house, lodging house or tenement house in which ten or more persons lodge or reside above the second story, and every factory, work-

shop, mercantile or other establishment the owner, lessee or occupant of which is notified in writing by the inspector hereinafter mentioned that the provisions of this act are deemed by him applicable thereto, shall be provided with proper ways of egress, or other means of escape from fire, sufficient for the use of all persons accommodated, assembling, employed, lodging or residing in such building; . . .

And the same provision, that "every hotel, family hotel, apartment house, boarding house, lodging house or tenement house in which ten or more persons lodge or reside above the second story," is repeated in St. 1894, c. 481, § 24, and, with the single change from "every hotel," etc., to "a hotel," etc., is to be found in R. L., c. 104, § 25, as amended by St. 1907, c. 503, § 1.

It appears, therefore, that the regulation of means of escape in hotels and boarding or lodging houses originally applied only to hotels and boarding or lodging houses which were three or more stories in height (St. 1883, § 251), and that such regulation so limited had been in force for five years when laws relative to the inspection of buildings were codified in St. 1888, c. 426, where substantially the same language was employed in section 1 with reference to hotels and boarding or lodging houses that is to be found in existing provisions of law. I see no reason to believe that by this codification the Legislature intended to extend the application of the law to a class of buildings which up to that time had been excepted from its provisions, or to limit the application of the qualifying words to tenement houses, so as to create a distinction between a tenement house and a hotel, family hotel, apartment house, boarding house and lodging house. The conclusion which I have reached is supported by the language of the court which considered this section (then St. 1888, c. 426, § 1), in *Perry v. Bangs*, 161 Mass., 35, 36, where the court said: —

Section 1 of St. 1888, c. 426, first describes the buildings to be subject to the provisions of the act, and this description includes "every hotel, family hotel, apartment house, boarding house, lodging house, or tenement house in which ten or more persons lodge or reside above the second story." The description ends as follows: "and every factory, workshop, mercantile or other establishment the owner, lessee, or occupant of which is notified in writing by the inspector hereinafter mentioned that the provisions of this act are deemed by him applicable thereto, shall be provided with proper ways of egress or other means of escape from fire, sufficient for the use of all persons accommodated, assembling, employed, lodging, or

residing in such building.” We assume that the words requiring a notice in writing from the inspector that he deems the provisions of the act applicable to certain establishments apply only to the buildings or establishments mentioned in the last clause of the description, and that a hotel in which more than ten persons lodge or reside above the second story is subject to the provisions of the act, even if no such notice has been given by an inspector.

I am constrained to advise you, therefore, that a certificate of an inspector of factories and public buildings is not required before an innholder’s license or a license to sell intoxicating liquors may be granted by the city or town authorities for a hotel in which not more than ten persons lodge or reside above the second story.

Your communication contains certain other inquiries, as follows: —

Does section 33, chapter 104, Revised Laws, apply to any hotel more than one story in height outside of Boston?

Does section 34, chapter 104, Revised Laws, require an annual inspection by the city or town (except Boston) inspector of buildings, or the chief engineer of the fire department, in May, of every hotel of less than ten rooms above the second story?

Does section 34, chapter 104, Revised Laws, require knotted ropes or better appliances in every hotel which is not otherwise suitably provided with fire escapes, and which is more than one story in height?

These inquiries relate to sections 33 and 34 of chapter 104 of the Revised Laws, and in slightly different phrase present the same questions. Section 33, so far as it is material, is as follows: —

The owner, lessee, proprietor or manager of a hotel, which is not otherwise suitably provided with fire escapes, or of a lodging house which contains ten or more rooms above the second story, shall place or cause to be placed a knotted rope or better appliance for use as a fire escape in every room of said hotel or lodging house used as a lodging room, except rooms on the ground floor.

Your inquiries, in substance, require my opinion upon the question whether or not the words “which contains ten or more rooms above the second story” qualify the word “hotel,” as well as the words “lodging house.”

I am of opinion that a consideration of the history of this particular provision makes it clear that the words "which contains ten or more rooms above the second story" apply to and describe a lodging house, and have no reference to the word "hotel" which precedes them. Thus, the provision with respect to hotels was originally enacted in 1890, and is to be found in chapter 307 of that year, and required that:—

Every owner, lessee, proprietor or manager of a hotel . . . shall . . . place or cause to be placed a knotted rope or other better appliance for use as a fire escape in every room of said hotel used as a lodging room, except rooms on the ground floor.

The provision with respect to lodging houses containing ten or more rooms above the second story was enacted in 1894 (St. 1894, c. 341); and in the same year the two provisions were combined in St. 1894, c. 481, § 44, which is identical with section 33 of chapter 104 of the Revised Laws, except that in the latter section the words "for the protection of human life in case of fire" are omitted after the words "fire escapes" in the third line.

It follows, therefore, that the description with respect to rooms above the second story is applicable only to a lodging house, and does not describe or limit the word "hotel."

Very truly yours,

DANA MALONE, *Attorney-General.*

*Civil Service — Assistant Commissioner of the Penal Institutions
Department of the City of Boston.*

The assistant commissioner of the penal institutions department of the city of Boston appointed by the penal institutions commissioner under the provisions of St. 1897, c. 395, § 5, is within the classification of "superintendents, assistant and deputy superintendents, deputies, executive officers and persons other than the chief superintendent of departments . . ." in civil service rule 7, section 1, clause 1, and is subject to the provisions of the civil service law and rules.

JULY 14, 1910.

HON. CHARLES WARREN, *Chairman, Civil Service Commission.*

DEAR SIR:— You request my opinion as to whether the position of assistant commissioner of the penal institutions department of Boston is within the classified civil service.

The penal institutions department is a department of the city of Boston. See opinion of Feb. 16, 1910. The assistant commissioner is within the classification of civil service rule 7, section 1, clause 1, of "superintendents, assistant and deputy superintendents, deputies, executive officers and persons other than the chief superintendent of departments performing any of the duties of a superintendent in the service of any city." The fact that the position is described as that of "assistant commissioner" instead of "assistant superintendent" is immaterial, since the duties must be analogous, and in my opinion such assistant commissioner is within the classified service of the city.

The only remaining question is, whether the position is by statute exempt from civil service rules. It is not so exempt by R. L., c. 19, § 9, which is the general provision for exemptions, nor, in my opinion, is it exempt by any special statutory provision. St. 1895, c. 449, § 14, provides that "the institutions department shall be under the charge of one institutions commissioner." Section 20 provides that:—

The officer or board in charge of any department created by this act . . . may, with the approval of the mayor, appoint not exceeding three assistants . . . ; and such appointment shall be exempt from the laws relating to civil service in the commonwealth and the cities and towns thereof.

St. 1897, c. 395, § 5, after changing the name of the department, provides that "the penal institutions commissioner may, with the approval of said mayor, appoint one assistant." St. 1909, c. 486, § 15, repeals St. 1895, c. 449, § 20, except as to the election department. The office of assistant commissioner is, therefore, created by St. 1897, c. 395, and as to it there is no specific provision for exemption from the civil service.

Very truly yours,

DANA MALONE, *Attorney-General.*

Civil Service — Officers whose Appointment is subject to Confirmation by City Council — Constables.

Constables whose appointments must be confirmed by the city council of the city of Boston are "officers . . . whose appointment is subject to confirmation by the . . . city council" within the meaning of R. L., c. 19, § 9, providing that such officers, among others, shall not be affected as to their selection or appointment by the civil service rules.

JULY 21, 1910.

HON. CHARLES WARREN, *Chairman, Civil Service Commission.*

DEAR SIR:— You have requested my opinion as to whether constables whose appointments must be confirmed by the city council of the city of Boston are officers within the provisions of R. L., c. 19, § 9, and therefore exempt from civil service classification.

R. L., c. 19, §§ 6 to 8, inclusive, authorize the making of rules regulating the selection of officers and employees in the service of the cities of the Commonwealth. Under authority of these sections certain rules have been made, one of which places within the classified service “constables in the service of any city receiving pay other than the statutory fees.” Civil service rule 7, class 18. Constables in the service of the city of Boston receiving pay other than the statutory fees, are, therefore, within the civil service classification, unless expressly excepted therefrom by statute.

R. L., c. 19, § 9, provides that:—

Judicial officers and officers elected by the people or by a city council, or whose appointment is subject to confirmation by the executive council or city council of any city, . . . police and fire commissioners and chief marshals, or chiefs of police and fire departments, shall not be affected as to their selection or appointment by any rules made as aforesaid; but, with the above exception, such rules shall apply to members of police and fire departments.

The constables in question are not expressly excepted from the application of the rules unless they are “officers . . . whose appointment is subject to confirmation by the . . . city council.”

In towns, “the selectmen may appoint as many constables . . . as in their opinion may be necessary.” R. L., c. 25, § 87. In cities, the mayor and aldermen have the powers of selectmen. R. L., c. 26, § 2. When an appointment is to be made by the mayor and aldermen, the mayor has “the exclusive power of nomination, subject to confirmation or rejection by the aldermen.” R. L., c. 26, § 8. In the city of Boston, the mayor and city council have the powers of a board of aldermen. St. 1909, c. 486, § 1.

The principal duty of a constable is the service of process, both criminal and civil. A constable may, however, serve civil process only if he has given the statutory bond. R. L., c. 25, §§ 88 to 93, inclusive.

In view of the statutory provisions referred to, I am of opinion that a constable is an officer within the meaning of the word as used in R. L., c. 19, § 9. See *Leavitt v. Leavitt*, 135 Mass. 191, 193; *Brown v. Russell*, 166 Mass. 14, 26; *Attorney-General v. Tillinghast*, 203 Mass. 539. "His appointment is subject to confirmation by the . . . city council" of Boston. *Attorney-General v. Douglass*, 195 Mass. 35, 38. The constables in question are, therefore, in my judgment, exempt from civil service classification.

The opinion which I have expressed applies to constables, but not to members of the police department. Police officers are, in general, classified within civil service rules. See rule 7, classes 14 to 17, inclusive. The statute which provides for exemptions from the application of the civil service rules further provides that "such rules *shall* apply to members of police . . . departments." R. L., c. 19, § 9. Moreover, in the city of Boston not only regular and reserve police, but also special police, are appointed by the police commissioner and not by the mayor and city council. St. 1887, c. 177; St. 1898, c. 282; St. 1906, c. 291, § 10.

Very truly yours,

DANA MALONE, *Attorney-General*.

*City or Town — Money borrowed in Anticipation of Taxes —
Limit of Authority to issue Notes in Payment.*

Under the provisions of R. L., c. 27, § 6, authorizing a city or town, by a majority vote, to "incur debts for temporary loans in anticipation of the taxes of the municipal year in which such debts are incurred and expressly made payable therefrom by such vote," a town may not legally issue notes for debts incurred in anticipation of taxes in any one year when such debts exceed in the aggregate the total amount which the town has by vote authorized to be so borrowed. A town may not, under the provisions of R. L., c. 27, § 6, authorize an amount to be borrowed in anticipation of taxes which exceeds the amount of the tax assessed or to be assessed for the year within which the debt is contracted.

AUG. 16, 1910.

CHARLES F. GETTEMY, Esq., *Director of the Bureau of Statistics.*

DEAR SIR: — By your letter of July 29 you desire to be advised as to whether or not a town has authority "to legally issue notes in anticipation of taxes for any one year to an amount in the aggregate in excess of the total amount which the town by vote

has authorized may be borrowed. For example: if a town is authorized to borrow \$50,000 in anticipation of taxes, may it borrow in excess of that sum, provided at any one time it has not more than \$50,000 outstanding?"

I assume that you refer to money borrowed in anticipation of taxes under the provisions of R. L., c. 27, § 6, which is as follows:—

Cities and towns may by a majority vote incur debts for temporary loans in anticipation of the taxes of the municipal year in which such debts are incurred and expressly made payable therefrom by such vote. Such loans shall be payable within one year after the date of their incurrence, and shall not be reckoned in determining the authorized limit of indebtedness.

Under this provision of law I am of opinion that the amount of the debt which the town has by vote duly authorized to be incurred may not in any case be exceeded, and that the authority of the town officers in the premises is exhausted when they have once contracted a debt to the extent of the sum set forth in such vote. It follows, therefore, that notes may not be legally issued for debts incurred in anticipation of taxes in any one year when such debts in the aggregate exceed the total amount which the town has by vote authorized to be so borrowed. See 1 Op. Atty.-Gen., 24, 65, 418; *Agawam National Bank v. Inhabitants of South Hadley*, 128 Mass. 503; *Smith v. Dedham*, 144 Mass. 177.

You also desire to be advised "as to what is the limit, if any, upon the amount which can be borrowed by a municipality in anticipation of taxes."

Section 6, above quoted, imposes no express limitation upon the authority of a town to incur debts for temporary loans, but, by its implication, such authority must be limited to the amount of the tax assessed or to be assessed in the year during which such debt is incurred. Thus, if the debt is incurred before the tax has been actually assessed, its amount must not exceed the amount of taxes to be levied for the year within which such debt is contracted. If the debt is incurred after the taxes have been assessed and before they are collected, it must not in any event exceed the amount of tax money assessed for that year remaining uncollected.

Very truly yours,

DANA MALONE, *Attorney-General.*

Street Railway Company — Issue of Bonds — Board of Railroad Commissioners — Approval — Sale at Less than Par Value.

The provision of St. 1906, c. 463, Part III., § 103, that for the purposes therein specified a street railway company "may . . . increase its capital stock or issue bonds, . . . to such an amount, . . . as the board of railroad commissioners shall determine will realize the amount which has been properly expended or will be properly required . . . for such of the purposes aforesaid as are set out in its petition to said board," authorizes the Board of Railroad Commissioners to approve an issue of bonds and the sale thereof by a street railway company at less than par value, provided that the price realized by such sale furnishes a fair and reasonable equivalent for the securities so disposed of.

The Board of Railroad Commissioners, having acted upon the petition of a street railway company and determined the amount of bonds which, if sold at par, would realize the amount properly expended or properly required, as set forth in the petition, upon a subsequent petition may take into consideration the fact that the petitioner has been unable to dispose of the bonds so authorized at par, and may approve a further issue of bonds for the same purpose in order to meet the deficit so created.

St. 1910, c. 536, amending St. 1906, c. 463, Part III., § 103, and providing that the Board of Railroad Commissioners, in authorizing an issue of bonds under section 103, "may prescribe the minimum price at which such bonds shall be sold, and may modify such price from time to time," and where the minimum price so established is less than par, may provide for the establishment of a sinking fund which at the maturity of the bonds will amount to the difference between the selling price and the par value thereof, is applicable to a petition pending at the time of its passage.

OCT. 21, 1910.

Hon. W. P. HALL, *Chairman, Board of Railroad Commissioners.*

DEAR SIR:— By a communication dated September 23 you have requested my opinion upon certain questions arising under the provisions of St. 1906, c. 463, Part III., § 103, as amended by St. 1910, c. 536. Your communication states that under the statute first mentioned, and prior to the enactment of the amendment, the Board approved:—

an issue by a street railway company of bonds of a par or face value equal to the amount of certain floating indebtedness properly incurred by the company in the construction and equipment of its railway and in the purchase of property necessary for its operation. The company sold the bonds, and realized therefrom an amount less than their par value and less than the amount of float-

ing indebtedness which it was proposed to pay. After applying the proceeds of the sale of said bonds to said floating indebtedness, the company filed its petition with the Board for approval of the issue of additional bonds to an amount sufficient to pay the balance of the floating indebtedness not paid with the proceeds of the bonds previously approved by the Board and issued and sold by the company. During the pendency of this petition, the General Court enacted chapter 536 of the Acts of 1910.

Upon these facts, and upon the assumption that the Board is satisfied that the petitioning street railway company acted in good faith in the sale of the bonds first approved and obtained a fair market value therefor, the following specific questions are asked:—

1. Can the Board now, under the authority conferred upon it by said section 103 of Part III. of chapter 463 of the Acts of 1906, as amended by chapter 536 of the Acts of 1910, approve, upon the company's pending petition, the issue of such additional bonds as this Board may deem to be reasonably necessary to realize the balance of the amount of floating indebtedness, previously found by the Board to have been properly incurred, and which the bonds previously approved by it had not been sufficient entirely to pay?

2. Can the Board now, under said statutes, and on the company's pending petition, if the Board approves the issue of any additional bonds as prayed for in said petition, require the company to establish a sinking fund, as provided in said chapter 536 of the Acts of 1910?

3. Is it necessary for said company to authorize and file a new petition subsequent to the enactment of chapter 536 of the Acts of 1910, in order to give this Board jurisdiction under said act to require the company to establish a sinking fund under the provisions thereof?

Section 103 of Part III. of chapter 463 of the Acts of 1906 provides as follows:—

A street railway company, for the purpose of building an extension, or of acquiring land for pleasure resorts, or of acquiring or building power houses or car houses or park buildings, or of acquiring or equipping additional rolling stock, or of changing its motive power, or of furnishing electricity to a town for light, or of abolishing grade crossings, or of paying betterment assessments for widening or otherwise altering streets, or of complying with any requirements lawfully imposed, or of making permanent invest-

ments or improvements, or of acquiring any additional real or personal property necessary or convenient for its corporate objects, or of refunding its funded debt, or for the payment of money borrowed or indebtedness incurred for any of the foregoing purposes, or for other similarly necessary and lawful purposes, may, in accordance with the provisions of sections one hundred and seven, one hundred and eight, one hundred and eleven and one hundred and twelve of Part III, and of sections forty-eight to fifty-six, inclusive, of Part II, increase its capital stock or issue bonds, secured by mortgage or otherwise, to such an amount, beyond the amounts fixed and limited by its agreement of association or its charter, or by any special law, as the board of railroad commissioners shall determine will realize the amount which has been properly expended or will be properly required, and as said board shall approve for such of the purposes aforesaid as are set out in its petition to said board.

To the purposes for which a street railway company might increase its capital stock, as thus set forth, St. 1909, c. 485, added the further purpose of supplying itself with working capital.

Sections 107 to 112 of Part III. of the chapter last quoted contain certain directions and restrictions upon the issuance of stocks, bonds, coupon notes and other evidences of indebtedness by street railway companies, which are not pertinent to the present inquiry.

Sections 48 to 56 of Part II. regulate the issuance by a railroad corporation of coupon or registered bonds, coupon notes or other evidences of indebtedness payable at periods of more than twelve months from the date thereof to provide means for funding its floating debt, or for the payment of money borrowed for any lawful purpose, or authorize the mortgage of a part or all of its railroad, equipment or franchise, or a part or all of its real or personal property, together with provisions for the operation and management of the railroad in case there is a default in the performance of the conditions of the mortgage.

St. 1910, c. 536, is as follows:—

Section one hundred and three of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six is hereby amended by adding at the end thereof the following:— Said board, in authorizing the issue of any bonds under this section may prescribe the minimum price at which such bonds shall be sold, and may modify such price from time to time, as the board may deem proper. Whenever said board authorizes or has approved

the issue or sale of bonds of a face value in excess of the amount determined by it to have been properly expended or to be properly required, it may, in its order of approval, or at any time thereafter, require the company issuing such bonds to establish a sinking fund, estimated to realize at the maturity of said bonds a sum equal to the difference between the amount or amounts for which such bonds were authorized or approved, and the face value of the bonds so authorized or approved therefor, and may designate some Massachusetts trust company as trustee and custodian of such fund, and may from time to time change such trustee. The provisions of any agreement relative to said sinking fund, made between the street railway company and the trust company selected as such trustee, shall be submitted to said board and shall not be valid until approved by it.

This statute created no new purpose for which, subject to the approval of the Board of Railroad Commissioners, bonds may be issued. Its only effect is to confer upon the Board authority to prescribe a minimum price at which bonds may be sold, and, where such minimum price is less than par, to provide for the establishment of a sinking fund which will at maturity amount to the difference between the selling price and the par value of the bonds. It follows, therefore, that the first question to be decided is, whether or not section 103, without reference to the amendment passed in 1910, either expressly or by implication, places a limitation upon the sale of bonds issued under its provisions for the purpose of raising money to pay for work of construction or to fund floating indebtedness or for any other lawful purpose.

I am of opinion that there is nothing in section 103, or in the other sections therein referred to, which limits the power of a street railway company to dispose of bonds, lawfully issued, at less than par if the price obtained is the fair market value of the securities sold. Generally speaking, a corporation, in the absence of statutory prohibition or restriction, may issue its bonds or other evidences of indebtedness at a discount, or may dispose of them at less than par, provided that the price realized or the work or materials furnished give a reasonable equivalent for the securities disposed of. *Gamble v. Queens County Water Co.*, 123 N. Y. 91; *Coe v. Columbus, etc., Railroad Co.*, 10 Ohio, 372; *Northside Railway Co. v. Worthington*, 88 Tex., 562. And this power in railroad or street railway corporations has been uniformly recognized by the Legislature of this Commonwealth. So in St.

1854, c. 286, which provided that a railroad corporation established by the laws of the Commonwealth might issue bonds for "the purpose of funding its floating debt or for money which it may borrow for any purpose sanctioned by law," and which, in *Commonwealth v. Smith*, 10 Allen, 448, was held to prohibit the issuance of bonds for any purpose and in any manner other than that therein provided, it was expressly enacted in section 5 that "all bonds or notes which have been, or which may hereafter be, issued by any railroad corporation, shall be binding and collectible in law, notwithstanding such notes or bonds were negotiated and sold by such corporation, or their agents at less than par." And this provision is re-enacted in section 51 of Part II. of chapter 463 of the Statutes of 1906, and is by reference applicable to bonds issued under section 103 of Part III. of such chapter.

I see nothing in the language of section 103 itself which either directly or by implication negatives the power so recognized. On the contrary, it expressly provides that a street railway company for the purposes specified "may . . . issue bonds . . . to such an amount . . . as the board of railroad commissioners shall determine *will realize the amount which has been properly expended or will be properly required*, and as said board shall approve for such of the purposes aforesaid as are set out in its petition to said board," — a choice of words by which, in my opinion, the Legislature clearly intended to recognize that, if bonds cannot be disposed of for their par value after an effort so to do made in good faith and with due diligence, the amount to be authorized by the Board, computed upon the basis of a sale at par, will not realize an amount equal to that which has been properly expended or will be properly required for the purposes specified, and to authorize the Board to determine the amount, expressed in the par value of the bonds, which *will realize* such amount. This view is confirmed by the language of St. 1910, c. 536, which could only have been adopted upon the theory that section 103 already recognized that it might be necessary to dispose of bonds at less than par and authorized them to be so disposed of; for such statute does not confer upon either the street railway company or the Board of Railroad Commissioners any new power in the premises, but provides simply that the Board, in authorizing the issue of bonds under section 103, may prescribe a minimum price at which they may be sold, and where such minimum price is established may provide for a sufficient sinking fund for their redemption at par. Moreover, the Legis-

lature must be deemed to have been well aware that, from the condition of the market or from other causes entirely beyond the control of the petitioning street railway company, it might often be that such company would be unable to dispose of its bonds at par, and, if restricted to an issue of an amount which in par value did not exceed the indebtedness to be met, would be forced to make the deficit good by other means, and would be left with a floating indebtedness originally incurred for a purpose for which bonds might be issued, but which could no longer be bonded, and must be met from earnings or carried as a permanent floating debt.

Adopting this construction of the provisions of section 103 of Part III. of chapter 463 of the Acts of 1906, I reply specifically to the questions submitted by your communication as follows:—

1. In view of the conclusion above reached, the first inquiry of the Board is reduced in substance to an inquiry whether the Board, having acted upon a petition of a street railway company and determined the amount of bonds which if sold at par value would realize the amount properly expended or properly required, as set forth in the petition, may, upon a subsequent petition, take into consideration the fact that, after an effort made in good faith and with all diligence to dispose of the bonds so authorized at par, the petitioner had failed to do so, and that the amount realized by actual sale upon the market was insufficient to accomplish the whole purpose for which the bonds were issued, and approve a further issue of bonds for the same purpose in order to meet the deficit so created. To this question I am of opinion that the reply should be in the affirmative. If the Board might have approved the issue of the additional bonds in the first instance, I see no reason why they might not subsequently approve them upon a presentation of all the facts showing failure to realize a sufficient amount by the sale of the bonds first approved for the same purpose.

2. St. 1910, c. 536, goes no further than to require the Board to make certain additional regulations and restrictions with reference to any issue of bonds which it may authorize under the provisions of section 103, and I am of opinion that it may apply as well to a pending petition as to one brought after its passage. It interferes with no vested rights of the petitioning company, and, therefore, is not subject to any objection upon constitutional grounds.

3. The conclusion reached in replying to the second question requires that the third question of the Board be answered in the negative.

Very truly yours,

DANA MALONE, *Attorney-General.*

*Taxation — Domestic Corporation — Minimum Limit of Tax —
Local Taxation — Deductions — Mortgage on Real Estate.*

In determining the minimum limit of tax upon a domestic corporation under the provisions of St. 1909, c. 490, Part III., § 43, that “the total amount of tax to be paid by such corporation in any year upon its property locally taxed in this commonwealth and upon the value of its corporate franchise shall amount to not less than one tenth of one per cent of the market value of its capital stock at the time of said assessment as found by the tax commissioner,” a mortgage on real estate taxable as real estate to the mortgagor, and held by a domestic corporation, is not included within “its property locally taxed in this commonwealth,” and the tax paid by the mortgagor on such real estate may not be used to reduce the amount of the franchise tax to be paid by the corporation holding such mortgage.

Oct. 27, 1910.

HON. WILLIAM D. T. TREFRY, *Tax Commissioner.*

DEAR SIR: — You have requested my opinion upon a question which is substantially as follows: in determining the minimum limit of tax upon a domestic corporation, is a mortgage on real estate taxable as real estate to the mortgagor, held by such corporation, included within “its property locally taxed in this Commonwealth?”

St. 1909, c. 490, Part III., § 43, relative to the taxation of domestic corporations, provides in part that:—

the total amount of tax to be paid by such corporation in any year upon its property locally taxed in this commonwealth and upon the value of its corporate franchise shall amount to not less than one tenth of one per cent of the market value of its capital stock at the time of said assessment as found by the tax commissioner.

In my opinion, a mortgage on real estate, taxable as real estate to the mortgagor, held by a domestic corporation, is not included within “its property locally taxed in this Commonwealth;” in other words, the tax paid by the mortgagor on such real estate is

not to be used to reduce the amount of the franchise tax to be paid by the corporation holding such mortgage.

In determining the minimum franchise tax to be paid by a domestic corporation, both the amount "to be paid by such corporation in any year upon its property locally taxed in this Commonwealth" and the amount to be paid by it "upon the value of its corporate franchise" are to be considered. Taxes, if any, to be paid by anybody else upon the property of the corporation are not to be included. It follows that the tax to be paid upon mortgaged real estate is not to be included when it is not to be paid by the corporation holding the mortgage. The interest of a mortgagee in real estate may be assessed to him as real estate, or the whole estate may be assessed to the mortgagor in possession. St. 1909, c. 490, Part I., §§ 15-18, inclusive, § 45. *Abbott v. Frost*, 185 Mass. 398; *Sullivan v. Boston*, 198 Mass. 119. Only when the mortgagee's interest is assessed to the mortgagee can it properly be said that the tax is to be paid by it. This is not such a case. The situation is similar to that in the case of leased real estate. Such real estate may be assessed to the lessor or to the lessee. St. 1909, c. 490, Part I., §§ 15 and 20. In an opinion of my predecessor (2 Op. Atty.-Gen., 556) you were advised that real estate leased by a domestic corporation is "its real estate . . . subject to local taxation" within the meaning of St. 1903, c. 437, § 72 (now St. 1909, c. 490, Part III., § 3), and that the value of such real estate is to be deducted from the value of the corporate franchise "if it appears that such leased real estate is taxed to the corporation." In both cases the actual method of taxation employed governs.

The fact that in a particular case a corporation which is the mortgagee by reason of an agreement with the mortgagor bears the burden of the tax on its interest, although such tax is not assessed to it, is immaterial. The purpose of the minimum limit upon the amount of the franchise tax was to require each domestic corporation to pay some tax directly. As was observed by the committee which reported the business corporation law (see report, pp. 60-61), a corporation holding only securities would not, in the absence of such a provision, be subject to taxation in the Commonwealth. The reason that such a corporation would not be subject to taxation is that the value of its non-taxable securities would be deducted from the value of its franchise before the tax was computed. The reason for the deduction of the value of such securities is that the value represented by them is otherwise taxed. The corporation holding such securities in-

directly bears the burden of such taxation, yet the Legislature intended that such corporation should be directly taxed on its franchise, and to accomplish that purpose provided for the minimum limit. A corporation holding a mortgage on real estate taxable as real estate to the mortgagor is in a situation analogous to that of a corporation holding non-taxable securities. By the same reasoning, it should not escape the payment of a franchise tax even if it indirectly bears the burden of the tax assessed on its interest in the mortgaged real estate.

Very truly yours,

DANA MALONE, *Attorney-General*.

Taxation — Towns — Assessors — Term of Office.

Since St. 1907, c. 579, § 1, providing in part that "each assessor in every city and town in the commonwealth . . . shall be elected or appointed for the term of three years . . .," took effect on Jan. 1, 1908, there are no towns which may choose assessors for one year, as provided in St. 1907, c. 560, § 371.

Nov. 2, 1910.

Hon. W. D. T. TREFRY, *Tax Commissioner*.

DEAR SIR: — You request my opinion as to whether the provision of St. 1907, c. 560, § 371, which authorizes towns to vote that selectmen shall act as assessors, is still in force.

That section provides, in part: —

A town which chooses its assessors or overseers of the poor for one year may, instead of electing such officers, provide by vote that the selectmen shall act also as assessors or as overseers of the poor, or both.

St. 1907, c. 579, § 1, provides, in part, that: —

Each assessor in every city and town of the commonwealth, except in the city of Boston, shall be elected or appointed to hold office for the term of three years and until his successor is duly elected or appointed.

Section 2 provides that the act shall take effect on Jan. 1, 1908.

Since Jan. 1, 1908, therefore, there are no towns which choose their assessors for one year. There are, therefore, no towns which may provide by vote that the selectmen shall act as assessors.

Very truly yours,

DANA MALONE, *Attorney-General*.

Savings Banks — Legal Investments — Street Railway Company — Bonds — Dividend equal to Five Per Cent. for Five Years — Returns — Nine Months ending June 30, 1910 — Board of Railroad Commissioners — Certification.

The Board of Railroad Commissioners, under the provision of St. 1908, c. 590, § 68, sub-division fifth, that deposits and the income derived therefrom may be invested by savings banks "in the bonds of any street railway company . . . which has earned and paid in dividends in cash an amount equal to at least five per cent. upon all its outstanding capital stock in each of the five years last preceding the certification by the board of railroad commissioners hereinafter provided for;" and of St. 1909, c. 502, § 1, that the annual returns required by law to be made to such Board shall be returns for the year ending on the thirtieth day of June; and section 2, that such returns for 1910 "shall cover the doings of street railway companies . . . for the preceding nine months only, and said period of nine months shall be deemed, under the provisions of section sixty-eight of chapter five hundred and ninety of the acts of the year nineteen hundred and eight, sub-division Fifth, . . . as one of the five years therein referred to, but the requirement that dividends equal to at least five per cent. upon all the outstanding capital stock of a street railway company shall have been earned and paid in cash in each of said five years, shall not apply to said period of nine months; and any street railway company which shall have earned and paid dividends in cash an amount equal to five per cent. upon all its outstanding capital stock in each of the five preceding years with the exception of said nine months period, shall be included in the list to be certified and transmitted by the board,"— may certify and transmit to the Savings Bank Commissioner the name of a street railway company which has paid dividends of 2 per cent. for the year ending Sept. 30, 1905, 5 per cent. for the years ending Sept. 30, 1906, 1907, 1908 and 1909, respectively, and 2 per cent. on common and 3 per cent. on preferred stock for the nine months ending on June 30, 1910.

Nov. 28, 1910.

HON. W. P. HALL, *Chairman, Board of Railroad Commissioners.*

DEAR SIR:— Your letter of November 23 requires my opinion upon the construction of chapter 502 of the Statutes of 1909, which provides, in section 1, that the annual returns required by law to be made to the Board of Railroad Commissioners shall be returns for the year ending on the thirtieth day of June, and shall be transmitted to the Board on or before the thirtieth day of the following September.

Section 2 is as follows:—

The return required by the preceding section to be filed for the period ending on the thirtieth day of June, in the year nineteen hundred and ten, shall cover the doings of street railway companies and every person, firm, association or corporation doing an express business upon either a railroad or railway in this commonwealth for the preceding nine months only, and said period of nine months shall be deemed under the provisions of section sixty-eight of chapter five hundred and ninety of the acts of the year nineteen hundred and eight, sub-division Fifth, relative to the investment of deposits, and the income derived therefrom, of savings banks in the bonds of street railway companies, as one of the five years therein referred to, but the requirement that dividends equal to at least five per cent upon all the outstanding capital stock of a street railway company shall have been earned and paid in cash in each of said five years, shall not apply to said period of nine months; and any street railway company which shall have earned and paid in dividends in cash an amount equal to five per cent upon all its outstanding capital stock in each of the five preceding years, with the exception of said nine months period, shall be included in the list to be certified and transmitted by the board. The list required by the provisions of said section sixty-eight to be certified and transmitted to the bank commissioner shall, after the passage hereof, be so certified and transmitted on or before the fifteenth day of December in each year.

St. 1908, c. 590, § 68, sub-division fifth, which is referred to in the above section, is as follows: —

In the bonds of any street railway company incorporated in this commonwealth, the railway of which is located wholly or in part therein, and which has earned and paid in dividends in cash an amount equal to at least five per cent upon all its outstanding capital stock in each of the five years last preceding the certification by the board of railroad commissioners hereinafter provided for. No such investment shall be made unless said company appears from returns made by it to the board of railroad commissioners to have properly paid said dividends without impairment of assets or capital stock, and said board shall on or before the fifteenth day of January in each year certify and transmit to the bank commissioner a list of such street railway companies.

Dividends paid by way of rental to stockholders of a leased street railway company shall be deemed to have been earned and paid by said company within the meaning of this clause, provided that said company shall have annually earned, and properly paid in dividends in cash, without impairment of assets or capital stock, an amount equal to at least five per cent upon all its outstanding capi-

tal stock in each of the five fiscal years next preceding the date of the lease thereof.

If two or more street railway companies have been consolidated by purchase or otherwise during the five years prior to said certification, the payment severally from the earnings of each year of dividends equivalent in the aggregate to a dividend of five per cent on the aggregate capital stocks of the several companies during the years preceding such consolidation shall be sufficient for the purpose of this act.

Your letter states that a street railway company has paid dividends of 2 per cent. for the year ending Sept. 30, 1905, 5 per cent. for the year ending Sept. 30, 1906, 5 per cent. for the year ending Sept. 30, 1907, 5 per cent. for the year ending Sept. 30, 1908, 5 per cent. for the year ending Sept. 30, 1909, and 2 per cent. on common stock and 3 per cent. on preferred stock for the nine months ending on June 30, 1910.

Your inquiry is as follows:—

Assuming that said company appears, from returns made by it to the Board of Railroad Commissioners, to have annually earned and properly paid said dividends without impairment of assets or capital stock, is it lawful for the Board to certify and transmit to the Bank Commissioner the said company as a street railway company entitled to have its bonds a legal investment for savings banks?

Upon the facts submitted, I am of opinion that the company to which you refer is within the requirements of section 2 of chapter 502 of the Statutes of 1909, and that the Board may properly certify and transmit to the Bank Commissioner the name of such company as a street railway company entitled to have its bonds a legal investment for savings banks, in accordance with the provisions of law already cited. The apparent purpose of such section is to provide that, while the period of nine months ending on June 30, 1910, and covered by the return which is provided for, is to be counted as one year in determining whether or not a street railway company may be certified in accordance with the provisions of St. 1908, c. 590, § 68, sub-division fifth, the requirement with respect to dividends is not to be applied to such period of nine months; or, in other words, if the requirement with respect to dividends has been complied with by

a street railway company in four years, included within a period of five consecutive years, of which one shall consist of the nine months ending on June 30, 1910, such company shall be included in the list to be certified and transmitted by the Board of Railroad Commissioners. It has been suggested that, so construed, the provision is applicable only to companies which have already completed a period of five years during which dividends have been earned and paid equal to at least 5 per cent. upon all their outstanding stock; and that so much of the section as provides that

any street railway company which shall have earned and paid in dividends in cash an amount equal to five per cent upon all its outstanding capital stock in each of the five preceding years, with the exception of said nine months period, shall be included in the list to be certified —

requires all companies which have not already paid the necessary dividends for five years to pay such dividends for five full years during a period of five years and nine months, which also includes the nine months ending on June 30, 1910. I am unable to appreciate the distinction so created, however, and am of opinion that the language quoted is to be taken in connection with the earlier provision, that such nine-months period is to be construed, for the purpose of St. 1908, c. 590, § 68, sub-division fifth, as one year during which street railway companies are not required to earn and pay in cash a 5 per cent. dividend, and is merely declarative of the authority of the Board to certify and transmit a list of the companies which comply with the provisions of the section.

Very truly yours,

DANA MALONE, *Attorney-General.*

Towns — Issue of Notes — Demand Notes — Town Treasurer.

St. 1910, c. 616, § 1, providing that each note issued by a town shall state "the date when it shall become due for payment," and R. L., c. 27, § 6, providing that loans in anticipation of taxes shall "be payable within one year after the date of their incurrence," do not prohibit the issue by the town of a note payable on demand.

A town note may not, under the provisions of St. 1910, c. 616, § 1, be made payable to the town treasurer.

DEC. 22, 1910.

CHARLES F. GETTEMY, ESQ., *Director of the Bureau of Statistics.*

DEAR SIR:—I have your letters of the 15th inst., in which you make certain inquiries in regard to town notes.

You inquire whether a town may legally issue a note payable on demand, and especially if it may issue a note payable on demand to obtain money in anticipation of taxes. This inquiry is made in view of the fact that St. 1910, c. 616, § 1, provides that each note shall state "the date when it will become due for payment," and of the fact that R. L., c. 27, § 6, requires that loans in anticipation of taxes shall "be payable within one year after the date of their incurrence." In reply to this inquiry, I advise you that, in my opinion, a town may legally issue a note payable on demand to obtain money in anticipation of taxes. Such a note is due at once for purposes of suit by the holder against the maker, and the statute of limitations begins to run at once. See *Fenno v. Gay*, 146 Mass. 118. The maker may make payment at once, without demand by the holder. See *Stover v. Hamilton*, 21 Gratt. (Va.) 273. A statement that such note is due "on demand" is, therefore, in compliance with the statutory requirement that it state "the date when it will become due for payment." For the same reason, such a note is in compliance with the statutory requirement that a loan in anticipation of taxes must "be payable within one year after the date of their [its] incurrence."

You also inquire whether a town note may be made payable to the town treasurer, or to the town treasurer or order. This inquiry is made in view of the fact that St. 1910, c. 616, § 1, requires that a town note shall state "the date of issue," and that "a record of every note so issued shall be kept by the treasurer of the town," and that, if the Director of the Bureau of Statistics "finds that the note appears to have been duly issued," etc., he shall so certify. In reply to this inquiry I advise you that, in my opinion, a town note may not be made payable to the town treasurer, or to the town treasurer or order. Such a note is in effect payable to the town; in other words, the maker and the payee named in the body of the instrument are the same. Consequently, it is not issued until indorsement by the treasurer. See *Little v. Rogers*, 1 Met. 108; *Moses v. Lawrence County Bank*, 149 U. S. 298, 302; R. L., c. 73, § 207. "The date of issue" of such note is, therefore, the date of in-

dorsement. No record of the issuing of the note, and no certification thereof, in accordance with the requirements of the statute, can be made until after such indorsement. The record and the certification cannot properly be made after indorsement, since in the form for the note prescribed by you under statutory authority it is contemplated that the note shall be complete upon its face.

Very truly yours,

DANA MALONE, *Attorney-General.*

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LIST OF CASES

IN WHICH THE

ATTORNEY-GENERAL

HAS APPEARED

DURING THE YEAR 1910.

GRADE CROSSINGS.

Notices have been served upon this department of the filing of the following petitions for the appointment of special commissioners for the abolition of grade crossings:—

Barnstable County.

Barnstable, Selectmen of, petitioners. Petition for abolition of County Road, Pond Village, crossing. Railroad Commissioners appointed commissioners. Commissioners' report filed. Arthur W. DeGoosh appointed auditor. Auditor's second report filed. Disposed of.

Bourne, Selectmen of, petitioners. Petition for the abolition of Collins and Handy crossings. Louis A. Frothingham, Henry L. Parker, Jr., and Lyman P. Thomas, appointed commissioners. Commissioners' report filed. Arthur W. DeGoosh appointed auditor. Auditor's first report filed. Disposed of.

Berkshire County.

Adams. Hoosac Valley Street Railway Company, petitioners. Petition for abolition of Commercial Street crossing in Adams. George W. Wiggin, William W. McClench and Edmund K. Turner appointed commissioners. Commissioners' report filed. Frank H. Cande appointed auditor. Auditor's third report filed. Pending.

Great Barrington, Selectmen of, petitioners. Petition for the abolition of a grade crossing in the village of Housatonic in said town. John J. Flaherty, Edmund K. Turner and Stephen S. Taft appointed commissioners. Commissioners' report filed. Frank N. Nay appointed auditor. Auditor's third report filed. Pending.

Lanesborough, Selectmen of, petitioners. Petition for abolition of Valley Road and Glen Road crossings. Railroad Commissioners appointed commissioners. Commissioners' report filed. Pending.

- Lee, Selectmen of, petitioners. Petition for abolition of Langdon's crossing in Lee. Wade Keyes, Thomas W. Kennefick and Luther Dean appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's second report filed. Disposed of.
- Lenox, Selectmen of, petitioners. Petition for abolition of grade crossings in Lenox. Fred Joy, Louis A. Frothingham and Edmund K. Turner appointed commissioners. Commissioners' report filed. J. Mott Hallowell appointed auditor. Auditor's first report filed. Disposed of.
- North Adams. Hoosac Valley Street Railway Company, petitioners. Petition for abolition of Main Street crossing, known as Braytonville crossing, in North Adams. Edmund K. Turner, William W. McClench and Joseph P. Magenis appointed commissioners. Commissioners' report filed. Frank H. Cande appointed auditor. Auditor's first report filed. Pending.
- North Adams, Mayor and Aldermen of, petitioners. Petition for abolition of State Street and Furnace Street crossings. Edmund K. Turner, David F. Slade and William G. McKechnie appointed commissioners. Commissioners' report filed. Pending.
- Pittsfield, Mayor and Aldermen of, and Directors of Boston & Albany Railroad Company, petitioners. Petition for the abolition of Hubbard and Gates avenues and Jason Street crossings in Pittsfield. Thomas W. Kennefick, William Sullivan and Charles M. Ludden appointed commissioners. Commissioners' report filed. Patrick J. Ashe appointed auditor. Auditor's first report filed. Pending.
- Pittsfield, Mayor and Aldermen of, petitioners. Petition for abolition of Merrill crossing in Pittsfield. Thomas W. Kennefick, Frederick L. Green and Edmund K. Turner appointed commissioners. Pending.
- Pittsfield, Mayor and Aldermen of, petitioners. Petition for abolition of Holmes Road crossing. William W. McClench, Charles N. Clark and Edmund K. Turner appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's second report filed. Disposed of.
- Stockbridge, Selectmen of, petitioners. Petition for the abolition of "River Road" crossing in Stockbridge. James B. Carroll, Edward B. Bishop and Luther Dean appointed com-

- missioners. Commissioners' report filed. Wade Keyes appointed auditor. Auditor's second report filed. Pending.
- Stockbridge, Selectmen of, petitioners. Petition for abolition of South Street crossing. Railroad commissioners appointed commissioners. Commissioners' report filed. A. W. DeGoosh appointed auditor. Auditor's first report filed. Pending.
- Stockbridge. Berkshire Railroad, petitioner. Petition for abolition of Glendale station crossing. Pending.
- Williamstown. Hoosac Valley Street Railway Company, petitioners. Petition for the abolition of a grade crossing in Williamstown, near the Fitchburg Railroad station. Edmund K. Turner, William W. McClench and Charles N. Clark appointed commissioners. Commissioners' report filed. Frank H. Cande appointed auditor. Auditor's third report filed. Disposed of.

Bristol County.

- Attleborough. Directors of Old Colony Railroad, petitioners. Petition for abolition of South Main Street crossing in Attleborough. George W. Wiggin, Augustus P. Martin and Charles A. Allen appointed commissioners. Commissioners' report filed. Clarence H. Cooper appointed auditor. Auditor's third report filed. Disposed of.
- Attleborough, Selectmen of, petitioners. Petition for abolition of West Street, North Main Street and other crossings in Attleborough. James R. Dunbar, Henry L. Parker and William Jackson appointed commissioners. Commissioners' report filed. Chas. P. Searle appointed auditor. Auditor's seventh report filed. Pending.
- Easton. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of crossing at Eastondale. James E. Cotter, Wm. Rankin and Charles D. Bray appointed commissioners. Fred Joy appointed auditor. Auditor's fourth report filed. Disposed of.
- Fall River, Mayor and Aldermen of, petitioners. Petition for abolition of Brownell Street crossing and other crossings in Fall River. John Q. A. Brackett, Samuel N. Aldrich and Charles A. Allen appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's nineteenth report filed. Pending.

- Mansfield. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of grade crossing at North Main, Chauncey, Central, West, School and Elm streets in Mansfield. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Pending.
- New Bedford, Mayor and Aldermen of, petitioners. Petition for abolition of certain grade crossings in New Bedford. George F. Richardson, Horatio G. Herrick and Wm. Wheeler appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's fourteenth report filed. Pending.
- Somerset. New York, New Haven & Hartford Railroad Company, petitioner. Petition for abolition of grade crossing at Wilbur Avenue. Pending.
- Swansea. New York, New Haven & Hartford Railroad Company, petitioner. Petition for abolition of grade crossing at River Road. Pending.
- Taunton, Mayor and Aldermen of, petitioners. Petition for abolition of grade crossings at Danforth and other streets in Taunton. Thomas M. Babson, George F. Swain and Edwin U. Curtis appointed commissioners. Pending.

Essex County.

- Gloucester. Boston & Maine Railroad, petitioner. Petition for abolition of crossings at Magnolia Avenue and Brays crossing. Arthur Lord, Moody Kimball and P. H. Cooney appointed commissioners. Commissioners' report filed. Pending.
- Gloucester. Directors of Boston & Maine Railroad, petitioners. Petition for abolition of grade crossing between Washington Street and tracks of Boston & Maine Railroad. Pending.
- Haverhill, Mayor and Aldermen of, petitioners. Petition for abolition of Washington Street and other crossings in Haverhill. George W. Wiggin, William B. French and Edmund K. Turner appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's eleventh report filed. Pending.
- Ipswich, Selectmen of, petitioners. Petition for abolition of High Street and Locust Street crossings. Geo. W. Wiggin,

- Edmund K. Turner and William F. Dana appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's second report filed. Pending.
- Lawrence. Boston & Maine Railroad, petitioner. Petition for abolition of crossings at Chickering Street. Moody Kimball, James C. Poor and John M. Grosvenor, Jr., appointed commissioners. Pending.
- Lawrence, Mayor and Aldermen of, petitioners. Petition for abolition of crossing at Merrimac and other streets in Lawrence. Pending.
- Lynn, Mayor and Aldermen of, petitioners. Petition for abolition of Summer Street and other crossings on Saugus branch of Boston & Maine Railroad and Market Street and other crossings on main line. George W. Wiggin, Edgar R. Champlin and Edmund K. Turner appointed commissioners. Commissioners' report filed. Edward A. McLaughlin appointed auditor. Pending.
- Lynn, Mayor and Aldermen of, petitioners. Petition for abolition of grade crossings at Pleasant and Shepard streets, Gas Wharf Road and Commercial Street, on the Boston, Revere Beach & Lynn Railroad. Pending.
- Rowley. Boston & Maine Railroad Company, petitioners. Petition for abolition of Main Street crossing in Rowley. E. K. Turner, Ralph A. Stewart and James M. Swift appointed commissioners. Commissioners' report filed. Edward A. McLaughlin appointed auditor. Auditor's second report filed. Disposed of.
- Salem. Directors of Boston & Maine Railroad, petitioners. Petition for the abolition of grade crossings at Bridge, Washington, Mill, North, Flint and Grove streets in Salem. Patrick H. Cooney, George F. Swain and William A. Dana appointed commissioners. Pending.
- Salem, Mayor and Aldermen of, petitioners. Petition for abolition of Lafayette Street crossing in Salem. Pending.

Franklin County.

- Deerfield, Selectmen of, petitioners. Petition for abolition of "Upper Wisdom Road" crossing. Edmund K. Turner, Calvin Coolidge and Hugh P. Drysdale appointed commissioners. Commissioners' report filed. Lyman W. Griswold appointed auditor. Pending.

- Greenfield, Selectmen of, petitioners. Petition for the abolition of Allen and Russell streets crossings in Greenfield. Edmund K. Turner, Walter P. Hall and Fred D. Stanley appointed commissioners. Stephen S. Taft appointed auditor. Auditor's first report filed. Pending.
- Northfield, Selectmen of, petitioners. Petition for abolition of crossing on road to South Vernon. Edmund K. Turner, Charles W. Hazelton and Charles H. Innes appointed commissioners. Commissioners' report filed. Pending.

Hampden County.

- Chicopee, Mayor and Aldermen of, petitioners. Petition for abolition of Plainfield and Exchange Street crossings and other crossings in Chicopee. Geo. W. Wiggin, Edmund K. Turner and Fred D. Stanley appointed commissioners. Commissioners' report filed. Timothy G. Spaulding appointed auditor. Auditor's fourth report filed. Disposed of.
- Palmer, Selectmen of, petitioners. Petition for abolition of Palmer and Belchertown Road crossing in Palmer. T. M. Brown, Chas. E. Hibbard and Henry G. Taft appointed commissioners. Commissioners' report filed. Stephen S. Taft appointed auditor. Auditor's first report filed. Disposed of.
- Palmer, Selectmen of, petitioners. Petition for abolition of Burley's crossing in Palmer. Pending.
- Russell, Selectmen of, petitioners. Petition for abolition of Montgomery Road crossing. Railroad Commissioners appointed commissioners. Commissioners' report filed. Thomas W. Kenefick appointed auditor. Auditor's first report filed. Pending.
- Springfield, Mayor and Aldermen of, petitioners. Petition for abolition of Bay State Road and other crossings in Springfield. George W. Richardson, Marshall Wilcox and George W. Wiggin appointed commissioners. Commissioners' report filed. Charles W. Bosworth appointed auditor. Auditor's first report filed. Disposed of.
- Springfield, Mayor and Aldermen of, petitioners. Petition for abolition of South End Bridge crossing in Springfield. Arthur H. Wellman, John J. Flaherty and George F. Swain appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's second report filed. Disposed of.

Westfield. Attorney-General, petitioner. Petition for abolition of grade crossings at Lane's and Lee's crossings in Westfield. Pending.

Hampshire County.

Belchertown, Selectmen of, petitioners. Petition for abolition of Holyoke Road crossing in Belchertown. George W. Wiggin, Fred D. Stanley and Edmund K. Turner appointed commissioners. Commissioners' report filed. Stephen S. Taft appointed auditor. Auditor's second report filed. Disposed of.

Belchertown, Selectmen of, petitioners. Petition for the abolition of crossing of road from Belchertown to Three Rivers and road from Bondville to Ludlow. Edmund K. Turner, F. G. Wooden and George P. O'Donnell appointed commissioners. Commissioners' report filed. Pending.

Northampton, Mayor and Aldermen of, petitioners. Petition for abolition of Grove Street and Earl Street crossings in Northampton. Frederick L. Greene, Stephen S. Taft and James M. Sickman appointed commissioners. Commissioners' report filed. William P. Hayes appointed auditor. Auditor's first report filed. Disposed of.

Ware, Selectmen of, petitioners. Petition for abolition of Maple Street and Gilbertville Road Crossings in Ware. Alpheus Sanford, Everett C. Bumpus and William W. McClench appointed commissioners. Commissioners' report filed. John W. Mason appointed auditor. Auditor's second report filed. Pending.

Middlesex County.

Acton, Selectmen of, petitioners. Petition for abolition of Great Road crossing in Acton. Benj. W. Wells, George Burrage and William B. Sullivan appointed commissioners. Commissioners' report filed. Fred Joy appointed auditor. Pending.

Acton, Selectmen of, petitioners. Petition for abolition of Maynard, Stow and Maple streets crossings in Acton. Edmund K. Turner, Edward F. Blodgett and Wade Keyes appointed commissioners. Commissioners' report filed. Fred Joy appointed auditor. Auditor's third report filed. Disposed of.

Ayer, Selectmen of, petitioners. Petition for abolition of Main Street crossing in Ayer. Samuel K. Hamilton, Theodore C. Hurd and Edmund K. Turner appointed commissioners.

Commissioners' report filed. Robert P. Clapp appointed auditor. Auditor's third report filed. Disposed of.

Belmont, Selectmen of, petitioners. Petition for abolition of Brighton Street, Concord Avenue and Trapelo Road crossings in Belmont. Theodore C. Hurd, Fred Joy and George F. Swain appointed commissioners. Commissioners' report filed. Guy Murchie appointed auditor. Auditor's fourth report filed. Disposed of.

Belmont, Selectmen of, petitioners. Petition for abolition of crossings at Waverley station. Thomas W. Proctor, Patrick H. Cooney and Desmond FitzGerald appointed commissioners. Pending.

Cambridge. Directors of Boston & Maine Railroad Company, petitioners. Petition for abolition of Prison Point Street crossing in Cambridge. Henry S. Milton, Edward B. Bishop and Henry G. Taft appointed commissioners. Commissioners' report filed. Theodore C. Hurd appointed auditor. Auditor's sixth report filed. Disposed of.

Chelmsford, Selectmen of, petitioners. Petition for abolition of Princeton Street crossing in Chelmsford. Edmund K. Turner, Frederick W. Dallinger and Charles F. Worcester appointed commissioners. Commissioners' report filed. W. C. Dillingham appointed auditor. Auditor's second report filed. Disposed of.

Everett. Directors of Boston & Maine Railroad Company, petitioners. Petition for abolition of crossings at Broadway and Main Street in Everett. George W. Wiggin, Edmund K. Turner and Robert S. Gray appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's sixth report filed. Disposed of.

Framingham, Selectmen of, petitioners. Petition for the abolition of Marble Street crossing. Pending.

Framingham, Selectmen of, petitioners. Petition for the abolition of Concord Street crossing. Pending.

Framingham, Selectmen of, petitioners. Petition for the abolition of Waverly Street crossing. Pending.

Framingham, Selectmen of, petitioners. Petition for the abolition of Bishop Street crossing. Pending.

Framingham, Selectmen of, petitioners. Petition for the abolition of Hollis and Waushakum streets crossings. Pending.

Framingham, Selectmen of, petitioners. Petition for the abolition of Clafin Street crossing. Pending.

- Lexington, Selectmen of, petitioners. Petition for abolition of Grant Street crossing in Lexington. Alpheus Sanford, Edmund K. Turner and S. Everett Tinkham appointed commissioners. Commissioners' report filed. Franklin Freeman appointed auditor. Auditor's first report filed. Disposed of.
- Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of Middlesex and Thorndike streets crossings. Pending.
- Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of Boston Road or Plain Street, School, Walker and Lincoln streets crossings. Arthur Lord, David F. Slade and Henry A. Wyman appointed commissioners. Commissioners' report filed. Pending.
- Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of Middlesex, Thorndike and Lincoln streets and Boston Road grade crossings. Pending.
- Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of crossing at Western Avenue and Fletcher Street. Pending.
- Malden. Directors of Boston & Maine Railroad Company, petitioners. Petition for abolition of Medford Street and other crossings in Malden. Geo. W. Wiggin, Robert O. Harris and Edmund K. Turner appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's third report filed. Pending.
- Malden, Mayor and Aldermen of, petitioners. Petition for abolition of Pleasant and Winter streets crossing in Malden. George W. Wiggin, Edmund K. Turner and Fred Joy appointed commissioners. Commissioners' report filed. Winfield S. Slocum appointed auditor. Auditor's second report filed. Pending.
- Marlborough, Mayor and Aldermen of, petitioners. Petition for abolition of Hudson Street crossing in Marlborough. Walter Adams, Charles A. Allen and Alpheus Sanford appointed commissioners. Commissioners' report filed. Pending.
- Natick. Boston & Worcester Street Railway Company, petitioners. Petition for alteration of Worcester Street crossing in Natick. Geo. W. Wiggin, Edmund K. Turner and Larkin T. Trull appointed commissioners. Commissioners' report filed. Theo. C. Hurd appointed auditor. Auditor's second report filed. Pending.

- Newton, Mayor and Aldermen of, petitioners. Petition for the abolition of Concord Street and Pine Grove Avenue crossings in Newton. George W. Wiggin, T. C. Mendenhall and Edmund K. Turner appointed commissioners. Pending.
- Newton, Mayor and Aldermen of, petitioners. Petition for abolition of crossings on main line in Newton. Theo. C. Hurd appointed auditor. Auditor's eleventh report filed. Pending.
- Newton, Mayor and Aldermen of, petitioners. Petition for the abolition of Glen Avenue and nine other crossings in Newton. Geo. W. Wiggin, T. C. Mendenhall and Edmund K. Turner appointed commissioners. Commissioners' report filed. Patrick H. Cooney appointed auditor. Auditor's sixteenth report filed. Pending.
- North Reading, Selectmen of, petitioners. Petition for abolition of Main Street crossing in North Reading. Alpheus Sanford, George N. Poor and Louis M. Clark appointed commissioners. Report of commissioners filed. Pending.
- Somerville, Mayor and Aldermen of, petitioners. Petition for abolition of Park Street, Dane Street, Somerville Avenue and Medford Street crossings in Somerville. George W. Wiggin, George F. Swain and James D. Colt appointed commissioners. Commissioners' report filed. Patrick H. Cooney appointed auditor. Auditor's fifth report filed. Pending.
- Wakefield, Selectmen of, petitioners. Petition for abolition of Hanson Street crossing in Wakefield. Pending.
- Waltham, Mayor and Aldermen of, petitioners. Petition for abolition of South Street crossing in Waltham. Geo. F. Swain, ——— and Geo. A. Sanderson appointed commissioners. Pending.
- Waltham, Mayor and Aldermen of, petitioners. Petition for abolition of Moody Street, Main Street, Elm Street, River Street, Pine Street, Newton Street and Calvary Street crossings in Waltham. Arthur Lord, Patrick H. Cooney and George F. Swain appointed commissioners. Pending.
- Watertown, Selectmen of, petitioners. Petition for abolition of grade crossings at Cottage, Arlington, School, Irving and other streets in Watertown. Pending.
- Weston, Selectmen of, petitioners. Petition for abolition of Church Street, Pigeon Hall and Concord Road crossings. Railroad Commissioners appointed commissioners. Commissioners' report filed. Pending.

Winchester, Selectmen of, petitioners. Petition for the abolition of crossing at Winchester station square. George W. Wiggin, George F. Swain and Arthur Lord appointed commissioners. Pending.

Norfolk County.

Braintree, Selectmen of, petitioners. Petition for the abolition of the Pearl Street crossing at South Braintree. Patrick H. Cooney, Frank N. Nay and George F. Swain appointed commissioners. Pending.

Braintree. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of grade crossing at School, Elm, River and Union streets in Braintree. John L. Bates, Winfield S. Slocum and Arthur H. Wellman appointed commissioners. Pending.

Brookline. Directors of Boston & Albany Railroad Company, petitioners. Petition for the abolition of Kerrigan Place crossing in Brookline. William Sullivan, Henry M. Hutchins and Wade Keyes appointed commissioners. Commissioners' report filed. Henry M. Hutchins appointed auditor. Auditor's first report filed. Pending.

Brookline and Boston. Directors of the Boston & Albany Railroad Company, petitioners. Petition for the abolition of Reservoir Lane crossing in Boston and Brookline. Henry C. Mulligan, Charles T. Davis and Albert S. Apsey appointed commissioners. Commissioners' report filed. Robert G. Dodge appointed auditor. Auditor's second report filed. Disposed of.

Canton. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Dedham Road crossing in Canton. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Commissioners' report filed. Pending.

Dedham, Selectmen of, petitioners. Petition for the abolition of Eastern Avenue and Dwight Street crossings in Dedham. Alpheus Sanford, Charles Mills and J. Henry Reed appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Pending.

Dedham, Selectmen of, and Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petitions for abolition of East Street, Walnut Street and Vernon Street crossings in Dedham, consolidated with petitions to abolish

- Milton Street crossing in Hyde Park. Samuel N. Aldrich, Edward B. Bishop and H. C. Southworth appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's thirteenth report filed. Disposed of.
- Foxborough. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of grade crossing at Cohasset and Summer streets in Foxborough. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Commissioners' report filed. Pending.
- Hyde Park and Dedham, consolidated petitions. See Dedham.
- Hyde Park, Selectmen of, petitioners. Petition for abolition of Fairmount Avenue and Bridge Street crossings in Hyde Park. Boyd B. Jones, Edmund K. Turner and Fred Joy appointed commissioners. Thomas W. Proctor appointed auditor. Auditor's third report filed. Pending.
- Needham, Selectmen of, petitioners. Petition for abolition of Charles River Street crossing in Needham. Pending.
- Quincy. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Saville and Water streets crossings in Quincy. John L. Bates, Winfield S. Slocum and Arthur H. Wellman appointed commissioners. Pending.
- Sharon. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of grade crossing at Depot, Garden and Mohawk streets in Sharon. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Commissioners' report filed. Pending.
- Walpole, Selectmen of, petitioners. Petition for abolition of Oak Street crossing and other crossings in Walpole. Dana Malone, Edmund K. Turner and Henry A. Wyman appointed commissioners. Commissioners' report filed. N. L. Sheldon appointed auditor. Auditor's fourth report filed. Pending.
- Westwood. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Green Lodge Street crossing in Westwood. Samuel L. Powers, Stephen S. Taft and Wm. Jackson appointed commissioners. Commissioners' report filed. Pending.

Plymouth County.

Abington. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Central Street crossing in Abington. Alpheus Sanford, Erastus Worthington, Jr., and Edward B. Bishop appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's second report filed. Disposed of.

Hingham. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Rockland Street crossing in Hingham. Winfield S. Slocum, Alpheus Sanford and Henry C. Southworth appointed commissioners. Arthur W. DeGoosh appointed auditor. Auditor's first report filed. Disposed of.

Scituate. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Water Street and Union Street crossings in Scituate. Arthur H. Wellman, Edmund K. Turner and Oscar A. Marden appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's third report filed. Disposed of.

Suffolk County.

Boston. Mayor and Aldermen of, petitioners. Petition for abolition of Dudley Street crossing in Dorchester. Thomas Post, Fred Joy and Edmund K. Turner appointed commissioners. Commissioners' report filed. James D. Colt appointed auditor. Auditor's ninth report filed. Pending.

Boston. Mayor and Aldermen of, petitioners. Petition for abolition of Dorchester Avenue crossing in Boston. F. N. Gillette, Charles S. Lilley and Charles Mills appointed commissioners. Commissioners' report filed. Fred Joy appointed auditor. Auditor's thirty-first report filed. Pending.

Boston. Mayor and Aldermen of, petitioners. Petition for abolition of Austin Street, Cambridge Street and Perkins Street crossings in Charlestown. Henry S. Milton, Edward B. Bishop and Henry G. Taft appointed commissioners. Commissioners' report filed. Fred Joy appointed auditor. Auditor's twelfth report filed. Pending.

Boston. New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Neponset and Granite avenues crossings in Dorchester. Pending.

- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of Freeport, Adams, Park, Mill and Walnut streets and Dorchester Avenue crossings. James R. Dunbar, Samuel L. Powers and Thomas W. Proctor appointed commissioners. Commissioners' report filed. Arthur H. Wellman appointed auditor. Auditor's fourth report filed. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of Congress Street crossing in Boston. George W. Wiggin, Edward B. Bishop and Charles A. Allen appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's twenty-seventh report filed. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for the abolition of the Essex Street crossing in Brighton. George W. Wiggin, William B. French and Winfield S. Slocum appointed commissioners. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of Blue Hill Avenue and Oakland Street crossings in Boston. William B. French, Arthur H. Wellman and George A. Kimball appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's twenty-first report filed. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of all crossings in East Boston. George W. Wiggin, William B. French and Edward B. Bishop appointed commissioners. Commissioners' report filed. Winfield S. Slocum appointed auditor. Auditor's twelfth report filed. Pending.
- Boston, Mayor and Aldermen of, petitioners. Petition for abolition of crossings at Saratoga, Maverick and Marginal streets in East Boston. Railroad Commissioners appointed commissioners. Pending.
- Revere, Selectmen of, petitioners. Petition for abolition of Winthrop Avenue crossing in Revere of the Boston, Revere Beach & Lynn Railroad. Pending.
- Revere, Selectmen of, petitioners. Petition for abolition of Winthrop Avenue crossing in Revere. George W. Wiggin, Everett C. Bumpus and Charles D. Bray appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's fourth report filed. Pending.

Worcester County.

- Blackstone. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Mendon Street crossing in Blackstone. Railroad Commissioners appointed commissioners. Commissioners' report filed. William S. Dana appointed auditor. Auditor's first report filed. Pending.
- Clinton, Selectmen of, petitioners. Petition for abolition of Sterling, Water, Main, High and Woodlawn streets crossings. George W. Wiggin, William E. McClintock and James A. Stiles appointed commissioners. Pending.
- Fitchburg, Mayor and Aldermen of, petitioners. Petition for abolition of Rollstone Street crossing in Fitchburg. Edmund K. Turner, Edwin U. Curtis and Ernest H. Vaughan appointed commissioners. Commissioners' report filed. James A. Stiles appointed auditor. Auditor's first report filed. Pending.
- Holden, Selectmen of, petitioners. Petition for abolition of Dawson's crossing and Cedar Swamp crossing in Holden. Charles A. Allen, Arthur P. Rugg and Henry G. Taft appointed commissioners. Commissioners' report filed. H. L. Parker appointed auditor. Auditor's first report filed. Pending.
- Hubbardston, Selectmen of, petitioners. Petition for abolition of Depot Road crossing in Hubbardston. Pending.
- Leominster, Selectmen of, petitioners. Petition for abolition of Water, Summer, Mechanic and Main streets crossings. George W. Wiggin, George F. Swain and Charles D. Barnes appointed commissioners. Pending.
- Northborough, Selectmen of, petitioners. Petition for abolition of Westborough Hospital station crossing in Northborough. Thomas Post, William Wheeler and Alpheus Sanford appointed commissioners. Commissioners' report filed. Guy W. Currier appointed auditor. Auditor's first report filed. Disposed of.
- Southborough, Selectmen of, petitioners. Petition for abolition of crossing on road from Southborough to Framingham. Samuel W. McCall, Louis A. Frothingham and Eugene C. Hultman appointed commissioners. Commissioners' report filed and recommitted. Pending.

- Southborough, Selectmen of, petitioners. Petition for abolition of crossing on road leading from Southborough to Hopkinton. George C. Travis, James W. McDonald and William Sullivan appointed commissioners. Commissioners' report filed. Theodore C. Hurd appointed auditor. Auditor's third report filed. Disposed of.
- Southborough, Selectmen of, petitioners. Petition for abolition of Main Street crossing at Fayville in Southborough. Pending.
- West Boylston. Boston & Maine Railroad Company, petitioners. Petition for abolition of Prescott Street crossing. Pending.
- Worcester, Mayor and Aldermen of, petitioners. Petition for abolition of crossings at Exchange, Central and Thomas and other streets. Arthur Lord, George F. Swain and Fred Joy appointed commissioners. Pending.
- Worcester, Mayor and Aldermen of, petitioners. Petition for abolition of Grafton Street crossing and eight other crossings, including alterations of Union Station. James R. Dunbar, James H. Flint and George F. Swain appointed commissioners. Commissioners' report filed. James A. Stiles appointed auditor. Auditor's twenty-ninth report filed. Pending.
- Worcester. Directors of Boston & Albany Railroad Company, petitioners. Petition for abolition of Webster Street, Ludlow Street, Sutton Lane and Heard Street crossings in Worcester. Harvey N. Shepard, Frederick Brooks and Joseph S. Ludlam appointed commissioners. Commissioners' report filed. James A. Stiles appointed auditor. Auditor's amended second report filed. Disposed of.

The following cases have been brought for alleged land damages incurred in the alteration of grade crossings. The Commonwealth, being obliged under the statutes to pay at least twenty-five per cent. of the expenses incurred in the alteration of all grade crossings, has in all cases been made a party thereto.

- Belmont *v.* Boston & Maine Railroad *et al.* Superior Court, Middlesex County. Pending.
- Boston & Maine Railroad *v.* Belmont. Superior Court, Middlesex County. Settled.

- Fitchburg Railroad Company *v.* Belmont. Superior Court,
Middlesex County. Settled.
- Lovejoy, Augustus, *v.* Commonwealth *et al.* Superior Court,
Middlesex County. Pending.
- Malden *v.* Boston & Maine Railroad Company. Superior Court,
Middlesex County. Pending.
- Worcester *v.* Worcester, Nashua & Rochester Railroad Company
et al. Superior Court, Worcester County. Pending.

CASES ARISING IN THE COURTS

UNDER THE

ACTS RELATIVE TO INHERITANCE AND SUCCESSION TAXES.

PETITION FOR INSTRUCTIONS.

Bristol County.

Haskell, Mary S., estate of. Frank C. Haskell, administrator.
Decree.

Stavers, John W., estate of. Caroline Stavers, administratrix.
Pending.

Essex County.

Cheever, Samuel, estate of. William C. Rust, administrator.
Decree.

Clarke, Frances S., executrix of the will of Amasa Clarke, *v.*
Attorney-General *et al.* Rescript.

Gorrill, Mark S., estate of. Clinton R. Thom *et al.*, adminis-
trators. Decree.

Nichols, Mary C., estate of. Frank O. Woods, executor. Pend-
ing.

Franklin County.

Hosmer, Maria L., estate of. John L. Baker *et al.*, executors.
Decree.

Tilton, Chauncey B., estate of. Otis Hager *et als.*, trustees,
petitioners. Pending.

Hampshire County.

Welton, Walter B., estate of. Henry W. Kidder, administrator.
Pending.

Middlesex County.

Bray, Mellen, estate of. Mellen N. Bray *et al.*, executors.
Pending.

Brown, Abbie L., estate of. William G. A. Turner *et al.*, peti-
tioners. Attorney-General waived right to be heard.

Elliott, Mary E., estate of. Henry C. Davis, executor. Petition
for abatement of tax. Reserved for full court. Pending.

- Langdell, Margaret E., estate of. Eugene Wambaugh *et al.*, executors. Disposed of.
- Proudfoot, David, *et al. v.* Third Congregational Society in Cambridge *et al.* Pending.
- Rugg, George H., estate of. Phineas C. Kinney, executor. Reserved for full court. Pending.
- Spaulding, Harriet N., estate of. E. Alonzo Blood, executor. Final decree.
- Whitney, Henry, estate of. William B. Durant, administrator. Attorney-General waived right to be heard.
- Whitney, Henry, estate of. William B. Durant, administrator. Pending.

Suffolk County.

- Coombs, John C., estate of. Charles R. Batt *et al.*, executors. Rescript.
- Ginn, Frederick B., estate of. Edwin Ginn, executor. Decree.
- Kelly, Thomas, estate of. Harriet L. Kelly, petitioner. Pending.
- Lincoln, Annie Preston, estate of. State Street Trust Company, trustee. Pending.
- Marshall, James C., estate of. The New England Trust Company, petitioner. Decree.
- McCarthy, John A., estate of. Andreas Blume, executor. Pending.
- Russ, Augustus, estate of. Dudley A. Dorr, executor. Final decree.
- Wharton, Nancy Willing, estate of. Laurence Minot *et al.*, trustees. Reserved for full court. Pending.

Worcester County.

- Buck, Horace B., estate of. Frank G. Fay, administrator. Pending.
- Gage, Thomas H., estate of. T. Hovey Gage, administrator. Pending.
- Whitcomb, Rebecca, estate of. Carl M. Blair, administrator. Pending.

INVENTORIES.

Barnstable County.

- Clark, Achsah S., estate of. Lewis F. Clark, administrator. Pending.

Bristol County.

- Heap, Sarah A., estate of. Edwin J. Cole, executor. Final decree.
- Philla, Henry, estate of. Fannie Philla, administratrix. Final decree.
- Rogers, Helen A., estate of. James W. Richardson, administrator. Pending.

Essex County.

- Agganes, Louis N., estate of. George P. Agganes, administrator. Pending.
- Badger, Mary A., estate of. Ambrose J. Lepine, administrator. Final decree.
- Breed, Arthur B., estate of. Lizzie L. Breed, executrix. Final decree.
- Brown, Arthur A., estate of. Herbert A. Brown *et al.*, administrators. Final decree.
- Brown, Charles F., estate of. Addie A. Keith, administratrix. Final decree.
- Callahan, Howard P., estate of. Annie F. Callahan, administratrix. Pending.
- Crowley, James E., estate of. Mary E. Crowley, administratrix. Pending.
- Davis, Agnes H., estate of. Walter A. Davis, administrator. Final decree.
- Donovan, Daniel J., estate of. Susan A. Donovan, administratrix. Pending.
- Driscoll, Ellen, estate of. Nora Driscoll, administratrix. Final decree.
- Field, Jessie A., estate of. Mary E. Field, administratrix. Final decree.
- Flynn, Sarah A., estate of. John J. Sweeney, executor. Final decree.
- Grandmaison, Abraham, estate of. Vena A. Grandmaison, administratrix. Pending.
- Harrington, Margaret, estate of. Jerome F. Kennelly, administrator. Final decree.
- Harris, Henry W., estate of. Rebecca Harris, administratrix. Pending.
- Larocque, Marie D., estate of. Napoleon Larocque, executor. Final decree.
- McLane, Jeannette B., estate of. George McLane, Sr., administrator. Final decree.

- Murphy, John J., estate of. Edward Murphy, administrator.
Final decree.
- Murphy, Thomas M., estate of. Mary F. Murphy, executrix.
Final decree.
- O'Brien, Philip, estate of. Mary E. Sweeney, administratrix.
Final decree.
- Pecker, James M., estate of. James Pecker, administrator.
Final decree.
- Perkins, Caroline E., estate of. Isaac E. B. Perkins, administrator.
Final decree.
- Quill, Hanora, estate of. Hannah Quill, executrix. Final decree.
- Sanborn, Aaron T., estate of. Franklin Balch, administrator.
Final decree.
- Shute, Joseph, estate of. Annie F. Shute, administratrix.
Final decree.
- Tallouse, Ethel M., estate of. Fred Tallouse, administrator.
Pending.
- Tilton, Sarah S., estate of. Daniel E. Tilton, administrator.
Dismissed.
- Trevoy, Murdock R., estate of. Mollie L. Trevoy, administratrix.
Final decree.
- Upton, George L., estate of. George Upton, administrator.
Final decree.
- Verrette, Lucinda, estate of. Amede Belliveau, executrix.
Final decree.
- Wildes, Sarah J., estate of. F. Balch, administrator. Final
decree.

Hampden County.

- Fitzpatrick, James J., estate of. John A. Fitzpatrick, administrator.
Final decree.
- Kubik, Sebastyan, estate of. Karalina Kubik, administratrix.
Final decree.
- Kurlej, Maryanna Rusin, estate of. Waldyslaw Kurlej, executor.
Pending.
- Lamb, Almira E., estate of. Charles M. Goodnow, administrator.
Final decree.
- Laventure, Henry T., estate of. Clara R. Laventure, administratrix.
Final decree.
- Robinson, Delphine, estate of. Frank Z. Robinson, executor.
Final decree.
- Spellicey, Ellen M., estate of. Annie J. McCarthy, administratrix.
Dismissed.

Hampshire County.

- Adams, Anna Jane, estate of. Carrie M. Coit, executrix. Dismissed.
- Werner, Andrew J., estate of. Bertha Werner, administratrix. Pending.

Middlesex County.

- Abbott, Elizabeth, estate of. Ida G. O'Reilly, administratrix. Final decree.
- Altavesta, John, estate of. Michael Altavesta, administrator. Final decree.
- Anderson, Christian A., estate of. Emma Anderson *et al.*, administrators. Dismissed.
- Aylward, John, estate of. John H. Aylward, administrator. Final decree.
- Blinn, Charlotte, estate of. Harriet E. Blinn *et al.*, executors. Final decree.
- Boerum, Susan C., estate of. Henry M. Boerum, administrator. Dismissed.
- Broderick, Emma G., estate of. John W. Broderick, executor. Final decree.
- Brown, Belmore N., estate of. Anna E. Brown, administratrix. Pending.
- Burnham, John, estate of. Ardelia Burnham, administratrix. Dismissed.
- DeAngelis, Antonio, estate of. Fredericco DeAngelis, administrator. Pending.
- Dubinka, Piotr, estate of. Stasia Wolska, administratrix. Pending.
- Finnegan, Patrick, estate of. Mary Finnegan, administratrix. Final decree.
- Flaherty, Martin, estate of. Mary E. McKenny, administratrix. Final decree.
- Flynn, James F., estate of. Mary F. Flynn, administratrix. Pending.
- Gilberti, Antonio, estate of. Margaret J. Gilberti, administratrix. Final decree.
- Hall, Sarah L., estate of. Charles H. Hall, executor. Dismissed.
- Jackson, Dorothy B., estate of. Volney Skinner, administrator. Final decree.

- Knowles, James O., estate of. Nellie M. Knowles, executrix.
Dismissed.
- Lane, Percy H., estate of. Willis G. Lane, administrator.
Final decree.
- Leonard, Patrick, estate of. Annie B. Leonard *et al.*, executrices. Final decree.
- Logan, Annie G., estate of. Bernard J. McLaughlin, administrator. Final decree.
- Mansfield, Richard, estate of. Mary A. Mansfield, executrix.
Dismissed.
- Mason, Harriet, estate of. Theodella Tyler, administratrix.
Final decree.
- McDonald, Edward J., estate of. Marie J. McAndrews, administratrix. Final decree.
- McEachern, Angus, estate of. Walter J. Roche, administrator.
Final decree.
- Meehan, John, estate of. Mary A. Meehan, executrix. Final
decree.
- Miller, Laura A., estate of. Darius L. V. Moffett, administrator.
Final decree.
- Moore, Charles D., estate of. Joseph W. Moore, administrator.
Final decree.
- Murphy, Catherine, estate of. John J. Murphy, administrator.
Dismissed.
- Nichols, James, estate of. Maud M. Nichols, administratrix.
Pending.
- Plunkett, James, estate of. Owen Tighe, executor. Pending.
- Pratt, David G., estate of. Eva H. Pratt, administratrix.
Pending.
- Russell, Luella, estate of. Clarence A. Perkins, administrator.
Final decree.
- Russo, Gerard, estate of. Louise R. Russo, administratrix.
Final decree.
- Skehill, John E., estate of. Patrick Skehill, administrator.
Final decree.
- Stanton, Catherine, estate of. Thomas Brennan, executor.
Pending.
- Staples, Mary E., estate of. Mabel D. Thirierge, executrix.
Pending.
- Twitchell, Charles M. A., estate of. Everett H. Hadley, administrator. Final decree.

Vahey, Mary, estate of. John P. Vahey, executor. Final decree.

Wyeth, Mary A., estate of. Wilfred C. Wyeth, administrator. Final decree.

Zwicker, William B., estate of. Ella M. Zwicker, administratrix. Pending.

Norfolk County.

Bosquet, Arthur, estate of. Frank H. Torrey, administrator. Final decree.

Emanuel, Stavros G., estate of. Nicholas G. Emanuel, administrator. Final decree.

Hawes, William K., estate of. John Everett, administrator. Disposed of.

Kelley, Sarah, estate of. James E. Kelley, administrator. Final decree.

McGivney, Ellen J., estate of. Edward J. Mealey, administrator c. t. a. Final decree.

Wadsworth, Dexter E., estate of. Kate A. Wadsworth, special administratrix. Pending.

White, Asher A., estate of. Samuel White, special administrator. Pending.

Young, James W., estate of. Adeline Young, administratrix. Final decree.

Plymouth County.

Pierce, Harriet O., estate of. Osgood Putnam, executor. Dismissed.

Trudeau, Mary S., estate of. William Trudeau, administrator. Final decree.

Suffolk County.

Andrews, Clifford F., estate of. Addie L. Andrews, administratrix. Final decree.

Angier, Harriet P., estate of. Angeline Peck, executrix. Dismissed.

Arthur, Ferida, estate of. Leo Ferris, administrator. Final decree.

Belmonte, Antonio, estate of. Angelina Belmonte, administratrix. Final decree.

Boardman, Henry W., estate of. William Greenwood, administrator. Pending.

Campana, Michael E., estate of. George Campana, administrator. Pending.

- Carter, Charles W., estate of. H. H. Armington, administrator.
Final decree.
- Carter, John H., estate of. Rhoda V. Clark, executrix. Final
decree.
- Collins, Daniel, estate of. Maria Collins, administratrix.
Final decree.
- Cooney, Patrick, estate of. Daniel P. Shea, executor. Dis-
missed.
- Costello, Catherine, estate of. Michael W. Costello, executor.
- Crowley, Daniel J., estate of. Patrick J. Crowley, administra-
tor. Pending.
- D'Aloria, Giusseppe, estate of. Antonio D'Aloria, administra-
tor. Final decree.
- Dickey, Thomas J., estate of. Pamela P. Dickey, executrix.
Final decree.
- Dion, Louise L., estate of. Napoleon J. Dion, administrator.
Pending.
- Fallon, John F., estate of. Annie McNally, administratrix.
Pending.
- Fargo, Martha, estate of. Anna F. Rogers, executrix. Pending.
- Fienstien, Fannie, estate of. Golda Goldman, administratrix.
Final decree.
- Fournier, Eleanor, estate of. Thomas J. Fournier, administra-
tor. Pending.
- Fournier, Loraine, estate of. Thomas J. Fournier, admin-
istrator. Pending.
- French, William A., estate of. Olivia C. French, executrix.
Final decree.
- Frothingham, Edwin, estate of. Mattie M. Frothingham, ad-
ministratrix. Pending.
- Gray, Charles C., estate of. Rachel B. Gray, administratrix.
Dismissed.
- Green, Catherine M., estate of. William J. Haggerty, adminis-
trator. Final decree.
- Hedrington, Ellen, estate of. Joseph A. Sheehan, administra-
tor. Pending.
- Hogstrom, Victor, estate of. Maria Hogstrom, administratrix.
Pending.
- Horne, Norman S., estate of. Irene S. Horne, administratrix.
Pending.
- Jordan, Joanna M., estate of. Francis J. Jordan, administra-
tor. Final decree.

- Kalis, Abraham, estate of. Joseph Kalis, administrator. Pending.
- Kelley, John, estate of. Edmund Burke, administrator. Final decree.
- King, David J., estate of. Elizabeth King, administratrix. Pending.
- Leach, George H., estate of. Alfred G. Ochs, administrator. Final decree.
- Leondar, Hazel, estate of. Abraham Leondar, administrator. Final decree.
- Love, Mary M., estate of. Henry W. Beal, administrator. Final decree.
- Mannix, Hannah M, estate of. Ellen M. Lucy, administratrix. Dismissed.
- McCarthy, Jeremiah F., estate of. Margaret E. McCarthy, executrix. Final decree.
- McCarthy, Maria, estate of. John McCarthy, administrator. Pending.
- McDermott, John P., estate of. John J. McDermott, administrator. Final decree.
- McFall, James F., estate of. Mary A. McFall, aministratrix. Final decree.
- McGrath, Kate, estate of. Elizabeth F. McGrath, executrix. Final decree.
- McKeen, William, estate of. Katherine M. McKeen, administratrix. Pending.
- Murphy, Ellen, estate of. A. P. Worthen, executor. Dismissed.
- Murray, Henry, estate of. Elizabeth P. Murray *et al.*, executors. Final decree.
- Powers, William, estate of. Nellie Powers, administratrix. Pending.
- Sampson, Frances E., estate of. Edward J. Sampson, administrator. Final decree.
- Scott, Charles S., estate of. Catherine McGivern, executrix. Final decree.
- Shacat, Isidore C., estate of. Hyman Shacat, administrator. Pending.
- Smith, Calvin B., estate of. Francis S. Smith, executrix. Pending.
- Smith, John S., estate of. Julia M. Smith, administratrix. Dismissed.

Strid, August, estate of. Elma Strid, administratrix. Pending.

Thompson, Howard J., estate of. Marion F. Thompson, administratrix. Dismissed.

Waitt, William G., estate of. Alpheus Sanford, executor. Final decree.

Welchlin, John A., estate of. Catherine Welchlin, administratrix. Final decree.

Worcester, Carrie W., estate of. Paul J. Worcester, administrator. Final decree.

Worcester County.

Allen, Frederick, estate of Yvonne Giguere, administratrix. Final decree.

Allen, Octavia, estate of. Yvonne Giguere, administratrix. Final decree.

Bates, Florence A., estate of. Herbert C. Sumner, administrator. Dismissed.

Dugan, John J., estate of. Margaret E. Dugan, executrix. Final decree.

Hodges, Walter B., estate of. Nettie M. Hodges, administratrix. Final decree.

Stefenjewicz, John, estate of. Mary Stefenjewicz, administratrix. Final decree.

PUBLIC CHARITABLE TRUSTS.

Berkshire County.

- Mason, Mary A., estate of. Frank H. Wright, petitioner. Petition for leave to compromise will. Pending.
- Williams Trust Funds, *in re.* John B. Hull *et als.*, trustees of Williams Academy, petitioners. Petition for instructions. Decree.

Bristol County.

- Borden, Ariadne J., estate of. Henry H. Earl, executor. Petition for instructions. Reserved for full court. Rescript.
- Pease, Abner, estate of. James L. Dexter *et als.*, trustees. Petition to establish trust to be a public charity. Decree.

Essex County.

- Atwood, Margaret, estate of. Henry B. Little *et als.*, petitioners. Petition for appointment of petitioners as trustees. Pending.
- Bertram, Mary A., estate of. Alden P. White, executor. Petition for instructions. Pending.
- Essex Agricultural Society *v.* Massachusetts General Hospital Corporation and the Attorney-General. Petition to sell real estate and to apply the doctrine of *cy-pres.* Service accepted. Petition dismissed. Petitioner appealed. Pending.
- Essex Institute, petitioner. Petition for instructions. Pending.
- Haskins, Leander M., estate of. Grafton Butman, petitioner. Petition for appointment of trustee. Pending.
- Hawks, Esther H., estate of. Frank W. Atkins *et al.*, executors. Petition for instructions. Pending.
- Hawks, Esther H., estate of. John M. Hawks *et als.*, trustees. Petition for allowance of first and second accounts. Attorney-General waived right to be heard.

- Hawks, Esther H., estate of. Zilpha D. Smith, petitioner. Petition for appointment of new trustee. Assented to appointment of Zilpha D. Smith.
- Needham, Alice, estate of. Salem Monthly Meeting of Friends, petitioner. Petition for instructions. Pending.
- Punchard, Benjamin H., estate of. Domestic and Foreign Mission Society, petitioner. Petition to vacate decree appointing trustee. Rescript.
- Ropes, Eliza O., estate of. Charles W. Richardson *et al.*, executors. Petition for appointment of trustee and for instructions. Decree. Appeal.
- Ropes, Eliza O., estate of. Charles W. Richardson *et al.*, executors. Petition for instructions. Pending.
- Ropes, Mary P., estate of. Charles W. Richardson *et al.*, administrators. Petition for instructions. Pending.
- Ropes, Mary P., estate of. Charles W. Richardson *et al.*, administrators. Petition for instructions. Pending.
- Ropes, Mary P., estate of. Charles W. Richardson *et al.*, executors. Petition for appointment of trustee and for instructions. Decree. Appeal.
- Ropes, Mary P., estate of. Charles W. Richardson *et als.*, administrators. Petition for allowance of first account. Attorney-General waived right to be heard.

Franklin County.

- Stratton, Abigail, estate of. Frank H. Montague *et al.*, trustees. Petition for allowance of tenth account. Pending.

Hampden County.

- Holbrook, George B., *et al. v.* Edward W. Appleton *et al.* Petition for leave to sell real estate under deed of trust, and for instructions. Decree.
- Whiting, H. Amelia, *v.* The Women's Union Temperance Organization. Petition for injunction to prevent defendant corporation from exceeding its powers under charter. Pending.

Hampshire County.

- Gaylord, George H., petitioner. Petition for termination of trust fund created for Russell Society. Pending.

Middlesex County.

- Bigelow, Hannah E., estate of. James F. Bigelow *et al.*, petitioners. Petition for instructions. Decree.
- Choate, Lydia G., estate of. Ellen M. Dow *et al.*, trustees. Petition for appointment of new trustee. Assented to appointment of Edward F. Johnson.
- Hartwell, Benjamin Hall, estate of. Helen Emily Hartwell, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.
- Hayes, Maria, estate of. Edward Clark *et al.*, trustees. Petition for release of present trustees and appointment of successors. Decree.
- Houston, Ellen, estate of. Anna C. Fall, trustee. Petition for allowance of second account. Attorney-General waived right to be heard.
- Hoyt, Eli W., estate of. Freeman B. Shedd, trustee. Petition for allowance of final account. Attorney-General waived right to be heard.
- Lee, Phebe Maria, estate of. William Whittemore, executor. Two petitions for instructions. Attorney-General waived right to be heard.
- Manning, Lucinda, estate of. Edward Spaulding, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.
- Martin, Webster Warner, estate of. Wesley T. Lee *et al.*, trustees. Petition for allowance of sixth account. Pending.
- Whitney, Caroline A. R., estate of. Charles A. Stone *et al.*, trustees. Petition for instructions. Decree.
- Whitney, Caroline A. R., estate of. Charles A. Stone *et al.*, trustees. Petition for instructions. Decree.
- Whitney, Edward, estate of. Charles A. Stone *et al.*, trustees. Petition for instructions. Decree.

Norfolk County.

- Adams, Levi, estate of. George W. Bullard *et al.*, trustees of the Second Congregational Church of Medway, petitioners. Petition for instructions. Pending.
- Coburn, Abbie A., estate of. William A. Donald *et al.*, trustees. Petition for instructions. Decree.
- Hemenway, Mary, estate of. Augustus Hemenway *et als.*, trustees. Petition for allowance of fifth and sixth accounts. Attorney-General waived right to be heard.

Hemenway, Mary, estate of. Augustus Hemenway *et als.*, trustees. Petition for allowance of seventh and final accounts. Attorney-General waived right to be heard.

Thayer, Sylvanus, estate of. Trustees of Thayer Academy, petitioners. Petition for allowance of thirty-seventh account. Attorney-General waived right to be heard.

Plymouth County.

McFarlin, Peleg, estate of. Eldoretta McFarlin, executrix. Petition for instructions. Decree.

Suffolk County.

Anagnostopoulos, Michael, estate of. Wallace L. Pierce *et al.*, trustees. Petition for allowance of first and final account. Attorney-General waived right to be heard.

Ashton, Elisha V., estate of. Charles P. Curtis *et al.*, trustees. Petition for allowance of fifth to eleventh accounts, inclusive. Attorney-General waived right to be heard.

Ashton, Elisha V., estate of. Charles P. Curtis *et al.*, trustees. Petition for instructions. Pending.

Bird, John H., estate of. George A. Thayer *et al.*, trustees. Petition for allowance of thirty-third, thirty-fourth and thirty-fifth accounts. Pending.

Bradlee, Joseph P., estate of. Francis C. Welch, petitioner. Petition for instructions. Decree.

Brown, Josiah W., estate of. Sewall F. Abbott *et al.*, trustees. Petitions for instructions. Pending.

Cheney, Ednah D., estate of. Charles S. Gill *et al.*, executors. Petition for allowance of first, second and third and final accounts. Attorney-General waived right to be heard.

Cushing, Emeline, estate of. Archibald H. Grimke *et al.*, petitioners. Petition for instructions. Rescript.

Cushing, Emeline, estate of. Archibald H. Grimke *et al.*, petitioners. Petition for allowance of first to thirteenth accounts, inclusive. Attorney-General waived right to be heard.

Cushing, Emeline, estate of. Archibald H. Grimke *et al.*, executors. Petition for allowance of fourteenth and fifteenth and final accounts. Attorney-General waived right to be heard.

Devens, Sarah A. W., estate of. Laurence Minot, trustee, petitioner. Petition for appointment of co-trustee. Assented to appointment of Robert H. Gardiner.

- Dix, John H., estate of. Charles P. Greenough *et als.*, trustees. Petition for allowance of thirteenth account. Attorney-General waived right to be heard.
- Hemenway, Mary, estate of. Augustus Hemenway *et al.*, trustees. Petition for allowance of fourth account. Attorney-General waived right to be heard.
- Irving, Ralph, *v.* Attorney-General *et als.* Petition for instructions. Dismissed.
- Liversidge, Thomas, estate of. Richard P. Humphreys *et al.*, trustees. Petition for leave to sell real estate. Disposed of.
- Locke, Elbridge W., estate of. Otis Merriam *et al.*, trustees. Petition for allowance of seventh and eighth accounts. Pending.
- Lyman, Florence, estate of. Thomas Dwight *et al.*, executors. Petition for instructions. Decree.
- Lyman, Florence, estate of. Thomas Dwight *et al.*, executors. Petition for instructions. Decree.
- Mabie, William I., *et al. v.* Edwin S. Gardner and Attorney-General. Petition for instructions regarding a public charitable trust under will of Mary Redding. Pending.
- Minot, William, *v.* Attorney-General. Petition to modify a decree entered March 19, 1901, in the estate of Thomas Thompson. Decree.
- Nute, Lewis W., estate of. Charles H. Moulton *et als.*, trustees. Petition for allowance of eighteenth, nineteenth, twentieth and twenty-first accounts. Pending.
- Parkman, George F., estate of. Edmund D. Codman, executor. Petition for instructions. Decree.
- Patterson, Adoniram Judson, estate of. Joseph Houghton *et al.*, executors. Petition for instructions. Pending.
- Potter, Sarah E., estate of. New Bedford Free Public Library, petitioner. Petition for instructions. Pending.
- Thorndike, George L., estate of. Albert E. Clary *et als.*, executors. Petition for allowance of first to fifth and final accounts. Pending.
- Thorndike, George L., estate of. Albert E. Clary *et al.*, trustees. Petition for allowance of first account. Pending.
- Thorndike, George L., estate of. William A. Morrison, surviving trustee. Petition for allowance of second account. Pending.
- Williams College, President and Trustees of, *v.* Attorney-General. Petition for distribution of trust funds of estate of David A. Wells. Decree.

Worcester County.

- Balch, Francis, estate of. Joseph A. Lovering, petitioner. Petition for instruction. Attorney-General waived right to be heard.
- Fletcher, Ezra W., estate of. Edward Whitin *et al.*, trustees. Petition for allowance of fourteenth to thirty-fourth and final accounts, inclusive. Attorney-General waived right to be heard.
- Foster, Richard W., estate of. Catherine E. Foster *et al.*, executors. Petition for instructions. Pending.
- Frost, Sumner M., estate of. Edward B. Tilton *et al.*, executors. Petition for instructions. Decree.
- Pierce, Ellen M., estate of. Joseph A. Lovering, administrator. Petition for instructions. Pending.
- Pierce, William D., estate of. Romeo E. Allen, executor. Petition for instructions. Pending.
- Southgate, Isaac, estate of. Frank D. Tucker, petitioner. Petition for appointment of new trustee. Frank D. Tucker appointed trustee.
- Westborough Agricultural Society, *in re.* Petition for disbursement of assets. Decree.
- Williams, Henry, estate of. Reason T. Lee *et als.*, trustees of the Bethel African Methodist Episcopal Church, petitioners. Petition for instructions. Pending.
- Winch, Ellen M. B., estate of. Charles W. Perkins *et al.*, executors. Petition for allowance of first, second and third and final accounts. Pending.

SUITS CONDUCTED BY THE ATTORNEY-GENERAL
IN BEHALF OF STATE BOARDS AND COMMISSIONS.

The following cases have been reported to this department by State boards and commissions, to be conducted by the Attorney-General, or under his direction.

1. METROPOLITAN PARK COMMISSION.

Petitions to the Superior Court for assessment of damages alleged to have been sustained by the taking of land by the said commission.

Middlesex County.

Allen, Herbert F., *v.* Commonwealth. Pending.
Blais, Eugenia V., *v.* Commonwealth. Pending.
Blais, Michael, *v.* Commonwealth. Pending.
Debbins, Robert W., *et al. v.* Commonwealth. Pending.
Kerr, William B., *v.* Commonwealth. Pending.
Northrup, Stephen C., *v.* Commonwealth. Pending.
Phelan, Patrick, *v.* Commonwealth. Pending.
Robinson, Sumner, *et al. v.* Commonwealth. Pending.

Suffolk County.

Elder, Alice, *v.* Commonwealth. Settled.
Hurley, John J., *v.* Commonwealth. Pending.
Proctor, George F., *v.* Commonwealth. Dismissed.
Welch, Mary E., *et als. v.* Commonwealth. Pending.

2. METROPOLITAN WATER AND SEWERAGE BOARD.

Petition to the Supreme Judicial and Superior Courts for assessment of damages alleged to have been sustained by the taking of land, and rights and easements in land, by said board.

Norfolk County.

Boston & Albany Railroad Company *v.* Commonwealth. Settled.
Boston & Albany Railroad Company *et al. v.* Commonwealth.
Settled.
Goddard, George A., *v.* Commonwealth. Pending.

Worcester County.

- Allen, Byron D., *v.* Commonwealth. Pending.
 Allen, Byron D., *v.* Commonwealth. Pending.
 Bradley, Patrick, *v.* Commonwealth. Pending.
 Cutting, Louis, administrator, *v.* Commonwealth. Pending.
 Kendall, Sanford C., *v.* Commonwealth. Pending.
 Keyes, Henry F., *v.* Commonwealth. Pending.
 Kirby, Nellie M., *v.* Commonwealth. Dismissed.
 Knight, Asa E., *v.* Commonwealth. Pending.
 Welch, James E., *v.* Commonwealth. Pending.
 Wood, James H., *et al.* *v.* Commonwealth. Pending.
 Wood, J. Frank, *et als.* *v.* Commonwealth. Pending.
 Wood, J. Frank, *et als.* *v.* Commonwealth. Pending.

3. MASSACHUSETTS HIGHWAY COMMISSION.

Petitions to the Superior Court for a jury to assess damages alleged to have been sustained by the taking of land, or injury to land, by said commission. Under agreement with this Commonwealth most of these cases are defended by the various towns in which the land is situated.

Bristol County.

- Cooper, Frederick P., *v.* Commonwealth. Pending.
 Lincoln, Benjamin A., *v.* Commonwealth. Pending.
 Seabury, Phoebe W., *v.* Commonwealth. Pending.
 Talbot, Joseph, *v.* Commonwealth. Pending.

Essex County.

- Bishop, Emeline, *v.* Commonwealth. Pending.
 Donovan, John, *v.* Commonwealth. Pending.
 Perley, Osborne, *v.* Commonwealth. Pending.

Franklin County.

- Connecticut Valley Street Railway Company *v.* Commonwealth.
 Disposed of.

Hampshire County.

- Flagg, Lucretia Taft, *v.* Commonwealth. Pending.
 Taft, Kate P., *v.* Commonwealth. Pending.

Middlesex County.

- Nourse, Joseph P., *v.* Commonwealth. Pending.

Norfolk County.

McLaughlin, Nancy M., *et al. v. Commonwealth.* Pending.

Worcester County.

Hill, Everett, *v. Commonwealth.* Pending.

Sullivan, Kate, *v. Commonwealth.* Pending.

Warren, Alice E. M., *v. Commonwealth.* Pending.

4. BOARD OF HARBOR AND LAND COMMISSIONERS.

Petitions to the Superior Court for assessment of damages caused by the taking of land by said commissioners.

Suffolk County.

Butler, Philip H., *v. Commonwealth.* Pending.

East Boston Company *v. Commonwealth.* Pending.

Lamb, George, *et al. v. Commonwealth.* Pending.

Lamb, George, *et al. v. Commonwealth.* Pending.

5. CHARLES RIVER BASIN COMMISSIONERS.

Petitions to the Superior Court for assessment of damages caused by the taking of land by said commissioners.

Suffolk County.

Abbott, Ellen M., *v. Commonwealth.* Settled.

Abbott, Katherine M., *v. Commonwealth.* Settled.

Allen, Henry F., *v. Commonwealth.* Settled.

Allen, Henry F., *v. Commonwealth.* Pending.

Apthorp, Octave L., *v. Commonwealth.* Pending.

Barstow, Catherine A., *v. Commonwealth.* Pending.

Bartlett, Schuyler S., *et al. v. Commonwealth.* Settled.

Beal, Elizabeth S., *v. Commonwealth.* Settled.

Beal, Thomas P., *et al.*, trustees, *v. Commonwealth.* Settled.

Bowditch, Alfred, *et al.*, trustees, *v. Commonwealth.* Settled.

Brown, Rebecca W., *et al. v. Commonwealth.* Pending.

Case, Laura L., *v. Commonwealth.* Settled.

Coolidge, Julia, *v. Commonwealth.* Settled.

Cotting, Charles E., *et al.*, trustees, *v. Commonwealth.* Pending.

Edmands, Katherine B., *v. Commonwealth.* Pending.

Fields, Annie, *v. Commonwealth.* Pending.

Freeman, Caroline S., *v. Commonwealth.* Settled.

- Goddard, George A., *v.* Commonwealth. Settled.
Hall, Harry S., *v.* Commonwealth. Settled.
Higginson, Henry L., *et al. v.* Commonwealth. Settled.
Homans, Helen A., *v.* Commonwealth. Pending.
Hooper, James R., *v.* Commonwealth. Pending.
Hooper, Robert C., *et al. v.* Commonwealth. Pending.
Hopkins, Georgiana, *v.* Commonwealth. Settled.
Hunneman, Carleton, *v.* Commonwealth. Settled.
Hutchins, Edward W., *v.* Commonwealth. Pending.
Inches, Louise P., *v.* Commonwealth. Pending.
Jackson, Frances E., *v.* Commonwealth. Settled.
Jewell, Edward, *v.* Commonwealth. Pending.
Loring, Mary H., *et al.*, trustees, *v.* Commonwealth. Settled.
Mann, Jonathan H., *et al. v.* Commonwealth. Settled.
McClure, Maria M., *v.* Commonwealth. Settled.
Means, Helen G., *v.* Commonwealth. Settled.
Meyer, Heloise, *v.* Commonwealth. Settled.
Moseley, Helen C., *v.* Commonwealth. Settled.
Niles, Sarah F., *et al. v.* Commonwealth. Pending.
Paine, Robert Treat, trustee, *v.* Commonwealth. Settled.
Parker, George W., *et al. v.* Commonwealth. Pending.
Parkinson, John, *v.* Commonwealth. Settled.
Parkman, Henry, *et al. v.* Commonwealth. Settled.
Pierce, Katherine C., *v.* Commonwealth. Pending.
Pierce, Wallace L., *v.* Commonwealth. Pending.
Prince, Fannie L., *v.* Commonwealth. Pending.
Prince, Lillian C., *v.* Commonwealth. Pending.
Putnam, Harriet L., *v.* Commonwealth. Settled.
Richardson, Margaret W., *v.* Commonwealth. Settled.
Sears, Mary C., *v.* Commonwealth. Pending.
Sears, Richard D., *v.* Commonwealth. Pending.
Sears, Ruth W., *v.* Commonwealth. Settled.
Shattuck, Frederick C., *et al. v.* Commonwealth. Settled.
Shattuck, George B., *v.* Commonwealth. Settled.
Shaw, Francis, *v.* Commonwealth. Pending.
Skinner, Francis, *v.* Commonwealth. Settled.
Sleeper, Maria W., *v.* Commonwealth. Pending.
Stackpole, Martha P., *v.* Commonwealth. Settled.
Stanton, Esther M., *v.* Commonwealth. Pending.
Sullivan, Richard, *v.* Commonwealth. Settled.
Tarbell, Arthur P., *et al. v.* Commonwealth. Pending.
Taylor, Georgianna O., *v.* Commonwealth. Pending.

Taylor, Mary M., *v.* Commonwealth. Pending.
 Ware, Mary L., *v.* Commonwealth. Settled.
 Whitney, Christiana S., *et al. v.* Commonwealth. Pending.
 Williams, John D., trustee, *v.* Commonwealth. Pending.

6. ARMORY COMMISSIONERS.

Suffolk County.

Brooks, Ellen A., *et al. v.* Commonwealth *et al.* Pending.
 Lyons, Ellen E., *v.* Commonwealth *et al.* Pending.

7. MT. TOM STATE RESERVATION.

Hampshire County.

Colton, George S., *v.* Commonwealth. Settled.
 Colton, George S., *v.* Commonwealth. Settled.

8. GREYLOCK RESERVATION COMMISSION.

Berkshire County.

Phillips, Dewey, *v.* Commonwealth. Pending.
 Smith, Clarence M., *v.* Commonwealth. Pending.

9. STATE BOARD OF INSANITY.

Suffolk County.

Callahan, Frank J., *et al. v.* Commonwealth. Pending.
 Callahan, George A., *et al. v.* Commonwealth. Pending.
 Fourth National Bank of Boston, *v.* Commonwealth. Pending.

10. WRENTHAM SCHOOL FOR THE FEEBLE-MINDED.

Norfolk County.

Soderberg, Annie L., *v.* Commonwealth. Pending.

11. MISCELLANEOUS CASES FROM ABOVE COMMISSIONS.

Essex County.

Cilley, Orran G., *v.* Cattle Bureau. Petition to recover the value of cattle condemned by Cattle Bureau. Pending.
 Reed, William H., *v.* Commonwealth. Claim for damages on account of injury to horse on State highway in Gloucester. Pending.

Tremblay, Paul, *v.* Commonwealth. Action of tort for injuries caused by defect in State highway in East Boston. Pending.

Middlesex County.

Hogan, James, *v.* Commonwealth. Petition to recover for materials furnished to contractor in construction of boulevard in Quincy. Pending.

International Automobile and Vehicle Tire Company *v.* Commonwealth. Petition for damages caused by construction of bridge across Charles River under St. 1903, c. 391. Pending.

Whitney, Arthur E., *v.* Commonwealth. Bill in equity to enjoin the Commonwealth from filling in Abajona River in Winchester. Pending.

Suffolk County.

Austin Engineering and Construction Company *v.* Commonwealth. Bill to recover on contract with Park Commission. Pending.

Davis, James A., *et al. v.* Commonwealth *et al.* Petition to recover for labor and materials used in construction of sewer. Pending.

De las Casas, William B., *et al.*, Metropolitan Park Commission, petitioners. Petition for appointment of commissioners to apportion payments from the cities and towns in the metropolitan parks district. Pending.

De las Casas, William B., *et al. v.* Sewer Commissioners of Revere. Petition for injunction to restrain town from obstructing sewer built by the Park Commission for bath house. Pending.

Doherty, James, *v.* Edward W. Everson *et al.* and Metropolitan Water and Sewerage Board. Action of tort. Damages caused by blasting. Pending.

Doherty, James, *v.* Commonwealth. Petition for assessment of damages caused by blasting for metropolitan sewer. Pending.

Eastman, Charles Albert, *v.* Board of Registration in Medicine. Bill in equity to enjoin Board from revoking certificate. Pending.

Ellinwood, Ralph R., Commonwealth *v.* Petition to restrain respondent from infringing park regulations on Revere boulevard. Pending.

- G. M. Bryne Company *v.* Commonwealth. Suit for payment of money claimed to be due on contract. Pending.
- Gibbons, William H., *v.* Commonwealth. Damage caused by blasting in construction of metropolitan sewer. Pending.
- McGinniss, Margaret T., Commonwealth *v.* Bill in equity to restrain defendant from encroaching on land of the Commonwealth. Pending.
- Natick, Commonwealth *v.* To recover for use of water of Lake Cochituate. Pending.
- National Contracting Company *et al.*, Commonwealth *v.* Action of contract to recover on bond. Pending.
- Niland, Michael, *v.* Commonwealth. Petition for assessment of damages caused by blasting for metropolitan sewer. Pending.
- Niland, Michael, *v.* Edward W. Everson *et al.* and Metropolitan Water and Sewerage Board. Action of tort. Damages caused by blasting. Pending.
- Normile, Francis, *v.* Commonwealth of Massachusetts *et al.* Petition for a jury to assess damages caused by construction of sewer in Roxbury. Pending.
- Normile, Francis, *v.* Edward W. Everson & Co. and Henry H. Sprague *et al.* Action of tort. Pending.
- Old Colony Construction Company, Commonwealth *v.* Action of contract to recover on bond. Pending.
- Pacific Surety Company *v.* Commonwealth *et al.* (McBride & Co.). Petition to recover from McBride & Co. certain sums expended by petitioner. Pending.
- Thomas, Lyman P., *v.* George M. Quirk *et al.* Action to recover for labor and materials furnished in construction of State highway. Pending.

Worcester County.

- Lamb, Arnoline M., *v.* Commonwealth. Petition to recover damages caused by change in grade of highway in Boylston. Pending.

12. STATE BOARD OF CHARITY.

Actions of contract pending in the Superior Court to recover charges for the support of insane paupers in State insane hospitals, under the provisions of R. L., c. 87.

Suffolk County.

- Chapin, Treasurer, *v.* Charles A. Mullin. Pending.
Chapin, Treasurer, *v.* Augustus Perrin. Settled.
Chapin, Treasurer, *v.* Maria Sliney. Execution issued.
Stevens, Treasurer, *v.* Athol. Dismissed.
Stevens, Treasurer, *v.* Joseph C. Colligan. Pending.
Stevens, Treasurer, *v.* Danvers. Settled.
Stevens, Treasurer, *v.* Granville S. Dow. Pending.
Stevens, Treasurer, *v.* Hanover. Settled.
Stevens, Treasurer, *v.* Lowell. Pending.
Stevens, Treasurer, *v.* Lynn. Settled.
Stevens, Treasurer, *v.* Quincy. Pending.
Stevens, Treasurer, *v.* John Shea, guardian. Pending.
Stevens, Treasurer, *v.* George M. Sterns, administrator. Pending.
Stevens, Treasurer, *v.* Stoughton. Pending.

MISCELLANEOUS CASES.

- A. C. Lawrence Leather Company *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.
- Adams, Henry S., administrator of the estate of Sylvester Harrington, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Allen, Henry F., *v.* Charles River Basin Commission *et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- America Soda Fountain Company, Attorney-General *ex rel. v.* Dumping material into tide water. Pending.
- American Steel and Wire Company of New Jersey *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.
- American Sugar Refining Company *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.
- American Writing Paper Company *et al.*, Attorney-General *v.* Petition for an injunction to restrain respondents from dumping material into tide water. Discontinued as to American Writing Paper Company. Pending.
- Amoskeag Manufacturing Company *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.
- Anderson, Mary J., administratrix of the estate of Elizabeth P. Anderson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Andrew, Manuel, Attorney-General *ex rel. v.* Information in the nature of *quo warranto* to try the title of the respondent to the office of sealer of weights and measures in Cambridge. Rescript.
- Baltic Mining Company *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Reserved for full court. Rescript.

- Barker, Forrest E., *et al. v. Haverhill Gas Light Company*. Petition for injunction to restrain company from business until compliance with order of Gas Commission. Decree.
- Beal, Elizabeth S., *v. Charles River Basin Commission*. Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- Beal, Thomas P., *et al. v. Charles River Basin Commission*. Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- Bishop, Mina L., executrix of the will of Malvina A. Marston, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Bohemia Mining Company *v. Commonwealth*. Petition to recover excise tax assessed on foreign corporation. Pending.
- Boston *v. Commonwealth*. Sewer assessment on Rutherford Avenue, Charlestown. Pending.
- Boston & Northern Street Railway Company. Claim for amount expended in relaying water pipes in Washington Street, Lynn, destroyed by electric currents. Pending.
- Bowditch, Alfred, *et al. v. Charles River Basin Commission et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- Brennan, James M., *v. Charles E. Woodbury, Superintendent*. Action of tort for personal injuries. Pending.
- Bright, William E., *et al. v. Railroad Commissioners et al.* Petition for *certiorari*. Rescript.
- Brown, Clarence W., executor of the will of William N. Burnham, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.
- Bryne, Andrew W., *et als. v. Commonwealth et al.* Petition to recover money in hands of Commonwealth. Pending.
- Bryson, James, executor of the will of Bernard Bryson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.
- Bullard, John C., *et al.*, executors of the will of Sarah M. Burnham, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Burr, Arthur E., trustee, *v. Commonwealth*. Action to recover money held by Commonwealth, and belonging to H. P. Cummings Company. Pending.
- Butland, Francis A., Attorney-General *ex rel. v.* Information in the nature of *quo warranto* to try the title of the respondent to the office of call fireman in Lawrence. Pending.

- Cahill Construction Company *v.* Commonwealth. Bill in equity. Decree.
- Canada, Atlantic & Plant Steamship Company Ltd. *v.* Commonwealth. Petition to recover excise taxes paid by foreign corporation. Pending.
- Champion Copper Co. *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.
- Chapin, Arthur B., Bank Commissioner, *v.* Boston Banking Company. Petition for injunction and appointment of receiver. Injunction issued and Charles K. Cobb appointed receiver.
- Chapin, Arthur B., Bank Commissioner, *v.* Southbridge Savings Bank. Petition for injunction. Pending.
- Cheney, Ansel J., *v.* James O'Doherty. Bill in equity to enjoin respondent for violation of building laws in construction of schoolhouse in Haverhill. Disposed of.
- Cheney, Ansel J., *v.* James O'Doherty. Bill in equity to enjoin respondent for violation of building laws in construction of schoolhouse in Haverhill. Disposed of.
- Coblents, Salenda E., executrix of the will of Arthur A. Averille, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Coggan, Marcellus, administrator *c. t. a.* of the estate of Rosa Lanaban, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- Columbian National Life Insurance Company *v.* Commonwealth. Petitions for abatement of franchise tax paid in 1903, 1904, 1905, 1906 and 1907. Pending.
- Commonwealth *v.* Boston. Action to recover money expended in changing grade of Bowdoin Street. Pending.
- Commonwealth *v.* Boston. Action to recover money expended in changing grade of Bowdoin Street. Judgment satisfied.
- Commonwealth *v.* Walter N. Buffum. Appeal by defendant from order of building inspector. Disposed of.
- Commonwealth *v.* Campbell Humphrey. Suit to recover for laundry work done at Prison for Women at South Framingham. Disposed of.
- Commonwealth *v.* New York, New Haven & Hartford Railroad Company. Action of tort for damage to property of Massachusetts Reformatory, caused by fire. Pending.
- Commonwealth *v.* Worcester. To recover for land taken from the Commonwealth. Pending.

- Conant, Nellie M., *v.* Mary F. Conant *et al.* Action of tort. Pending.
- Conant, Nellie M., *v.* Hosea M. Quimby. Action of tort. Pending.
- Connors, James M., *v.* Commonwealth. Damages caused by defect in State highway. Judgment satisfied.
- Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for year 1909. Pending.
- Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1910. Pending.
- Cotting, Charles E., *et al.*, trustees of Boston Real Estate Trust, *v.* Commonwealth. Petition to recover money paid as betterments on land sold by Commonwealth. Rescript.
- Cotting, Charles E., *et al.* *v.* Commonwealth. Petition to recover sewer assessment. Rescript.
- Crockett, Sara L., estate of H. L. Harding *et al.*, executors. Petition of Treasurer and Receiver-General to collect tax on said estate. Pending.
- Cummings, Roscoe F., executor of the will of Ellen L. Cummings, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Decree.
- Cummins, John F., administrator of the estate of John B. Halloran, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- Dailey, Michael R., executor of the will of Maurice Daily, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Decree.
- Dean, John J., *et al.*, executors of the will of Thomas H. Buckley, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Dowd, James J., executor of the will of Patrick Leonard, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Decree.
- Dunn, James, executor of the will of Mary Welch, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- East Butte Copper Mining Company *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.
- Edgerly, Frank H., *et al.* *v.* Cattle Bureau. Bill to recover for horse killed by order of Cattle Commissioner under R. L., c. 90. Pending.

- Ennis, John D., *et al.*, administrators of the estate of Edmund Walsh, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Everett, Willard S., executor of the will of Elizabeth Davis, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Fells Ice Company, Attorney-General *ex rel. v.* Petition for use of Attorney-General's name in an information in the nature of *quo warranto* to test respondent's right to cut ice in a great pond. Disposed of.
- Field, John Q. A., executor of the will of Caroline Wood, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Field, Ralph, administrator of the estate of George A. Mason, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Fields, Annie, *v.* Charles River Basin Commission. Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Pending.
- Fifield, George W., executor of the will of Ruth S. Shaw, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Fowler, Charles F., executor of the will of Eliza E. Crocker, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Frankfort Marine and Plate Glass Company *v.* Commonwealth. Petition to recover deposit with Treasury. Pending.
- Galvin, Stephen P., administrator of the estate of Calvin R. Baker, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- George H. Sampson Company *v.* Commonwealth *et als.* Bill of complaint. Disposed of.
- Georgia Home Insurance Company *v.* Commonwealth. Action to compel Treasurer and Receiver-General to return bond deposited with him by said company. Pending.
- Grant, Robert, Judge of Probate, *v.* William W. Risk *et al.* Contract on bond as public administrator. Pending.
- Hammond, Gardner Green, petitioner. Petition to register title to land in Chilmark. Decree.
- Harrington, Charles C., executor of the will of Elizabeth A. Harrington, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

- Harvey, James R., *Commonwealth v.* Action to recover for horses returned by the State Colony for the Insane. Disposed of.
- Haverhill Gas Light Company *v.* Gas and Electric Light Commissioners *et al.* Bill in equity in the Circuit Court of the United States to restrain the Board from carrying out an order to decrease the price of gas in Haverhill. Final decree.
- Hays, Arthur W., executor of the will of Nathaniel Allen, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Herbert, John, executor of the will of Edward T. Cowdrey, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Herwig, Mary. Petition for writ of habeas corpus. Pending.
- Hickey-Riedeman Company, Attorney-General *ex rel. v.* Bill in equity to enjoin defendant from discharging waste into Assabet River. Pending.
- Higginson, Henry L., *et al. v.* Charles River Basin Commission *et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- Home for Aged Women *v.* Charles River Basin Commission *et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- Howes, Frank H., executor of the will of Abby Crowell Howes, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Hunneman, Carleton *v.* Charles River Basin Commission. Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- International Automobile and Vehicle Tire Company *v.* Commonwealth. Petition for damages to petitioner's property caused by change of east branch of Charles River by Park Commission. Pending.
- Jackson, Frances E., *v.* Charles River Basin Commission *et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- Jamieson, Robert C., administrator of the estate of Isaac Huffmaster, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.
- Jenney, E. C., executor of the will of Maria P. Stark, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

- Johnson, Edwin A., executor of the will of Bessie M. Fuller, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Johnson, Julia A., executrix of the will of Daniel G. Davis, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.
- Jordan, John N., executor of the will of Caroline A. Worthen, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Jordan, Thomas M., acting mayor of Lawrence, Attorney-General *ex rel. v.* Petition in the nature of mandamus to compel the respondent to call a special meeting of the city council. Use of name granted.
- Keyes, Wade, executor of the will of Annie E. Robinson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Ladd, A. Shirley. Petition for writ of habeas corpus. Petition dismissed.
- Lawrence, Common Council of, Attorney-General *ex rel. v.* Petition for use of Attorney-General's name for writ of mandamus. Disposed of.
- Learoyd, John D., *et al.*, executors of the will of Eben G. Berry, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.
- LeBosquet, Henry, executor of the will of Helen LeBosquet, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Libby, George W., administrator of the estate of Oliver Libby, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Little, George T., *et al.*, executors of the will of Rachel R. Thayer, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Little, Henry B., petitioner. Petition to register title to land in Peabody. Pending.
- Loomis, James H., executor of the will of George W. Gibson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Lowe, Philip, executor of the will of William R. Rainey, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

- Lyman, Charles E., *v.* Commissioners on Fisheries and Game. Petition for annulment of an order of said commissioners. Pending.
- Lyons, Walter S., *v.* Commonwealth. Bill of complaint to recover for work done on Foxborough State Hospital from funds held by the Commonwealth. Final decree.
- MacDonald, George E., Attorney-General *ex rel. v.* Information in the nature of *quo warranto* to try the title of the respondent to the office of secretary of the board of overseers of the poor of Gloucester. Disposed of.
- Macfarlane, Ada. Petition to register title to land in Winthrop. Pending.
- Mahar, Joseph P., executor of the will of Thomas J. Rehill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Malone, Bernard A., *et al.*, executors of the will of Henry Adams, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Manchester, Abraham, executor of the will of Abraham E. Manchester, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Mann, Mary Ellen, executrix of the will of Phebe Totman. Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Maritime Insurance Company *v.* Commonwealth *et al.* Bill to recover bonds deposited with the Treasurer and Receiver-General. Pending.
- McCarthy, Justin H., *v.* Commonwealth. Petition under R. L., c. 201, to recover salary. Judgment for the Commonwealth.
- McClure, Maria M., *v.* Charles River Basin Commission *et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- McGuirk, Ann, executrix of the will of Terrence Farley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- McIntire, Charles H., trustee under the will of Maria T. Clark, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- McQuaid, Thomas B., *et al.*, executors of the will of Thomas McQuaid, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

- Metropolitan Life Insurance Company *v.* Frank H. Hardison, Insurance Commissioner. Petition for review, under St. 1907, c. 576, § 75. Pending.
- Moore, William H., *et al.*, executors of the will of Edward W. Murray, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Morgan, Thomas, *et al.*, executors of the will of Martha Frankland, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Morse, Electra A., *et al. v.* David Ferguson *et al.* Action of tort. Pending.
- Murphy, Annie. Petition for writ of habeas corpus. Disposed of.
- Murphy, James S., administrator c. t. a. of the estate of Charles H. Young, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Murphy, Mary E., executor of the will of Delia Martin, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- National Calfskin Company *v.* Commonwealth. Petition to recover excise tax paid by foreign corporation. Pending.
- National Contracting Company *v.* Commonwealth. Petition to recover under R. L., c. 201. Pending.
- New England Dressed Meat and Wool Company *v.* Commonwealth. Petition to recover excise tax paid by foreign corporation. Pending.
- New England Maple Syrup Company *v.* Henry P. Walcott *et als.* Bill in equity for an injunction. Pending.
- New England Trust Company, trustee under the will of James C. Marshall, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.
- New York. New Haven & Hartford Railroad Company, Attorney-General *ex rel. v.* Information to enjoin the company from holding stock of the Boston & Maine Railroad. Dismissed.
- Newton Savings Bank *v.* Elmer A. Stevens *et al.* Bill in equity to compel the Treasurer and Receiver-General to transfer certain bonds. Disposed of.
- North Packing and Provision Company *v.* Commonwealth. Petition to recover excise tax paid by foreign corporation. Pending.
- O'Brien, Mary F., Attorney-General *et rel. v.* Information in

the nature of *quo warranto* to try the title of the respondent to the office of assistant superintendent of State aid department of Lowell. Judgment.

O'Connell, Joseph P., *v. Commonwealth et al.* Bill to recover money in hands of Commonwealth belonging to Austin Engineering and Construction Company. Pending.

Ohls, Frederick W., *et al.*, State Board of Charity *v.* Action to recover on bond.

"Order of Owls," Attorney-General *ex rel. v.* Petition for injunction. Pending.

Osman, Charles F., administrator c. t. a. of the estate of Johanna F. Rising, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Osman, Charles F., *v. Commonwealth et al.* Bill in equity to reach and apply funds in the hands of respondents. Pending.

Paine, Robert Treat, trustee, *v. Charles River Basin Commission et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.

Parker, Galen A., executor of the will of Martha R. Temple, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Patridge, Eugene E., executor of the will of Charles L. Pitts, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Porter, Rose M., *v. Frank H. Hardison.* Action of tort. Pending.

Powers, Wilbur H. Petition to register title to land in Winthrop. Pending.

Pratt, Annie L., executrix of the will of Sarah M. Wyman, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Provident Institution for Savings, Attorney-General *v.* Petition to withdraw deposits under St. 1907, c. 340. Rescript. Writ of error. Pending in the Supreme Court of the United States.

Quincy, city of, Attorney-General *ex rel. v.* Petition to recover penalty for failure to instal water meters. Pending.

Rafferty, Ann, administratrix of the estate of Alice Cumiskey, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree. Appeal taken.

Rayner, Augustus J. C., Attorney-General *ex rel. v.* Informa-

tion in the nature of *quo warranto* to try the title of the respondent to the office of rodman for the Massachusetts Highway Commission. Disposed of.

Redman, Allston M., executor of the will of Mary J. Redman, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Rice & Hutchins, Inc., *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.

Rice, Charles W., *v.* Eben S. Draper, Governor. Petition for writ of mandamus. Pending before full court. Rescript.

St. Joseph's Mutual Benefit Association, Attorney-General *ex rel. v.* Petition for injunction and appointment of a receiver. Charles M. Davenport appointed receiver.

Sargent, Clara J., *v.* State Board of Lunacy and Charity. Superior Court, Essex County. Appeal on a complaint charging neglect of children under St. 1882, c. 181. Disposed of.

Shapleigh, Samuel B., executor of the will of Ellen L. Shapleigh, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Skinner, Francis, *v.* Charles River Basin Commission *et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.

Sloan, Margaret I., executrix of the will of Phena M. Sloan, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Sonora Railway Company, Ltd., *v.* Commonwealth. Petition to recover excise tax. Disposed of.

Stearns, James P., administrator of the estate of Robert Bramhall, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Stetson, Helen L., administratrix of the estate of A. Amelia Hood, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Stoughton Mills, Incorporated, Attorney-General *ex rel. v.* Bill in equity to enjoin defendant from discharging waste into Neponset River. Pending.

Sullivan, Julia F., executrix of the will of Ellen Donoghue, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Sullivan, Michael L., executor of the will of William F. Odlin, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

- Sullivan, Richard, *v.* Charles River Basin Commission *et al.*
Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- Tarbell, Arthur P., *v.* Boston Athletic Association *et al.* Bill in equity to enjoin defendant from building a boathouse on Charles River basin. Pending.
- Tibbetts, Frank L., executor of the will of Illathera Barker, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- 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 St. 1883, c. 259, and St. 1891, c. 397. Pending.
- Title Guaranty and Surety Company, Trustees of Massachusetts Hospital for Epileptics *v.* Action of contract. Settled.
- Turley, Thomas J., *et al.*, administrators of the estate of Mary Benson, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- United Surety Company, Attorney-General *ex rel.* *v.* Information brought to recover fines for violation of the provisions of St. 1907, c. 576, §§ 110 and 112. Final decree.
- Vahey, James H., administrator d. b. n. of the estate of Ellen Gougeon, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- Vining, Floretta, executor of the will of Elizabeth Jacobs, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Walen, William W., administrator of the estate of Almira C. Walen, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Waltham Watch Company *v.* Commonwealth. Action to recover corporation tax for 1908. Pending.
- Waltham Watch Company *v.* Commonwealth. Action to recover corporation tax for 1909. Pending.
- Ware, Mary L., *v.* Commonwealth. Bill to enjoin Charles River Basin Commission from maintaining wall. Decree.
- Webster & Dudley Street Railway Company, Attorney-General *v.* Decree.
- Welch, Mary Ann, executrix of the will of Thomas Welch, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.

- Welch, William J., *v.* John A. Campbell. Action of tort. Pending.
- Welch, William J., *v.* Hosea M. Quinby, superintendent. Action of tort. Pending.
- Westborough Insane Hospital, Trustees of, *v.* Daniel A. Dorey *et al.* Petition to recover for breach of contract. Pending.
- Weston, town of, *v.* Railroad Commissioners *et al.* Petition for *certiorari*. Rescript.
- Whitaker, Elbridge J., executor of the will of Oliver Everett, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- White, Ida V., *v.* Charles River Basin Commission *et al.* Bill to enjoin Commonwealth from interfering with riparian rights on Charles River. Decree.
- Whitney, Jophanus H., *v.* James O'Doherty. Bill of complaint to restrain respondent from using building for public performances until altered to conform to regulations. Disposed of.
- Wilkins, John F. O., executor of the will of Laura A. Whicher, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- Williams, Moses *et al.*, petitioners. Petition to register title to land in Boston. Attorney-General waived right to be heard. Final decree.
- Winslow Brothers & Smith Company, Attorney-General *ex rel.* *v.* Bill in equity to enjoin defendant from discharging waste into Neponset River. Pending.
- Wolley, Edwin L., *et al.*, administrators of the estate of Lydia G. Jennison, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Disposed of.
- Worcester & Webster Street Railway Company, Attorney-General *v.* Decree.
- Workmen's Circle, Attorney-General *ex rel.* *v.* Petition for injunction to restrain respondent from doing business, under St. 1907, c. 471. Injunction issued.
- Wyman, Estelle, *v.* Commonwealth. Writ of error. Dismissed.
- York Manufacturing Company *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.

COLLECTIONS.

Collections have been made by this department as follows:—

Corporation taxes for the year 1909, overdue and referred by the Treasurer of the Commonwealth to the Attorney- General for collection,		\$89,720 41
Interest,		846 40
Costs,		1,881 16
Miscellaneous,		255,722 32
Total,		\$348,170 29

The following table shows a detailed statement of the same:—

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
A. E. Gloyd Shoe Company,	\$73 73	\$0 75	\$74 48
A. F. Ross & Co., Inc.,	268 92	5 20	274 12
A. G. Crosby Company,	290 68	5 81	296 49
A. Guerini Stone Company,	10 41	07	10 48
A. H. Rice Lumber Company,	9 38	10	9 48
A. M. Thomas Company,	29 66	20	29 86
Abrahams-Quinn Company,	173 50	—	173 50
Acme News Company,	20 82	22	21 04
Adamson Publishing Company,	9 02	18	9 20
Adco, Inc.,	9 36	18	9 54
Ætna Heating Company,	39 00	50	39 50
Alberts Company,	8 67	17	8 84
Alden & Tarbox, Inc.,	26 02	16	26 18
Alden Bryant Company,	53 61	23	53 84
Alley & Emery, Inc.,	563 87	11 27	575 14
Almy Uniform Company,	150 94	1 21	152 15
American Clothing Company,	104 10	2 08	106 18
American Cultivator Publishing Company,	43 37	86	44 23
American Fireworks Company,	43 23	3 36	46 59
American Grocery Company,	731 82	6 83	738 65
American Paper Stock Company,	78 07	25	78 32
American Stave and Cooperage Company,	208 20	1 18	209 38
American Tannery Engineering Company,	13 27	—	13 27

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Angelo Seretto Company, . . .	\$100 00	\$2 00	\$102 00
Angier Company,	249 84	11 25	261 09
Ascutney Lumber Company, . .	12 00	48	12 48
Associated Lumber Company, . .	12 00	-	12 00
Associated Mining Engineers Cor- poration,	14 20	28	14 48
Associated Retail Dealers Com- pany,	88 69	5 00	93 69
Atwood Preserving Company, . .	26 54	15	26 69
Austin-Walker Company,	860 56	5 73	866 29
B. R. Holcomb Company,	190 85	1 31	192 16
Barney-Vinal Company,	260 25	-	260 25
Barristers Law Firm, Inc., . . .	9 19	18	9 37
Bartlett Box and Lumber Com- pany,	147 47	1 03	148 50
Bay State Brass Company,	794 63	5 23	799 86
Bay State Distilling Company, . .	70 09	47	70 56
Bay State Hard Plaster Company,	48 92	16	49 08
Belisle Printing and Publishing Company,	68 09	32	68 41
Benj. N. Moore & Sons Company,	1,698 56	10 19	1,708 75
Bernard Billings Company,	60 72	51	61 23
Boston Art Silver Place Company,	26 02	18	26 20
Boston Billiard and Bowling Com- pany,	95 42	41	95 83
Berwick Cake Company,	114 51	2 29	116 80
Boston Book Company,	1,301 25	8 45	1,309 70
Boston Brokerage Company,	19 95	05	20 00
Boston Camera Exchange, Inc., . .	26 02	13	26 15
Boston Cycle and Sundry Com- pany,	803 82	5 63	809 45
Boston Dental Manufacturing Company,	13 01	07	13 08
Boston Furnace Company,	34 70	22	34 92
Boston Holding Company,	90 00	45	90 45
Boston Insulated Wire and Cable Company,	275 86	1 34	277 20
Boston Mirror Company,	128 39	1 02	129 41
Boston Sculpture Company,	65 06	46	65 52
Bow Ridge Development Com- pany,	95 33	1 14	96 47
Bristol County Furniture Com- pany,	114 51	2 30	116 81
British Tea Table, Inc.,	23 94	06	24 00
Brockton Die Company,	89 52	79	90 31
Brockton Ideal Shoe Company, . .	93 58	55	94 13
Brockton Lumber and Construc- tion Company,	14 57	08	14 65
Brockton National Shoe Company,	89 10	30	89 40
Brosnihan Wrench Company,	65 89	25	66 14
Buck Printing Company,	173 50	81	174 31

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Builders Iron and Steel Company,	\$48 58	\$0 34	\$48 92
Burbank Brothers Company, . . .	46 84	31	47 15
Burns Worcester Company, . . .	360 01	9 60	369 61
Butman & Cressey Company, . . .	330 51	2 31	332 82
C. A. Cook Company,	398 35	2 59	400 94
C. D. Wright Company,	128 04	2 56	130 60
C. E. Trumbull Company,	43 37	28	43 65
C. H. Annable Lumber Company,	202 82	74	203 56
C. W. Luce & Co., Inc.,	563 87	3 75	567 62
Canton Ice Company,	29 84	1 12	30 96
Carmel Tea and Coffee Company,	19 25	—	19 25
Carter Press of Baltimore Corpo- ration,	6 88	13	7 01
Carter Wooden Ware Company, . . .	6 00	—	6 00
Central Dry Goods Company,	54 10	50	54 60
Charles A. Lind Company,	30 24	—	30 24
Charles H. Stone Company,	20 82	08	20 90
Charles J. Jacobs Company,	34 70	18	34 88
Charles S. Gove Company,	304 26	6 08	310 34
Charles Waugh Company,	105 83	—	105 83
Chattel Loan Company,	867 50	17 35	884 85
Cheney & Thompson Company, . . .	100 63	1 36	101 99
Childs Acme Cutter and Press Company,	130 12	1 68	131 80
Citizens Electric Street Railway Company,	2,045 56	6 82	2,052 38
Citizens' Loan Association,	24 92	64	25 56
Coates Clipper Manufacturing Company,	156 15	3 02	159 17
Cobb & White Company,	36 78	27	37 05
Collins Hardware Company,	2,082 00	8 53	2,090 53
Colonial Bed Company,	60 72	2 74	63 46
Commercial Brewing Company, . . .	292 08	1 17	293 25
Commercial Express Company, . . .	10 41	—	10 41
Common Sense Gum Company,	141 43	2 83	144 26
Conant Whiting Company,	6 83	—	6 83
Concrete Power Block Company,	92 23	82	93 05
Consumers Glue Company,	34 70	1 87	36 57
Continental Waste Company, Inc.,	7 28	05	7 33
Coulter Coal and Lumber Com- pany,	141 40	87	142 27
Crocker Drug Company,	34 70	18	34 88
Crown Hair Cloth Company, Inc.,	125 96	78	126 74
Crown Novelty Company,	234 22	1 56	235 78
Cullen Brothers Company,	147 47	1 05	148 52
Cummings Machine Works,	190 85	1 27	192 12
Cyrus T. Clark Company,	6 94	—	6 94
D. F. O'Connell Company,	121 45	1 43	122 88
D. H. Eames Company,	572 55	3 81	576 36
Daley & Wanzer Allerton Express Company,	15 18	11	15 29

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Daley's Nantasket Express Com- pany,	\$26 05	\$0 18	\$26 23
Dalton-Ingersoll Manufacturing Company,	1,414 02	9 42	1,423 44
Daniel Gunn & Co., Inc.,	29 49	20	29 69
D'Arcy & Sons Company,	558 77	3 35	562 12
Devonshire Overall Company,	52 05	19	52 24
Dill Cattle Company,	100 00	63	100 63
Dizer-Copeland Company,	133 45	1 98	135 43
Dr. Burleigh Corporation,	83 17	1 08	84 25
Driscoll & Co., Inc.,	29 14	20	29 34
Durant Company,	173 50	1 21	174 71
Dyer Supply Company,	92 57	74	93 31
E. D. Shadduck, Inc.,	108 43	67	109 10
E. G. Tutein & Co., Inc.,	124 53	2 49	127 02
E. L. LaBaron Foundry Company,	43 04	29	43 33
E. L. Wood Box Company,	95 42	-	95 42
E. M. Phillips Lumber Company,	45 14	96	46 10
E. P. Sanderson Company,	1,011 50	3 71	1,015 21
E. R. Brown Beer Pump Com- pany,	74 60	4 75	79 35
E. R. Taylor Company,	94 76	1 89	96 65
E. T. Slattery Company,	1,995 25	13 63	2,008 88
E. W. Sprague & Co., Inc.,	173 50	58	174 08
Eagle Cornice and Skylight Works,	66 76	12	66 88
East India Extract Company,	145 39	97	146 36
East Side Auto Company,	58 55	46	59 01
Eastern Carbonic Gas Company,	85 01	4 25	89 26
Eastern Electric Company of New Bedford,	43 37	15	43 52
Eastern Furniture Company,	35 39	-	35 39
Eastern Steel Casting Company, Inc.,	294 95	1 47	296 42
Eaton Building Company,	13 53	94	14 47
Economy Drug Company,	23 59	19	23 78
Edwards & Mitchell Electric Com- pany,	10 41	21	10 62
Electric Maintenance Company,	12 56	11	12 67
Elk Flint Bottle Company,	32 00	64	32 64
Elk River Milling Company,	43 12	30	43 42
English & Flett, Inc.,	225 37	74	226 11
Equitable Supply Company,	256 61	77	257 38
Essex Brass Foundry Company,	121 45	1 13	122 58
Estes Mills,	2,469 92	62 32	2,532 24
Eureka Manufacturing Company,	6 24	06	6 30
Excelsior Woolen Company,	141 57	-	141 57
F. S. McDermott Company,	52 05	24	52 29
Fall River Granite Company,	15 30	06	15 36
Fall River, Warren & Taunton Ex- press Company,	5 20	05	5 25
Falmouth Land Company,	27 65	74	28 39

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Federal Manufacturing Company,	\$75 99	\$0 27	\$76 26
Felton-Turner Heating Company,	183 21	1 22	184 43
Ferris Wheel Amusement Com- pany, Inc.,	17 35	—	17 35
Fiske Shoe and Leather Company,	606 38	4 05	610 43
Fitchburg Real Estate and Loan Company,	87 27	1 75	89 02
Flanders Company,	43 37	86	44 23
Frank E. Fitts Manufacturing and Supply Company,	185 92	62	186 54
Frank P. Bennett & Co., Inc., . .	173 50	1 15	174 65
Frank P. Brown Company,	31 23	22	31 45
Fred S. & A. D. Gore Corporation,	15 61	31	15 92
Freeman Clothing Company, . . .	26 02	—	26 02
French Carriage Company,	316 18	—	316 18
French Leather Novelty Com- pany,	7 80	05	7 85
Fuller Manufacturing Company, . .	27 79	21	28 00
G. B. Lawrence Company,	72 87	43	73 30
Gardner Automobile Company, . .	9 36	—	9 36
Gardner Furnishing Company, . . .	23 31	—	23 31
Gardner Gas, Fuel and Light Com- pany,	49 70	18	49 88
Garnett Leather Company,	86 75	11	86 86
Gaudette Company,	52 05	37	52 42
Gem Leather Company,	147 47	91	148 38
General Color and Chemical Com- pany,	46 84	33	47 17
General Service Company,	111 05	63	111 68
George E. Feast Company,	150 25	3 00	153 25
George F. Vester Company,	52 05	1 04	53 09
George H. Salloway Company, . . .	156 15	1 09	157 24
George Martin, Confectionery, Inc.,	104 10	71	104 81
Geo. P. Bingham Company,	86 75	1 73	88 48
Glendale Laundry, Inc.,	17 35	17	17 52
Globe Credit Company,	74 60	57	75 17
Globe Mattress Manufacturing Company,	91 08	43	91 51
Golden Grain Farming Company,	20 16	14	20 30
Gordon Automobile Supply Com- pany,	27 76	—	27 76
Graham Company,	65 06	50	65 56
Green Mountain Lumber Com- pany,	119 88	44	120 32
Greendale Gas Engine Company,	108 43	34	108 77
Greene Shoe Company,	138 80	—	138 80
Gregory & Brown Company,	208 20	73	208 93
Grinnell McKeown Company, Inc.,	24 98	—	24 98
Grip Coupling Company,	26 19	19	26 38
Grocers Supply Company, Ltd., . .	52 05	50	52 55

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Guaranty Plate Works, . . .	\$26 02	\$0 18	\$26 20
H. A. Johnson Company, . . .	3,106 82	10 75	3,117 57
H. C. & C. D. Castle, Inc., . . .	189 46	1 29	190 75
H. C. Greenlaw Company, . . .	16 65	08	16 73
H. Cabitt Company, . . .	26 02	26	26 28
H. F. Keyes Wagon Company, . . .	19 95	-	19 95
H. M. Kinports Company, . . .	99 93	1 79	101 72
H. Newman & Son, Inc., . . .	28 97	14	29 11
H. Pill & Bro., Inc., . . .	65 06	23	65 29
Hall & Hancock Company, . . .	62 46	-	62 46
Hampden Creamery Company, . . .	124 85	54	125 39
Harding Uniform and Regalia Company, . . .	173 50	1 12	174 62
Harvard Baking Powder Company, Harvard Interstate Express Com- pany, . . .	60 72	41	61 13
Harvey D. Watson Company, . . .	8 67	52	9 19
Hathaway & Mackenzie Grain Company, . . .	52 05	07	52 12
Henry H. Tuttle Company, . . .	235 64	1 18	236 82
Henry W. Wellington Company, . . .	455 43	9 11	464 54
Hertig Furnace Company, . . .	156 15	52	156 67
Hertig Furnace Company, . . .	15 61	10	15 71
Hewitt Lunch Company, . . .	69 40	1 38	70 78
Highland Paint and Wall Paper Company, . . .	104 10	95	105 05
Hind Roofing and Sheet Metal Company, . . .	86 75	62	87 37
Hoagland-Curtis Drug Company, Hodgson, Kennard & Co., Inc., . . .	1,075 70	21 50	1,097 20
Hoffecker Company, . . .	425 50	2 19	427 69
Holland Box Company, . . .	76 34	39	76 73
Holyoke Auto Company, . . .	48 85	97	49 82
Holyoke Base Ball Association, . . .	79 11	58	79 69
Holyoke City Market and Grocery Company, . . .	121 45	1 62	123 07
Home Educator Company, . . .	112 77	80	113 57
Homer Foote & Co., Inc., . . .	60 08	28	60 36
Horticulture Publishing Company, Howard Machine Company, Inc., . . .	485 80	4 45	490 25
Hugh Nawn Contracting Com- pany, . . .	13 08	-	13 08
Hurst Sporting Goods Company, Hy-Sil Manufacturing Company, Hyde Park General Hospital, Inc., . . .	86 75	3 81	90 56
Hydro Palm Soap Company, . . .	1,477 83	5 69	1,483 52
Hyland Mattress Company, Inc., . . .	14 50	-	14 50
Ideal Steam Trap Company, . . .	49 96	18	50 14
Imperial Paint and Wall Paper Company, . . .	28 28	2 12	30 40
International Hat Company, . . .	14 07	07	14 14
Intertrust Security Company, . . .	24 29	48	24 77
	14 74	10	14 84
	132 62	-	132 62
	137 41	94	138 35
	223 13	78	223 91

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Intervale Association,	\$52 05	\$0 25	\$52 30
Isaac H. Dinner Company, . . .	60 72	58	61 30
J. B. Raymond Company, . . .	8 67	06	8 73
J. F. Dwyer Drug Company, . .	41 64	32	41 96
J. F. Williams Company, . . .	15 61	10	15 71
J. G. Walker & Son Corporation,	172 00	3 44	175 44
J. H. Chandler Company, . . .	31 23	62	31 85
J. H. Gerlach Company, . . .	212 10	3 18	215 28
J. L. Rice Company,	22 91	11	23 02
J. M. Howard & Son Company, .	124 05	3 48	127 53
J. Maro Harriman Drug Company,	130 12	1 30	131 42
J. Nardi Company,	30 18	60	30 78
James Barrett Manufacturing Company,	503 15	3 35	506 50
James Bryden Company, Inc., .	52 05	1 04	53 09
James Flynn Architectural Iron Works Company,	10 41	07	10 48
James H. Whittle Company, . .	256 78	—	256 78
Jersey Ice Cream Company, . .	156 15	1 08	157 23
John Briggs & Co., Inc., . . .	244 14	84	244 98
John Cavanaugh & Son Building- moving Company,	234 22	2 62	236 84
John F. Ryan Company,	607 25	3 04	610 29
John W. Boyce Company, . . .	100 63	64	101 27
Jordan Drug Company,	43 37	2 47	45 84
Joseph Bentley Hair Company, .	223 81	4 47	228 28
Joseph M. Bradley Company, . .	38 17	76	38 93
Joseph P. Boyce Cigar Company,	208 20	—	208 20
Joseph S. Donovan Company, . .	17 35	15	17 50
K. A. Kelly Company,	54 47	54	55 01
K. G. Laham & Co., Inc., . . .	78 94	53	79 47
Kaleva Co-operative Association,	39 10	22	39 32
Karrer & Co. (Incorporated), .	78 94	—	78 94
Keniston Engineering Company, .	121 45	81	122 26
Kenney & Clark Company, . . .	832 80	9 46	842 26
King Mining Company,	85 00	1 70	86 70
Kinney Heating and Supply Com- pany,	62 28	42	62 70
Kissel Kar Kompany,	133 24	46	133 70
Kleno Manufacturing Company, .	16 77	12	16 89
Kress Brothers Carriage Company,	112 77	1 31	114 08
Krey Music Company,	130 12	2 60	132 72
L. Diamond Company,	104 10	94	105 04
L. M. Bowes Company,	130 12	2 60	132 72
Lang & Jacobs Company, . . .	121 45	85	122 30
Lawrence Produce Company, . .	57 56	34	57 90
Leavitt's Scotch Polish Company,	24 01	24	24 25
Leonard & Freeman Company, .	46 84	—	46 84
Lewis F. Small, Inc.,	17 35	15	17 50
Lexington Peat Company, . . .	52 05	1 04	53 09
Liberty Lumber Company, . . .	429 13	10 89	440 02

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Linscott Motor Company, . . .	\$192 58	\$1 28	\$193 86
Listed Securities Corporation, . . .	451 10	3 10	454 20
Lombard Machine Company, . . .	151 81	1 11	152 92
London Harness Company, . . .	650 62	6 18	656 80
London Importers, Inc., . . .	147 47	1 02	148 49
London Studios, Inc., . . .	121 45	5 23	126 68
Lovell & Covel Company, . . .	260 25	2 60	262 85
Lunt Moss Company, . . .	658 86	2 63	661 49
Lynch Company, . . .	69 40	46	69 86
M. & M. Manufacturing Company, . . .	26 02	18	26 20
M. D. Vaughn Company, . . .	15 61	10	15 71
M. M. Barry Company, . . .	52 05	1 04	53 09
McIntosh-Brown Company, . . .	52 05	-	52 05
Magee Furnace Company, . . .	3,882 32	25 88	3,908 20
Majestic Company, . . .	182 17	45	182 62
Malden Co-operative Express Company, . . .	10 41	09	10 50
Malden Grain Company, . . .	122 16	81	122 97
Manufacturers' Bottle Company, . . .	87 02	1 74	88 76
Marathon Egyptian Cigarette Company, . . .	15 61	15	15 76
Marlboro-Hudson Gas Company, . . .	125 26	3 75	129 01
Martin Kelly Company, . . .	104 10	65	104 75
Massachusetts College of Com- merce, Inc., . . .	83 28	1 66	84 94
Massachusetts Fan Company, . . .	134 02	56	134 58
Massachusetts Loan and Security Company, . . .	56 38	50	56 88
Massachusetts School of Law, Inc., . . .	17 35	11	17 46
Massasoit Company, . . .	286 56	1 24	287 80
McLean Block & Co., Inc., . . .	370 28	7 40	377 68
McWeeny Dry Goods Company, . . .	171 76	-	171 76
Melvin Bancroft Company, . . .	60 72	21	60 93
Menashi, Khoury Company, . . .	25 85	17	26 02
Metropolitan Air Goods Company, . . .	81 54	85	82 39
Metropolitan News and Publish- ing Company, . . .	364 35	7 29	371 64
Mitchell Press, . . .	64 95	4 35	69 30
Monn Product Company, . . .	11 24	05	11 29
Mount Pleasant Stable Company, . . .	69 40	1 71	71 11
Muir's Laundry, Inc., . . .	60 72	55	61 27
Murdock-Shaw Company, . . .	329 65	2 20	331 85
N. Richardson Sons Manufactur- ing Company, . . .	115 37	1 15	116 52
National Electric Equipment Com- pany, . . .	39 03	78	39 81
National Fruit Products Com- pany, . . .	98 72	-	98 72
National Matzo Company of Boston, . . .	58 99	1 76	90 75

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Navin & Kelly Company,	\$225 68	\$1 50	\$227 18
New Bedford Express Company,	5 20	80	6 00
New Can Company,	312 30	1 03	313 33
New England Amusement and Entertainment Company,	174 02	1 74	175 76
New England Cigar Box Company, New England Cloak and Suit Com- pany,	50 88 138 80	60 2 77	51 48 141 57
New England Discount Company, New England Office Furniture Company,	403 90 52 05	3 64 36	407 54 52 41
New England Reed Company,	484 48	2 83	487 31
New England Sales Company,	30 18	20	30 38
New England Trading Company, Newburyport Herald Company,	60 72 24 98	43 48	61 15 25 46
Nightingale-Grant Company,	9 90	—	9 90
Norris F. Comley Conservatories, Northampton Printing and Bind- ing Company,	70 26 63 76	46 25	70 72 64 01
Norton Door Check Company,	66 58	41	66 99
Nousu Co-operative Store Com- pany,	20 38	72	21 10
Noyes & Dewar Company,	138 80	1 03	139 83
Oakley Steel Foundry Company,	262 41	1 66	264 07
O'Brien Company,	46 84	38	47 22
Old Corner Pharmacy, Inc.,	26 02	17	26 19
Oleic Co., Inc.,	19 39	38	19 77
Oliver & Howland Company,	357 41	2 39	359 80
O'Neil Auto Garage Company,	17 35	—	17 35
Oriental Bed Company,	56 21	19	56 40
Orthopedic Shoe Company,	18 11	24	18 35
P. R. Glass Company,	72 87	1 45	74 32
Park Outfitting Company, Inc.,	17 35	—	17 35
Parker-Turco Company,	68 15	1 36	69 51
Pastime Amusement Company,	52 05	23	52 28
Patrons Co-operative Association, Pattinson Manufacturing Com- pany,	35 30 31 23	25 —	35 55 31 23
Pawtucket Granolithic Construc- tion Company,	5 89	05	5 94
Peabody Supply Company,	69 40	1 38	70 78
Pemberton Sales Company,	172 80	3 45	176 25
Peoples Drug Store Company,	26 02	18	26 20
Peoples Furniture Company,	104 10	82	104 92
Peoples Ice Company,	26 02	17	26 19
Perry & Ayers (Inc.),	27 76	29	28 05
Phoenix Securities Company,	7 28	08	7 36
Photo Supply Company,	30 36	60	30 96
Pierce & Barnes Company,	17 35	34	17 69
Pierce Labeling Machine Com- pany,	43 37	14	43 51

	Collected on Account of Corporation Tax for 1999.	Interest.	Totals.
Pilgrim Foundry Company, . . .	\$292 78	\$5 85	\$298 63
Pittsfield Soap Company, . . .	24 29	49	24 78
Plymouth County Publishing Company,	20 47	41	20 88
Plymouth Press, Inc.,	41 98	84	42 82
Prudential Supply Company, . . .	179 36	2 08	181 44
Publishers Binding and Mailing Company,	182 17	1 21	183 38
Purity Confectionery Company, . .	22 55	14	22 69
Quinsigamond Lake Steamboat Company,	30 36	-	30 46
R. Farland & Sons Company, . . .	52 05	2 55	54 60
R. L. Cleveland Company,	187 38	1 26	188 64
R. M. Bucknam & Co., Inc.,	22 81	21	23 02
Ralph F. Russell Company,	86 75	58	87 33
Ray-Lawson Granite Company, . . .	14 83	60	15 43
Raymond Skate Manufacturing Company,	17 35	09	17 44
Reliance Grease Company,	12 49	10	12 59
Revere Ice Company,	173 50	58	174 08
Robert R. Herriman Company, Inc.,	54 13	37	54 50
Robert R. McNutt, Inc.,	195 18	3 90	199 08
Robert S. Jones Company,	54 82	1 09	55 91
Rocky Hill Crystal Spring Water Company,	6 94	-	6 94
Rowe Contracting Company,	243 07	1 00	244 07
Royal Comb Company,	86 05	54	86 59
Royal Shoe Company,	72 52	48	73 00
Russ, Eveleth & Ingalls Company, .	1,252 30	25 04	1,277 34
S. D. Viets Company,	614 71	2 15	616 86
S. H. Davis Company of Webster, Mass.,	119 71	59	120 30
S. M. Howes Company,	1,764 49	12 94	1,777 43
S. R. Bailey & Co., Inc.,	945 83	7 88	953 71
St. Clair's, Inc.,	373 02	3 73	376 75
Salem Barrel Company,	52 05	1 04	53 09
Salem Bay Steamboat Company, . . .	138 80	93	139 73
Salem Commercial School, Inc., . .	138 80	2 77	141 57
Salem Press Company,	60 72	21	60 93
Samuel Ward Company,	1,349 83	9 45	1,359 28
Schipper Bros. Coal Mining Com- pany, Inc.,	24 34	-	24 34
Sectional Rubber Tire Company, . .	44 76	1 02	45 78
Seth W. Fuller Company,	117 98	78	118 76
Sexton Drug Store,	52 05	45	52 50
Shapleigh Coffee Company,	349 91	2 45	352 36
Sheldon Yacht and Power Boat Company,	90 22	70	90 92
Silas Pierce & Co., Ltd.,	2,241 39	17 93	2,259 32
Sixteen Associates, Inc.,	35 39	14	35 53

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
Small, Maynard & Co., Inc.,	\$520 50	\$3 42	\$523 92
Snowflake Axle Grease Company,	95 42	64	96 06
Somerset Coal Company,	118 84	80	119 64
Soule Art Publishing Company,	259 38	3 37	262 75
Spatula Publishing Company,	71 13	47	71 60
Springfield Building Company,	25 15	20	25 35
Springfield Feldspar Company,	10 00	—	10 00
Springfield Portable House Com- pany,	7 80	04	7 84
Stadden's Art Shop, Inc.,	216 87	1 45	218 32
Standard Bottling and Extract Company,	364 35	2 55	366 90
Standard Laundry Company of Boston,	69 40	46	69 86
Standard Soap Works,	65 84	—	65 84
Stoughton Mills, Inc.,	398 18	2 45	400 63
Stoughton Record Company,	12 14	43	12 57
Symonds & Poor Carbonator Com- pany,	511 82	21 56	533 38
T. H. O'Donnell & Co., Inc.,	138 80	1 11	139 91
Taunton Evening News,	47 36	38	47 74
Taunton Stove Lining Company,	255 04	2 34	257 38
Tavander Process Company,	6 33	—	6 33
Taylor Manufacturing Company of Boston,	26 02	18	26 20
Therapeutic Publishing Company,	7 63	07	7 70
Thomas J. Shea Company,	52 05	26	52 31
Tichnor Brothers, Inc.,	268 49	5 37	273 86
Times Newspaper Company,	281 07	1 76	282 83
Tracy Brothers' Leather Com- pany,	433 75	1 45	435 20
Tribune Building Company,	8 67	06	8 73
Truscott Boat Manufacturing Company of Massachusetts,	69 40	53	69 93
Tudor Press, Inc.,	150 85	1 05	151 90
Uniao Commercial Portuguesa Company,	14 05	09	14 14
Union Credit Company,	26 28	78	27 06
Union Parlor Furniture Company,	24 98	10	25 08
Union Tool Company,	20 42	16	20 58
United Bedding Company,	78 07	1 56	79 63
United Druggists Mutual Fire In- surance Company,	1,735 00	6 07	1,741 07
United Electric Apparatus Com- pany,	142 27	43	142 70
United Fish Company,	43 96	65	44 61
United Laboratories Company,	1,023 65	5 97	1,029 62
United Perfume Company,	176 97	1 03	178 00
United States Column Company,	152 07	51	152 58
United States Land Development Company,	6 94	14	7 08

	Collected on Account of Corporation Tax for 1909.	Interest.	Totals.
University Schools of Correspondence,	\$127 41	\$2 55	\$129 96
Up-to-Date Manufacturing Company,	78 07	25	78 32
Utica Treeing Machine Company,	12 35	39	12 74
Vaughan Construction Company,	14 20	—	14 20
Vega Company,	86 75	58	87 33
Vienna Lunch Company,	74 25	1 48	75 73
Vulcan Manufacturing Company,	34 70	43	35 13
W. A. Norton Company,	41 64	83	42 47
W. E. Chipman Company,	34 70	22	34 92
W. E. Hoyt Company,	303 62	1 87	305 49
W. F. Embree Company,	225 55	4 51	230 06
W. H. Magrath Cigar Company,	17 50	15	17 65
W. J. Ham Company,	226 08	55	226 63
W. K. Farrington Press,	69 40	1 38	70 78
W. P. Goode Brush Company,	70 26	1 40	71 66
W. T. Shackley & Son Company,	234 22	2 73	236 95
Wadleigh Company,	119 71	60	120 31
Warren, Brookfield & Spencer Street Railway Company,	98 89	52	99 41
Warren P. Tobey Company,	26 02	19	26 21
Water Power Development Company,	34 70	1 82	36 52
Wentworth Lister Company,	261 98	1 75	263 73
West Medford Automobile Company,	20 82	09	20 91
Westborough Brass Bedstead Company,	25 00	—	25 00
Wheelock Fence Company,	58 99	39	59 38
Whittier Wooden-Ware Company,	381 70	2 54	384 24
William Allen Sons Company,	284 54	1 94	286 48
William Morris, Inc.,	173 50	1 21	174 71
Williamstown Press Company,	32 96	60	33 56
Wire Bound Packing Case Company of Massachusetts,	55 79	24	56 03
Wold Machine Company,	23 42	19	23 61
Worcester Railway Supply Company,	69 40	25	69 65
Worcester Textile Machine Company,	35 56	71	36 27
Wordell Plumbing Company,	62 80	1 25	64 05
Young's, Inc.,	86 75	1 73	88 48
	\$89,720 41	\$846 40	\$90,566 81

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 Dec. 31, 1910, 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.
1910. Jan. 5,	New York,	Henry F. Whitteridge,	Neglect of wife and children,	Suffolk,	Lawful and in proper form.
Jan. 8,	Connecticut,	L. T. Lewis,	Stealing,	Hampden,	Lawful and in proper form.
Jan. 14,	New York,	Benjamin M. Schwartz, <i>alias</i> ,	Neglect of wife and children,	Suffolk,	Lawful and in proper form.
Jan. 31,	New York,	Samuel Delmont,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 14,	New York,	William Shannon and Allen H. Stewart,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 15,	Bulgaria,	Vahan Nalbandian, <i>alias</i> ,	Murder,	Essex,	Lawful and in proper form.
Feb. 17,	New York,	Edward Sarrazin,	Rape,	Hampshire,	Lawful and in proper form.
Feb. 21,	New York,	Vincenzo Verturano,	Murder,	Plymouth,	Lawful and in proper form.
Feb. 21,	Illinois,	Rubin Ginsberg,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 21,	New York,	Harold C. Stern,	Forgery,	Suffolk,	Lawful and in proper form.
March 14,	New York,	Osman F. Bateman,	Larceny,	Suffolk,	Lawful and in proper form.

Date of Reference.	State or Country upon whose Executive Requisition was made.	Name of Fugitive.	Crime charged.	Venue of Prosecution.	Report.
1910.					
March 18,	Rhode Island,	Franklin Herrick Warren, <i>alias</i> ,	Polygamy,	Suffolk,	Lawful and in proper form.
March 22,	Pennsylvania,	James Brogan,	Fornication,	Middlesex,	Lawful and in proper form.
April 25,	New York	Petro Russo and Gaetano Aveni,	Larceny,	Suffolk,	Lawful and in proper form.
May 3,	New York,	Levi T. Barney,	Larceny,	Middlesex,	Lawful and in proper form.
May 5,	Pennsylvania,	Nehemiah Jasnogudsky,	Larceny,	Suffolk,	Lawful and in proper form.
May 6,	New York,	Frank Younger,	Breaking and entering,	Middlesex,	Lawful and in proper form.
May 7,	New York,	Walerya Stopkowitz,	Larceny,	Franklin,	Lawful and in proper form.
May 7,	Illinois,	Salvatore Giambrone,	Conspiracy to steal,	Suffolk,	Lawful and in proper form.
May 10,	New York,	Arthur E. Andrew,	Larceny,	Suffolk,	Lawful and in proper form.
May 12,	Dominion of Canada,	Harry Williams, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
May 20,	Maine,	Arthur W. Sanborn,	Larceny,	Middlesex,	Lawful and in proper form.
June 21,	New York,	William Duffy,	Larceny,	Suffolk,	Lawful and in proper form.
June 21,	Maine,	Clarence H. Greenleaf,	Assault,	Plymouth,	Lawful and in proper form.
July 5,	New York,	Joseph W. Swan,	Kidnapping,	Suffolk,	Lawful and in proper form.
July 8,	New York,	Carlo Chiorando,	Larceny,	Suffolk,	Lawful and in proper form.
July 28,	New Jersey,	Conrad H. Meyer, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
July 29,	Pennsylvania,	Charles Jeffries,	Breaking and entering,	Hampden,	Lawful and in proper form.
Aug. 1,	Connecticut,	Ellis W. Stetson,	Breaking and entering,	Middlesex,	Lawful and in proper form.

Aug. 8,	New York,	D. Eustace Bigelow,	Larceny,	Suffolk,	Lawful and in proper form.
Aug. 10,	New York,	Lucius Cummings,	Larceny,	Suffolk,	Lawful and in proper form.
Aug. 11,	New York,	William Lane, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
Aug. 12,	Connecticut,	George W. Parker and Thomas Lovejoy,	Breaking and entering,	Norfolk,	Lawful and in proper form.
Aug. 29,	New Hampshire,	Edwin A. Corkin,	Larceny,	Middlesex,	Lawful and in proper form.
Sept. 1,	Dominion of Canada,	Edward Mullen,	Larceny,	Suffolk,	Lawful and in proper form.
Sept. 10,	Illinois,	Ernest H. Myer,	Larceny,	Suffolk,	Lawful and in proper form.
Sept. 21,	New York,	Sheridan P. Ball,	Larceny,	Suffolk,	Lawful and in proper form.
Sept. 28,	California,	Joseph M. Rawley,	Larceny,	Hampshire,	Lawful and in proper form.
Oct. 1,	New York,	James Bradley,	Breaking and entering,	Hampshire,	Lawful and in proper form.
Oct. 10,	New York,	Maria Fillipina,	Larceny,	Suffolk,	Lawful and in proper form.
Oct. 18,	Illinois,	Ernest Capso,	Being a vagabond,	Middlesex,	Lawful and in proper form.
Nov. 1,	New York,	Elwood W. Devine,	Rape,	Plymouth,	Lawful and in proper form.
Nov. 1,	New York,	Peter H. McNealy,	Neglect of wife and children,	Suffolk,	Lawful and in proper form.
Nov. 7,	Kentucky,	Samuel Ackerman, <i>alias</i> ,	Larceny,	Plymouth,	Lawful and in proper form.
Nov. 12,	Colorado,	Charles H. Macleod,	Polygamy,	Suffolk,	Lawful and in proper form.
Nov. 14,	New York,	William H. Kohler,	Larceny,	Suffolk,	Lawful and in proper form.
Dec. 1,	Ohio,	Paolo Razzino,	Murder,	Worcester,	Lawful and in proper form.
Dec. 5,	California,	Frederick J. Hethel,	Larceny,	Suffolk,	Lawful and in proper form.
Dec. 20,	New York,	George J. Fleming,	Breaking and entering,	Suffolk,	Lawful and in proper form.
Dec. 24,	Virginia,	William H. Spaulding, <i>alias</i> ,	Forgery,	Suffolk,	Lawful and in proper form.
Dec. 30,	New York,	Gaetano Aliotta, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.

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 Dec. 31, 1910, for examination and report thereon:—

Date of Reference.	State making the Requisition.	Name of Fugitive.	Crime charged.	Report.
1910. Feb. 2,	New York,	Ricardo Lopez,	Grand larceny,	Lawful and in proper form.
Mar. 21,	Virginia,	Charles R. Anderson,	Assault,	Lawful and in proper form.
April 5,	Vermont,	Auguste Therrien,	Selling mortgaged property,	Lawful and in proper form.
April 7,	Rhode Island,	Raymond E. Walker,	Forgery,	Lawful and in proper form.
April 14,	Michigan,	Joseph Chebot,	Obtaining money under false pretences, and larceny,	Lawful and in proper form.
April 18,	Connecticut,	Morris Sholock,	Embezzlement,	Lawful and in proper form.
May 14,	New York,	Fred Pumpelly,	Larceny,	Lawful and in proper form.
July 14,	New York,	Arthur L. Ball,	Forgery,	Lawful and in proper form.
July 14,	California,	Antonio Morey,	Forgery,	Lawful and in proper form.
Aug. 4,	Connecticut,	John H. Hall,	Larceny,	Lawful and in proper form.
Aug. 23,	Maine,	Fred J. Carter,	Assault with intent to commit rape,	Lawful and in proper form.
Sept. 15,	New York,	Thomas F. Henry,	Abandonment of children,	Lawful and in proper form.
Sept. 30,	Ohio,	Vinton T. Maale,	Failure to provide for minor child,	Not in proper form.
Oct. 6,	Vermont,	A. Shirley Ladd,	Illegally soliciting life insurance,	Lawful and in proper form.

Oct.	21	New Jersey,	George E. Ryan,	Larceny,	Lawful and in proper form.
Oct.	21,	New Jersey,	William B. Brenezer,	Obtaining money under false pretences,	Lawful and in proper form.
Oct.	27,	Illinois,	Christ Georgeapolis,	Larceny,	Lawful and in proper form.
Nov.	1,	Michigan,	Minnie Williams,	Larceny,	Lawful and in proper form.
Nov.	4,	New York,	Frederico Gorgone,	Abandonment of child,	Lawful and in proper form.
Nov.	10,	New York,	Alfred W. Burnett,	Grand larceny,	Lawful and in proper form.
Dec.	12,	Illinois,	Nathan R. Dye,	Larceny,	Lawful and in proper form.

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.

