

Commonwealth of Massachusetts
ATTORNEY-GENERAL'S REPORT

1911

The Commonwealth of Massachusetts.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE

YEAR ENDING JANUARY 17, 1912.



BOSTON:

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

1912.

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
BOSTON, Jan. 17, 1912.

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,

JAMES M. SWIFT,
Attorney-General.

The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
State House.

Attorney-General.

JAMES M. SWIFT.

Assistants.

FREDERIC B. GREENHALGE.

FRED T. FIELD.

ANDREW MARSHALL.

HENRY M. HUTCHINGS.

Engineer of Grade Crossings.

HENRY W. HAYES.

Chief Clerk.

LOUIS H. FREESE.

STATEMENT OF APPROPRIATION AND EXPENDITURES.

Appropriation for 1911, \$45,000 00

Expenditures.

For law library,	496 18
For salaries of assistants,	13,745 14
For expert services,	171 27
For clerks,	3,458 33
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,	\$3,222 99	
Other expenses incidental thereto,	574 36	
	3,797 35	

For office expenses, 2,389 32

For court expenses, 3,661 99

Total expenditures,	\$31,799 58	
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Costs collected,	1,936 01	
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Net expenditures,	\$29,863 57	
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The Commonwealth of Massachusetts.

DEPARTMENT OF THE ATTORNEY-GENERAL,
BOSTON, Jan. 17, 1912.

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 this department during the year, to the number of 5,338, are tabulated below:—

Corporate franchise tax cases,	635
Extradition and interstate rendition,	93
Grade crossings, petitions for abolition of,	103
Indictments for murder,	38
Inventories and appraisals,	175
Land Court petitions,	11
Land-damage cases arising from the taking of land by the Ar- mory Commissioners,	3
Land-damage cases arising from the taking of land by the Harbor and Land Commission,	4
Land-damage cases arising from the taking of land by the Charles River Basin Commission,	29
Land-damage cases arising from the taking of land by the Massa- chusetts Highway Commission,	14
Land-damage cases arising from the taking of land by the Met- ropolitan Park Commission,	11
Land-damage cases arising from the taking of land by the Met- ropolitan Water and Sewerage Board,	13
Land-damage cases arising from the taking of land by the State Board of Insanity,	8
Land-damage cases arising from the taking of land by the Wren- tham State School,	1
Land-damage cases arising from the taking of land by the Grey- lock Reservation Commission,	2
Miscellaneous cases arising from the work of the above-named commissions,	29
Miscellaneous cases,	223
Petitions for instructions under inheritance tax laws,	27

Public charitable trusts,	110
Settlement cases for support of persons in State Hospitals,	11
All other cases not enumerated above, which include suits to require the filing of returns by corporations and individuals and the collection of money due the Commonwealth,	3,798

CAPITAL CASES.

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

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, J.J. 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 were overruled. The defendant Peter Delorey was thereupon sentenced to State Prison for a term of not more than twenty nor less than eighteen years; and the defendant James Mantir was sentenced to State Prison for life. 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. She was arraigned March 15, 1911, and pleaded guilty to manslaughter. This plea was accepted by the Commonwealth, and the defendant was thereupon sentenced to the Reformatory for Women. The case was in charge of District Attorney Albert 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. On Feb. 15, 1911, 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 sentenced to State Prison for life. The case was in charge of District Attorney Joseph C. Pelletier.

WALTER G. FALL, indicted in Suffolk County, November, 1910, for the murder of Frederick Schlehuber, at Boston, on Nov. 10, 1910. On Feb. 15, 1911, the defendant pleaded guilty to another indictment and this indictment was placed on file. The case was 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. In June, 1911, the defendant was tried by a jury before Hardy, J. The result was a verdict of guilty of manslaughter, and the defendant was sentenced to State Prison for a term not exceeding seven nor less than five years. The case was 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., and Wallace K. Hardy were assigned by the court as counsel for the defendant. In May, 1911, the defendant was tried by a jury before Crosby, J. The result was a verdict of guilty of murder in the first degree, and the defendant was sentenced to death by electrocution during the week beginning October 8, 1911. This sentence was commuted to imprisonment for life by the Governor, by and with the advice of the Council. The case was 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. On June 23, 1911, 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 not exceeding ten nor less than eight years. The case was 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; which sentence was carried out on March 7, 1911. The case was in charge of District Attorney W. Scott Peters.

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 A. Heneberg, 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. The defendant's motion for a new trial was denied, and he was sentenced to State Prison for life. The case was in charge of District Attorney George S. Taft.

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., and J. E. Crowley, Esq., were assigned by the court as counsel for the defendant. In October, 1911, the defendant was tried by a jury before Quinn, J. The result was a verdict of guilty of manslaughter, and on Oct. 27, 1911, the defendant was sentenced to State Prison for a term of not more than ten nor less than eight years. The case was in charge of District Attorney Albert F. Barker.

EDWARD J. McNANLEY, indicted in Hampden County, December, 1910, for the murder of Margaret E. McNanley, at Springfield, on Nov. 6, 1910. He was arraigned Jan. 3, 1911, and pleaded not guilty. John P. Kirby, Esq., was assigned by the court as counsel for the defendant. The defendant later 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 Christopher Callahan.

EDWARD E. MELVIN, indicted in Suffolk County, December, 1910, for the murder of John W. Carey, at Boston, on Dec. 10, 1910. He was arraigned Jan. 16, 1911, and pleaded not guilty. William H. Bent, Esq., was assigned by the court as counsel for the defendant. In September, 1911, the defendant was tried by a jury before Lawton, J. 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 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., and Miran Sevasly,

Esq., were assigned by the court as counsel for the defendant. In February, 1911, the defendant was tried by a jury before Aiken, J. The result was a verdict of not guilty. The case was in charge of District Attorney Henry C. Attwill.

PAOLO RAZZINO, indicted in Worcester County, October, 1910, for the murder of Luigi Palumbo, at Worcester, on Oct. 9, 1910. He was arraigned Jan. 27, 1911, and pleaded not guilty. David F. O'Connell, Esq., and Jeremiah J. Moynihan, Esq., were assigned by the court as counsel for the defendant. Feb. 20, 1911, the indictment as to murder was *nol prossed*, leaving it to stand for manslaughter, and the defendant was tried by a jury before Fox, J. The result was a verdict of not guilty. The case was in charge of District Attorney James A. Stiles.

HOWARD STEWARD, indicted in Hampden County, December, 1910, for the murder of Thomas Donlin, at Springfield, on Oct. 1, 1910. He was arraigned Jan. 3, 1911, and pleaded not guilty. Willmore B. Stone, Esq., was assigned by the court as counsel for the defendant. The defendant later 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 Christopher T. Callahan.

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

SALVATORE ACCAMPORO, PASQUALE DI LORENZO, VALENTINO SUSI and MICHELE ACCOMPORO, indicted in Suffolk County, July, 1911, for the murder of Antonio Schiappa, at Boston, on July 3, 1911. They were arraigned Sept. 7, 1911, and each pleaded not guilty. James H. Vahey, Esq., T. J. Grady, Esq., were assigned by the court as counsel for the defendants. In November, 1911, the defendants were tried by a jury before Chase, J. The result was a verdict of guilty of murder in the second degree against Salvatore Ac-

camporo; the other defendants were found not guilty, and discharged. The defendant Salvatore Accamporo was thereupon sentenced to State Prison for life. The case was in charge of District Attorney Joseph C. Pelletier.

WILLIAM J. ALBERT, indicted in Bristol County, February, 1911, for the murder of Catherine Albert. He was arraigned Feb. 15, 1911, and pleaded guilty to murder in the second degree. Robert A. Terry, Esq., was assigned by the court as counsel for the defendant. The plea of the defendant was accepted by the Commonwealth, and he was thereupon sentenced to State Prison for life. The case was in charge of District Attorney Joseph T. Kenney.

EDMUND BERUBE, indicted in Bristol County, June, 1911, for the murder of Morris Schwartz. He was arraigned June 20, 1911, and pleaded not guilty. Edward Higginson, Esq., was assigned by the court as counsel for the defendant. On Dec. 26, 1911, 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 sentenced to State Prison for life. The case was in charge of District Attorney Joseph T. Kenney.

FRANK J. BLASKOVEC, indicted in Middlesex County, September, 1911, for the murder of Frances Wilkinson, at Somerville, on July 21, 1911. Nov. 1, 1911, the defendant was adjudged insane and was committed to the Bridgewater State Hospital. The case was in charge of District Attorney John J. Higgins.

LUKAS DARDARIAN, indicted in Bristol County, June, 1911, for the murder of John Dardarian. He was arraigned June 20, 1911, and pleaded not guilty. No counsel was assigned to act for the defendant. On Nov. 23, 1911, the defendant retracted his former plea, and pleaded guilty to manslaughter. This plea was accepted by the Commonwealth, and the defendant was thereupon sentenced to State Prison for a term

of not more than eighteen years nor less than fifteen years. The case was in charge of District Attorney Joseph T. Kenney.

GIUSEPPE DI MAIO, indicted in Middlesex County, January, 1911, for the murder of Antonio Di Filippo, at Newton, on Nov. 27, 1910. He was arraigned March 17, 1911, and pleaded not guilty. John E. Crowley, Esq., was assigned by the court as counsel for the defendant. In June, 1911, the defendant was tried by a jury before Hardy, J. The result was a verdict of not guilty. The case was in charge of District Attorney John J. Higgins.

THOMAS HAGGERTY, indicted in Suffolk County, June, 1911, for the murder of Marie Haggerty, at Boston, on May 3, 1911. He was arraigned Aug. 16, 1911, and pleaded not guilty. M. F. Kennedy, Esq., and James F. Kenney, Esq., were assigned by the court as counsel for the defendant. On Nov. 2, 1911, the defendant was adjudged insane, and was committed to the Bridgewater State Hospital. The case was in charge of District Attorney Joseph C. Pelletier.

FELIX JANONIS, indicted in Hampshire County, June, 1911, for the murder of Frank Tomel, at Easthampton, on March 17, 1911. He was arraigned June 13, 1911, and pleaded not guilty. George P. O'Donnell, Esq., and Rufus H. Cook, Esq., were assigned by the court as counsel for the defendant. On Oct. 25, 1911, 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 Richard W. Irwin, Stephen S. Taft, Esq., District Attorney *pro tem*.

MARIA LIMA, indicted in Middlesex County, November, 1911, for the murder of her infant child, at Lowell, on Oct. 12, 1911, and for concealing the death of said child. She was arraigned Nov. 27, 1911, and pleaded not guilty. Sher-

win L. Cook, Esq., and William G. Andrew, Esq., were assigned by the court as counsel for the defendant. So much of said indictment as charged murder was *nol prossed* on Nov. 27, 1911, and the defendant was tried on the remaining charges of the indictment by a jury before McLaughlin, J. The result was a verdict of not guilty on first count, guilty on second count, and the defendant was thereupon sentenced to the House of Correction for a term of eleven months. The case was in charge of District Attorney John J. Higgins.

MICHAEL PACHIOUROS, indicted in Middlesex County, June, 1911, for the murder of John Germanakos, at Lowell, on March 16, 1911. The defendant was arraigned June 16, 1911, and pleaded not guilty. William H. Bent, Esq., and Bennett Silverblatt, Esq., were assigned by the court as counsel for the defendant. In November, 1911, the defendant was tried by a jury before McLaughlin, J. The result was a verdict of not guilty. The case was in charge of District Attorney John J. Higgins.

ELIZABETH SAVOY, indicted in Norfolk County, September, 1911, for the murder of her infant child. She was arraigned Sept. 29, 1911, and pleaded guilty to manslaughter. J. W. McAnarney, Esq., was assigned by the court as counsel for the defendant. Sept. 29, 1911, the indictment was *nol prossed* as to so much thereof as charged more than manslaughter and as to so much thereof as charged concealment of the death of her infant child. The defendant was thereupon sentenced to the Reformatory for Women. The case was in charge of District Attorney Albert F. Barker.

NAZIF USEN, indicted in Worcester County, May, 1911, for the murder of Peter Marke, at Southbridge, on Feb. 4, 1911. He was arraigned June 5, 1911, and pleaded not guilty. George S. Taft, Esq., was assigned by the court as counsel for the defendant. In June, 1911, the defendant was tried by a jury before Aiken, C.J. The result was a verdict of guilty of manslaughter, and the defendant was thereupon

sentenced to State Prison for a term of not more than five nor less than four years. The case was in charge of District Attorney James A. Stiles.

The following indictments for murder are now pending:—

CHARLES ALESANDO, indicted in Hampden County, December, 1911, for the murder of Dominic Salvatore, at Russell, on June 24, 1911. He was arraigned Dec. 26, 1911, and pleaded not guilty. Richard J. Morrissey, 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.

STEFAN BORASKY, indicted in Hampden County, December, 1911, for the murder of Rose Amansky, at Granville, on Sept. 27, 1911. He was arraigned Dec. 26, 1911, and pleaded not guilty. Joseph F. Carmody, 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.

HARRY H. BUTTS, indicted in Suffolk County, July, 1911, for the murder of Robert Williamson, at Boston, on June 21, 1911. He was arraigned July 12, 1911, and pleaded not guilty. Joseph A. Dennison, 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 Joseph C. Pelletier.

PETER CASSETTI, indicted in Norfolk County, December, 1911, for the murder of Nicholas Cassetti, at Weymouth, on Oct. 1, 1911. He was arraigned Dec. 22, 1911, and pleaded not guilty. No further action has been taken in this case. The case is in charge of District Attorney Albert F. Barker.

CHESTER S. JORDAN, indicted in Middlesex County, March, 1909, for the murder of Honora C. Jordan, at Somer-

ville, 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 defendant was thereupon sentenced to death by electrocution during the week beginning March 12, 1911. The case was taken to the Supreme Court of the United States on writ of error, and is now pending in that court. The case was in charge of District Attorney John J. Higgins.

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. In February, 1911, the defendants were tried by a jury before Schofield, J. The result was a verdict of guilty of murder in the first degree. Motion of defendants for a new trial was denied, and defendants' exceptions are now pending. The case is in charge of District Attorney Albert F. Barker.

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. The defendant's exceptions were overruled, and the defendant entered an appeal from an order overruling a motion in arrest of judgment, which order was affirmed by the Supreme Judicial Court, Oct. 20, 1911. On Oct. 25, 1911,

the defendant was sentenced to death by electrocution during the week beginning Dec. 31, 1911. An appeal from this sentence was dismissed and the sentence affirmed by the Supreme Judicial Court, Dec. 18, 1911. The case was in charge of District Attorney Richard W. Irwin.

CLARENCE V. T. RICHESON, indicted in Suffolk County, October, 1911, for the murder of Avis W. Linnell, at Boston, on Oct. 14, 1911. He was arraigned Nov. 13, 1911, and pleaded not guilty. William A. Morse, Esq., and Philip R. Dunbar, Esq., were assigned by the court as counsel for the defendant. The case is in charge of District Attorney Joseph C. Pelletier.

SAVERIO SPANO, indicted in Norfolk County, December, 1911, for the murder of Guiseppe Rucher, at Quincy, on Dec. 3, 1911. He was arraigned Dec. 22, 1911, and pleaded not guilty. No further action has been taken in this case. The case is in charge of District Attorney Albert F. Barker.

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 committed to the Bridgewater State Hospital for observation. In November, 1911, he was tried by a jury before Crosby, J., the trial being conducted by Attorney-General James M. Swift, assisted by the District Attorney. The result was a verdict of guilty of murder in the first degree. Defendant's motion for a new trial is now pending. The case is in charge of District Attorney Christopher T. Callahan.

ANNIE TATOSKY, indicted in Plymouth County, June, 1911, for the murder of an infant child, at Abington, on May 3, 1911. She was arraigned June 14, 1911, and pleaded not guilty. No further action has been taken in this case. The case is in charge of District Attorney Albert F. Barker.

GRADE CROSSINGS.

Construction has been in progress during the year at Neponset, Somerville, Lynn, Worcester, Lowell, Weston, Norfolk, Somerset, Swansea and Belchertown, and the engineer of grade crossings has made 34 visits of inspection in connection therewith.

Forty-seven hearings before and conferences with special commissioners and auditors have been attended by this department. Statements of expenditures numbering 48 and amounting to \$2,182,670.51 have been examined. Objections to items amounting to \$168,682.89 have been made, of which amount \$10,798.84 have been disallowed, and decisions as to \$157,362.69 are pending. During the year, of objections filed to accounts during 1909, \$731.39 have been disallowed, leaving an amount of \$292.81 pending; of objections made during 1910, \$2,528.37 have been disallowed, and decisions as to \$4,412.52 are pending; making a total for the year 1911 of \$14,058.60 disallowed, and decisions as to \$162,068.02 now pending.

Special investigations for the Quincy and Braintree commissions have been made by the engineer of grade crossings.

Objection to certain accounts in connection with the Worcester grade crossings was made, and six hearings have been held thereon before the auditor, at some of which the Attorney-General appeared in person, in addition to the engineer of grade crossings and the Assistant Attorney-General by whom such objections are ordinarily conducted, and other hearings are to follow.

Under authority of chapter 214 of the Acts of 1911 the engineer of grade crossings has been employed outside of this department by the Board of Railroad Commissioners thirty-four and one-half days.

ENTRY FEE IN CIVIL ACTIONS.

I call attention again to the recommendation made by my predecessor in his report of last year, which was as follows:—

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.

Although a draft of bill was submitted in connection with this recommendation, no legislation was passed thereon. I respectfully suggest that the amendment be made at this session.

COLLECTION OF PENALTIES AGAINST PUBLIC-SERVICE CORPORATIONS.

R. L., c. 121, § 32, provides a forfeiture for failure to file annual returns, as therein prescribed, on the part of gas and electric light corporations. The method of collection, as the law now stands, must be by an action of tort, or criminal complaint, which is a slow and ineffective method in practice. I recommend that said section be amended so that suits for penalties may be brought by information in equity in the Supreme Judicial Court.

St. 1909, c. 483, § 3, provides that a fine shall be paid by gas companies for furnishing gas below the standard required, and provides that said fine shall be paid into the treasury of the Commonwealth. The method of collection of this fine is by an action of tort or the ordinary criminal procedure for the collection of a fine. This is a slow and ineffective method in practice, and I recommend that said section be amended so that the fine can be recovered by information in equity in the Supreme Judicial Court.

JURY SERVICE.

It has been called to my attention that from time to time it happens that the work in a criminal session gives out, in counties in which separate sittings of the Superior Court are established for civil and criminal business, and the jurors

could be advantageously used in a civil session; and sometimes, though less frequently, the work in the civil sessions gives out, and the jurors could be advantageously used in the criminal session. For the purpose of enabling the court to utilize the jurors in such event I recommend an amendment to section 29 of chapter 157 of the Revised Laws, so that said section shall read as follows:—

In the counties in which separate sittings of the superior court are established for civil and criminal business, criminal cases only shall be tried by jury at the criminal sittings, and civil cases only at the civil sittings, *but the jurors summoned for either civil or criminal business may by order of the court be used interchangeably for either criminal or civil business, as occasion may require.*

APPOINTMENT OF APPRAISERS.

It has been called to my attention that an ancient statutory provision, now R. L., c. 139, § 6, which provides that appraisers of the original inventory of an estate may be appointed by a disinterested justice of the peace is still sometimes acted under. As the almost uniform, and by far the better, practice is that such appraisers are appointed by the Probate Court, I recommend that the above statute be amended so that appraisers shall be appointed only by the Probate Court.

UNITED SHOE MACHINERY COMPANY.

In July the attention of this department was directed to certain alleged practices and business methods and arrangements employed by the United Shoe Machinery Company, and an investigation of the same was begun. Before it was fairly under way it became public that the United States government, through the Department of Justice, had been investigating the same matters for some five or six months, and that the whole subject had been submitted for consideration to the United States grand jury. The result of this action was the indictment in the federal court of several of the officers of the corporation. At that time I announced that these indictments would not prevent the continuance of the investigation by this department, as it

seemed to me that the indictment of these officials did not get at the meat of the objections to the alleged business methods of the corporation. I therefore continued the investigation so far as I was able. Recently, however, a proceeding in equity has been brought in the Circuit Court of the United States, entitled *United States of America, petitioner, v. United Shoe Machinery Company of New Jersey et als., defendants*, which appears to cover every point of complaint which has been brought to my attention concerning this matter. This action covers substantially the same procedure and ground that would be covered in case of prosecution under our State statutes. If successful, the result will be much broader and more far-reaching than any State proceeding could be, inasmuch as the corporations complained of are not Massachusetts corporations, and a large part of the operation of said companies is carried on outside of this Commonwealth. It has seemed to me, therefore, advisable to await the outcome of this petition in equity in the United States court before attempting to institute proceedings under our State law.

In this connection I desire to call attention to the fact that the Attorney-General ordinarily is not the officer of the State government to discover facts. His principal duty is to pass upon questions of law, the facts having been furnished by the various departments in connection with which opinion or action is ought. (See Opinion of Attorney-General Knowlton, 1 Op. Atty.-Gen. 275.) This department has no means provided for acquiring information and facts except through voluntary disclosure on the part of such persons as may have knowledge of them. In acquiring the information obtained in this particular case I have had to depend largely upon the efforts of the State police and certain other outside assistance. In a number of instances persons inquired of have refused to give the information requested or to discuss the matter. The effective way to acquire such information is by inquiry before a grand jury, where witnesses can be summoned and compelled to disclose their knowledge and information. In this connection I concur in the recommendation of His Excellency in his inau-

gural message, in substance that chapter 454 of the Acts of 1908 be amended by striking out, in the first line of section 2, the words "or by his direction," so that said section shall read: "The attorney-general, or a district attorney, may bring an action," etc.

DEPARTMENT OF THE ATTORNEY-GENERAL.

Without doubt the past year has been the busiest in the history of this department. This readily appears by comparison of the work with that of recent years. For instance, the number of cases standing upon the dockets of the department for 1905 was 2,534; for 1906, 2,858; for 1907, 2,610; for 1908, 3,398; for 1909, 3,321; for 1910, 3,363; and for 1911, 5,338.

Comparing the official opinions rendered, it appears that in 1906, 122 opinions were given; in 1907, 113; in 1908, 99; in 1909, 100; in 1910, 165; and in 1911, 246.

The cases disposed of during the year number 4,294, leaving now pending in the department 1,044 cases. It also appears that the amount of money collected in the way of fines, forfeitures and other collections is larger than in any preceding year, amounting to \$382,329.17.

It is to be noted that this increased amount of work has been carried on without any proportional increase in the expense of the department.

Twelve cases have been argued before the Supreme Court of the Commonwealth during the year.

There are two cases pending in the United States Supreme Court,—the case of *Commonwealth v. Jordan* on a writ of error from his conviction and sentence for murder, and *Commonwealth v. Baltic Mining Co.*, involving the constitutionality of the law concerning taxation of foreign corporations.

The case against The Provident Institution for Savings in Boston, brought under the provisions of St. 1907, c. 340, and St. 1908, c. 590, §§ 56 and 57, has been decided in favor of the Commonwealth by the Supreme Court of the United States and said institution has paid to the Treasurer \$114,729.14 thereunder. Petitions against other banks cov-

ered by said provisions are in process of filing, whereby, it is estimated some \$500,000 will be turned over to the Treasurer of the Commonwealth.

During the year, also, the so-called milk rate cases have been heard before the Interstate Commerce Commission, in which an intervening petition was filed by my predecessor. I attended the hearings of these cases before the Interstate Commerce Commissioner at the taking of testimony in Boston. A brief was submitted and argument made at the final hearing in Washington.

With reference to the order adopted by the General Court on June 2, 1911, to report as to whether the New York, New Haven & Hartford Railroad Company has complied with respect to the Springfield Street Railway Company with the order of the Supreme Judicial Court under date of June 23, 1908, I have to say that the answer to be given thereto is of such a special nature and so voluminous in its contents that I am compiling it in the form of a special report.

After a service of two years as law clerk and six years as Assistant Attorney-General, Mr. Fred T. Field leaves this department at the expiration of his official year, to enter upon private practice. During his term of service he has displayed marked ability, zeal and efficiency in the performance of his duties. His departure is a loss to the service of the Commonwealth.

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

Respectfully submitted,

JAMES M. SWIFT,
Attorney-General.

OPINIONS.

Armories — Use for Public Purposes — Rallies of Political Parties and Meetings for the Discussion of Public Questions.

Under the provision of St. 1908, c. 604, § 140, that "armories . . . shall not be used except by the organized militia for such military purpose or purposes incidental thereto as may be designated by the commander-in-chief: *provided, however,* that the commander-in-chief, upon terms and conditions to be prescribed by him and upon an application approved by the military custodian of an armory . . . may allow the temporary use of such armory for public purposes," an armory may be used for rallies of political parties or meetings for the discussion of questions of public policy which are of interest or benefit to the community at large.

JAN. 19, 1911.

Brig. Gen. GARDNER W. PEARSON, *Adjutant General.*

DEAR SIR: — In your communication of January 16 you state that you are directed by His Excellency the Governor to request a written opinion from the Attorney-General upon the question whether or not State armories may be used for rallies of political parties and for meetings for the discussion of questions of public policy.

St. 1908, c. 604, § 140, is as follows: —

Armories provided for the militia shall not be used except by the organized militia for such military purpose or purposes incidental thereto as may be designated by the commander-in-chief: *provided, however,* that the commander-in-chief, upon terms and conditions to be prescribed by him and upon an application approved by the military custodian of an armory provided in any city or town for the militia, may allow the temporary use of such armory for public purposes. The compensation fixed by the commander-in-chief for every such temporary use shall be paid to the treasurer and receiver general within ten days after the occupation of the armory for such temporary use ceases, accompanied by the certificate of the quartermaster general that the sum so paid is the correct amount; and all moneys so received shall be paid into the treasury of the commonwealth.

In an opinion dated Nov. 14, 1907, my predecessor advised the Adjutant-General that —

A consideration of these statutes shows that it was the intention of the Legislature to permit a qualified and restricted use of armories for purposes other than military purposes. The term "public purposes," as used in the existing law, must be taken to impart a still wider use than primarily permitted, although the Legislature has not defined its limits. It is a matter of some difficulty to arrive at a satisfactory definition of the words "public purposes" as used in said act. The word "public" is defined by the Century Dictionary to mean "open to all the people, shared in or to be shared or participated in or enjoyed by people at large; not limited or restricted to any particular class of the community;" and there is nothing in the statute under consideration which shows an intention of the Legislature to give to it any new meaning or to change the signification which is given to the word in ordinary speech.

I am of opinion, however, that, speaking generally, the words "public purposes" are intended to mean some purpose which is of general interest or benefit to the community at large, to which any person who desires may obtain admission, either with or without the payment of a reasonable fee.

In this conclusion I concur, and am of opinion that meetings of political parties which are of general interest to the community at large and to which any person who desires may obtain admission, as well as meetings of like character for the discussion of questions of public policy, are public purposes within the provisions of St. 1908, c. 604, § 140, above cited.

You further inquire "whether or not the Governor, as Commander-in-Chief, may allow the temporary use of armories for such purposes without charge." By reason of the provision that "the compensation fixed by the commander-in-chief for every such temporary use shall be paid to the treasurer and receiver general within ten days after the occupation of the armory for such temporary use ceases, accompanied by the certificate of the quartermaster general that the sum so paid is the correct amount, and all moneys so received shall be paid into the treasury of the commonwealth," I am of opinion that the statute does not contemplate that such use should be permitted without compensation therefor to the Commonwealth.

You further submit for my consideration an instruction, intended to be given to custodians of armories, as follows: —

The use of the drill sheds of armories for rallies of political parties or meetings for the discussion of questions of public policy is a public purpose.

You inquire whether or not such instruction is in accordance with the existing laws. With the qualification that rallies of political parties or meetings for the discussion of questions of public policy are such as to be of general interest or benefit to the community at large, I am of opinion that the instruction which you quote in substance agrees with existing laws.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Annual Appropriations — Statements of Amounts required for the Ensuing Fiscal Year — Governor and Council — Verification of Estimates — Examination and Audit of Books of Account.

St. 1910, c. 220, § 1, requiring that every officer or board having charge of any department, institution or undertaking which receives an annual appropriation from the treasury of the Commonwealth, shall annually submit to the Auditor statements in detail showing the amounts appropriated for the current fiscal year and required for the ensuing fiscal year, and that the Auditor shall combine such statements with a like statement relating to his own department in one document, to be printed and submitted on or before the first Thursday in January to the Governor and Council for examination, and by the Governor transmitted to the General Court with such recommendations as he may deem proper, does not confer upon the Governor and Council, or upon the Governor alone, any new or additional authority to examine, for the purpose of verifying or otherwise investigating such statements, the expenditures or books of accounts of, or to prescribe for such purpose the method of accounting which shall be used by, any State officer or board.

JAN. 21, 1911.

His Excellency the Governor and the Honorable Council.

GENTLEMEN: — You have orally required my opinion upon the question of your authority, under the provisions of St. 1910, c. 220, to verify or to make investigation with reference to the estimates submitted to you by officers or boards having charge of any department, institution or undertaking which receives an annual appropriation of money from the treasury of the Com-

monwealth in accordance with such provisions, by examining and auditing the books and accounts or prescribing the methods of accounting of such officers or boards.

The statute to which you refer is as follows:—

SECTION 1. Every officer or board having charge of any department, institution or undertaking which receives an annual appropriation of money from the treasury of the commonwealth, including annual appropriations to be met by assessments, shall, annually, on or before the fifteenth day of November, submit to the auditor of the commonwealth statements in detail showing the amount appropriated for the current fiscal year and the amounts required for the ensuing fiscal year, with an explanation of the reason for any increased appropriation, and with citations of the statutes relating thereto, and with a statement of the expenditures for the current year and for each of the next preceding two years. The said estimates shall not include any estimates for special purposes or objects. The auditor of the commonwealth shall embody the said statements, with a like statement relating to his own department, in one document, which shall be printed, and shall be submitted on or before the first Thursday in January of each year to the governor and council for examination, and the governor shall transmit the same to the general court with such recommendations, if any, as he may deem proper. The auditor shall also submit his estimates for the ensuing fiscal year for the ordinary and other revenue of the commonwealth which shall be made a part of the document herein provided for. Copies of the document shall be distributed to the members of the general court.

SECTION 2. Officers, heads of departments, boards, commissions and trustees of institutions, who, in their annual reports, or otherwise, recommend appropriations from the state treasury for special purposes or objects, including appropriations to be met by assessments in addition to the ordinary running expenses, shall submit estimates thereof in detail to the auditor of the commonwealth on or before the fifteenth day of November in each year, and he shall classify them and embody them in one document which shall be printed, and shall be submitted on or before the first Thursday in January of each year to the governor and council for examination, and the governor shall transmit the same to the general court with such recommendations, if any, as he may deem proper. He shall make recommendation as to how much should be raised by the issue of bonds and how much should be paid out of current revenue. Copies of the document shall be distributed to the members of the general court.

SECTION 3. The plans, estimates and specifications made in accordance with the provisions of chapter five hundred and twenty

of the acts of the year nineteen hundred and seven, or of amendments thereof, relating to any improvement described in either of the documents aforesaid, shall at the same time be submitted to the governor and council.

SECTION 4. The auditor shall furnish to the governor and council such further information in regard to the revenue, expenditures and other financial operations of the commonwealth, and in such form as the governor may require.

SECTION 5. The governor may, in his discretion, transmit to the general court from time to time, with his recommendations, if any, thereon, particular items in either of the said documents, and may withhold other items for further investigation.

SECTION 6. Section twenty-six of chapter six of the Revised Laws, as amended by section six of chapter two hundred and eleven of the acts of the year nineteen hundred and five and section five of chapter five hundred and ninety-seven of the acts of the year nineteen hundred and eight, and all acts and parts of acts inconsistent herewith, are hereby repealed.

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

It is to be observed that this statute provides that the Auditor shall in the first instance receive the estimates of State officers and boards and transmit them to the Governor and Council for examination, together with estimates for ordinary and other revenue of the Commonwealth made by him, and that the only power vested in the Governor with respect to such estimates is that of making such recommendations as he may deem proper. It is also made the duty of the Auditor to furnish to the Governor and Council further information in connection with such estimates regarding the revenue, expenditures and other financial operations of the Commonwealth in such form as the Governor may require.

I am of opinion that this statute does not confer upon the Governor and Council, or upon the Governor alone, any new or additional right to examine the expenditures or books of account of, or to prescribe the method of accounting which shall be used by, any State officer or board for the purpose of verifying or otherwise investigating the estimates so required. It is already provided by St. 1908, c. 597, § 4, that —

Under the direction of the auditor, the supervisor of accounts shall direct and control all the accounts in all departments, and shall have full authority to prescribe, regulate and make changes in the methods of keeping and rendering accounts, and shall see that they are properly maintained, and that all items are correctly allocated

between capital receipts and disbursements and operating revenue and expense. He shall establish in each department a proper system of accounts, which shall be uniform so far as is practicable. He shall establish a proper system of accounting for stores, supplies and materials, and may provide, where he deems it necessary, for a continuing inventory thereof. He may inquire into the methods of purchasing and handling such stores, supplies and materials by the departments, reporting to the auditor such changes as may in his judgment be deemed wise. He shall provide such safeguards and systems of checking as will insure, so far as is possible, the proper collection of all revenue due the commonwealth; and, where he deems it necessary, shall provide that forms and receipts shall be numbered consecutively, making the departments responsible for their use or cancellation;

and by section 6 that —

Whenever the word “departments” occurs in this act it shall be understood to include all departments, boards, commissions, institutions and offices of the commonwealth which incur expense or to which income accrues, unless the context requires a different interpretation.

Under these provisions of law the Auditor is given full authority to prescribe, regulate and make changes in the methods of keeping or rendering accounts in all State departments, boards, commissions and offices, and to see, by audit or otherwise, that they are properly maintained; and there is nothing in the language of St. 1910, c. 220, to warrant a conclusion that by its enactment the Legislature intended to supersede or modify the authority of the Auditor under the statutes above cited by conferring upon the Governor and Council any supervision or control of public expenses or the methods of accounting therefor. Upon the contrary, it is the obvious intention of the latter statute that the estimates furnished to the Governor and Council in accordance with its requirements should be furnished through the Auditor, and that any additional information which may be required in the premises should be supplied by him (§ 4).

The general power of the Governor and Council to investigate the expenditures of State officers, boards or commissions was made the subject of an opinion by my predecessor to His Excellency the Governor, dated April 26, 1909 (Attorney-General's Report, 1909, p. 31), in which it was stated that —

The Governor and Council may at any time examine such bills and vouchers in the Auditor's department, and thus familiarize

themselves with the expenditures of the Commonwealth as much as they wish. They may take such measures as they see fit to ascertain that the money appropriated for the various institutions in the Commonwealth is being expended in the manner intended by the Legislature, and may make such personal investigation at the institutions themselves as may be necessary to make sure that this is being done; but they have no right to say that the money appropriated by the Legislature shall not be expended in the way authorized by it. There are various departments under the immediate supervision of the Governor, and in such departments it is his duty to see that the money appropriated is properly expended therein. There are other departments in which it is the duty of the head of such departments to see that the money appropriated is properly expended, and for which the Governor is not responsible, and in which he has no authority except so far as may be necessary to see that the warrants are drawn in accordance with the appropriations authorized by the Legislature. Should the Governor and Council be of opinion that the finances of any institution are not being properly and economically expended, the remedy would be by removal of the trustees or other officers over whom they have authority, in accordance with the statutes in such case made and provided. To this extent, under the Constitution and law of the Commonwealth the Governor and Council have authority to investigate the expenditures of any department, and to familiarize themselves as much as they see fit with any of the expenditures of the Commonwealth.

I am, therefore, forced to the conclusion that, in the investigation of the estimates submitted to the Governor and Council, under the provisions of St. 1910, c. 220, the Governor and Council are not authorized to audit the books or accounts of any officer or board whose estimates are before them for consideration, or to prescribe any method of accounting to be followed by such officer or board, and that such information as may be required with respect to matters of finance, in addition to that supplied by the estimates themselves, is to be furnished by the Auditor in such form as the Governor may require.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Civil Service Commission — City of Boston — Appointment to Office — Investigation — Public Records.

In the performance of the duties required by St. 1909, c. 486, § 10, that the Civil Service Commission shall make a careful inquiry into the qualifications of a nominee for office in the city of Boston, under such rules as they may, with the consent of the Governor and Council, establish, such commission act in a special and limited capacity under the authority of that section alone, and they are not controlled by the general provisions relating to civil service, in R. L., c. 19, and in the rules formulated thereunder.

Letters and other memoranda received by the Civil Service Commission in the course of the investigation provided for in St. 1909, c. 486, § 10, are not received, and are not required to be received, for filing within the meaning of R. L., c. 35, § 5, providing that the words "public records" shall mean "any written or printed book or paper, any map or plan of the commonwealth or of any county, city or town which is the property thereof and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the commonwealth or of a county, city or town has received or is required to receive for filing;" and they are not, therefore, public records as therein defined.

A member of the Legislature has no greater right to inspect letters or papers which are in the possession of the commission but are not public records, than has any other member of the public.

JAN. 28, 1911.

WARREN P. DUDLEY, Esq., *Secretary, Civil Service Commission.*

DEAR SIR: — By the provisions of section 10 of chapter 486 of the Statutes of 1909, "An act relating to the administration of the city of Boston and to amend the charter of the said city," certain duties with respect to the appointment of heads of departments and members of municipal boards in the city of Boston were vested in the Civil Service Commission upon the receipt of a certified copy of a certificate of appointment from the mayor in the form provided in such section: —

The commission shall immediately make a 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 they conclude that he is a competent person with the requisite qualifications, they shall file with the city clerk a certificate signed by at least a majority of the commission that they have made a careful inquiry into the qualifications of the appointee, and that in their opinion he is a recognized expert, or that he is qualified by education, training or experience for said office, as the case may be, and

that they approve the appointment. . . . If the commission does not within thirty days after the receipt of such notice file said certificate with the city clerk the appointment shall be void.

In the performance of these duties the Civil Service Commission have formulated certain regulations which, so far as material, are:—

2. Upon receipt of the said copy of certificate of appointment the Civil Service Commission shall make such inquiry concerning the training, experience, character and qualifications of the appointee as it judges necessary.

3. Upon request from the Civil Service Commission, the mayor shall furnish to it such information as it may call for relating to the age, residence, experience, training, character and qualifications of the appointee; and he shall forward to it any and all correspondence, papers, petitions, recommendations and protests in his possession relating to the appointee, all of which shall be returned to the mayor within thirty days after receipt from the city clerk of said copy of certificate of appointment.

The city council and city clerk of Boston, and all commissioners and commissions appointed by the Governor, shall, upon request from the Civil Service Commission, furnish to it such information as it may call for relating to the age, residence, experience, training, character and qualifications of the appointee.

In connection with the careful inquiry which is required by the statute the commission have invited communications, both oral and in writing, with reference to persons appointed under the provisions of St. 1909, c. 486, § 9, and, as you state in your letter, "have, in fact, used many sources of information— data furnished in writing by the mayor or by the appointee; personal conferences at the State House by the commission with the appointee and with other citizens; personal investigation by the individual commissioners; testimony of sworn witnesses taken at the State House by the commission; official city and State reports and other documents; reports and notes made by agents and inspectors employed by the commission; letters written to the commission voluntarily by various citizens; letters written by citizens in response to letters of inquiry sent out by the commission; letters written by citizens presumably in response to a general invitation to the public made by the commission in a notice issued to the press April 6, 1910." The notice to which you refer was as follows:—

APRIL 6, 1910.

In order that the Civil Service Commission may fulfill in the most complete manner possible the duty imposed upon it by chapter 486 of the Acts of 1909 in making "the careful inquiry" therein required into the qualifications of nominees for the positions of heads of departments, and in order that no injustice may be done to any nominee, or to the mayor of the city of Boston, or to the public, by reason of the failure on the part of the commission to receive the fullest information, the commission hereby issues this formal notice that information as to the qualifications of a nominee presented to the commission at its office in the State House by any one, in person, or in writing over his signature, will be considered in the investigation which the commission will undertake under the rules framed by it and approved by the Governor and Council.

You further advise me that a request in writing has been made by a member of the present Legislature, in the form following:—

So that your Board may have a definite request before you in writing, I respectfully submit the following:—

As a member of the Legislature of 1911, and for the purpose of obtaining accurate information relating to a matter of legislation before said body, I desire to examine at your office at the State House, in the presence of the secretary of the Board, all the letters, petitions, communications, recommendations for and against the certification of Morris L. Morrison as a member of the board of assessors, and Joseph P. Lomasney as a member of the board of health of the city of Boston.

A further request was thereafter made by the said member that the matter be referred to the Attorney-General, and in accordance therewith the Civil Service Commission submitted for the decision of the Attorney-General the following specific questions:—

(1) Are such letters and papers, described as above, "records of their proceedings" or "recommendations of applicants received by them or by any officer authorized to make appointments, or to employ laborers or others within the scope of such rules," within the meaning of R. L., c. 19, § 5, and such as are under that statute required "to be preserved" and "to be open to public inspection?"

(2) Are such letters and papers "public records," within the definition prescribed in R. L., c. 35?

(3) Are the commissioners under obligation by law to allow an individual member of the Legislature to inspect such letters and papers ? ”

On January 20, in accordance with a request of the said member, a hearing was given by me, at which the Civil Service Commission was represented by its secretary, and the said member was fully heard upon all the questions raised by his original communication to the Civil Service Commission and by the inquiries of the commission as above quoted. To his statements and arguments I have given most careful consideration. Upon so much thereof as was addressed to the propriety of permitting an examination of letters or documents in the nature of evidence for or against persons appointed to office under the provisions of St. 1909, c. 486, § 9, which may be in the possession of the Civil Service Commission, as a matter of policy or fairness I cannot assume to pass except in so far as such considerations are involved in the construction of the statutes which are applicable in the premises.

Replying specifically to the questions of the Civil Service Commission, therefore, my opinion is as follows:—

(1) R. L., c. 19, § 5, provides that the commission —

shall keep records of their proceedings and of examinations made by them or under their authority. Recommendations of applicants received by them or by any officer authorized to make appointments or to employ laborers or others, within the scope of such rules, shall be preserved. Such records and recommendations shall, under regulations approved by the governor and council, be open to public inspection.

This provision of law is found in the general statute which provides for 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” (section 6), under rules prepared by the commission and approved by the Governor and Council, which include —

The classification of the positions and employments to be filled.

Open competitive and other examinations to test the practical fitness of applicants.

The filling of vacancies in and the selection of persons for public

positions and employments in accordance with the results of such examinations, or in the order of application, or otherwise.

Promotions, if practicable, on the basis of ascertained merit in the examination and seniority of service.

A period of probation before an appointment or employment is made permanent.

Preference to veterans in appointment and promotion.

It is clear that in the performance of the duties required by the provisions of St. 1909, c. 486, § 10, hereinbefore quoted, the commission act in a special and limited capacity, under the authority of that section alone. They are not to be controlled by the general provisions relating to civil service, which are to be found in R. L., c. 19, and in the rules formulated thereunder. (See section 9.) The provisions of R. L., c. 19, § 5, therefore, have no application to the proceedings of the commission under St. 1909, c. 486, § 10.

(2) R. L., c. 35, § 5, defined the words "public records" as follows:—

In construing the provisions of this chapter and other statutes, the words "public records" shall, unless a contrary intention clearly appears, mean any written or printed book or paper, any map or plan of the commonwealth or of any county, city or town which is the property thereof and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the commonwealth or of a county, city or town has received or is required to receive for filing, and any book, paper, record or copy mentioned in the six following sections. The word "record" shall, in this chapter, mean any written or printed book, paper, map or plan.

Speaking of this section, in an opinion dated Sept. 22, 1902 (II. Op. Atty. Gen. 381), the Attorney-General stated that—

This legislative definition cannot be held to include within its intention every paper which an officer of the Commonwealth receives and files. It must be limited to such as he is required by law to so receive for filing. Any other construction must be prejudicial to the rights and interests of the Commonwealth or its officers, and, indeed, of parties or persons making communications with such officers.

And see Attorney-General's Report, 1907, p. 60. This section has been construed and this view has been confirmed in the case of *Round v. Police Commissioner*, 197 Mass. 218, where, at page 220, the court say:—

The petitioner contends that such a paper, returned to the Licensing Board, is a public record under the R. L., c. 35, § 5, because it is a paper which an officer of the city has received or is required to receive for filing. An examination of this section shows that it relates to books, papers and maps which are intended for the use of the public. We are of opinion that the returns by pawnbrokers are not papers received for filing. There are statutes which require that certain papers be filed in the office of the city or town clerk, or in some registry, for inspection by all persons interested. Such papers are "received for filing" within the meaning of the statute; but the statute as to returns by pawnbrokers makes no provision for filing. The licensing boards may preserve them in such a way as they choose.

While the facts in the two cases are not identical, I am bound to follow the construction therein declared. To make any letter, paper or document in the possession of the Civil Service Commission a "public document" within the meaning of R. L., c. 35, § 5, therefore, the commission must have received or must be required to receive such letter, paper or document for filing under the terms of some particular statute. No such requirement is to be found in St. 1909, c. 486, § 10. The commission are broadly authorized to "make a 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 their conclusion is favorable to such nominee, they are required to file with the city clerk a certificate to that effect. This inquiry is to be governed only by their discretion and by such rules as, with the consent of the Governor and Council, they may adopt for their own guidance.

The rules so far adopted, which I have already quoted, do not in my opinion require the filing of any letter, paper or document by the commission. They do, in Rule 3, require the mayor to forward to the commission "any and all correspondence, papers, petitions, recommendations and protests in his possession relating to the appointee," and they provide for the return of the same, after the commission have reached a decision, but this provision has no bearing upon like documents addressed to and received by the commission in the course of their inquiry, and, so far as it is material at all, suggests an intent that such matters should not be retained and filed by the commission.

I am therefore constrained to conclude that the letters and other memoranda to which your inquiry is directed are not

received for filing, and are not required to be filed, by any law which has been called to my attention. They are received by the commission in connection with the specific duties required by the provisions of St. 1909, c. 486, § 10, for the purpose of aiding the commission in the performance of those duties. The commission are not required to receive or to retain and preserve them; and they are retained and preserved, if at all, only for the information or convenience of the commission. Since they are not received and are not required to be received for filing, within the meaning of R. L., c. 35, § 5, they are not public records as defined in that section.

(3) A member of the Legislature, as such, has no greater right to inspect letters or papers which are in the custody of the commission, but are not public records, than has any other member of the public, and his individual rights are to be measured by those of the public generally.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Volunteer Militia — Armory Commission — Construction of Armories.

The duty of the armory commission, under the provision of St. 1908, c. 604, § 133, as amended by St. 1909, c. 323, § 1, that "if in their judgment the needs of the service demand it, subject to the approval of the commander-in-chief, . . . shall construct armories, not exceeding three yearly, until the volunteer militia shall be provided with adequate quarters," is to construct armories until the volunteer militia are provided with adequate quarters, subject to the limitation that there shall not be under construction in any one year more than three such armories.

FEB. 3, 1911.

Brig. Gen. GARDNER W. PEARSON, *Adjutant General*.

DEAR SIR: — Relative to the construction of St. 1908, c. 604, § 133, as amended by St. 1909, c. 323, § 1, which, so far as material, is as follows: —

The armory commissioners shall rebuild, remodel or repair armories of the first class which have been injured or destroyed by fire, and may reconstruct, remodel, enlarge or otherwise improve existing state armories, if in their judgment the needs of the service demand it, subject to the approval of the commander-in-chief, and, in addition, shall construct armories, not exceeding three yearly, until the volunteer militia shall be provided with adequate quarters.

you submit the following questions for my opinion:—

1. Must the armory commission build any armories?
2. Must they build from one to three?
3. Must they build three each year?

Assuming that to the first and second questions should be added the word “yearly,” I understand your inquiry is in substance to require my opinion upon the duties of the commissioners with respect to the construction of armories in any given year.

The duty of the commission seems to be plain. They are to “construct armories . . . until the volunteer militia shall be provided with adequate quarters.” The provision that they shall not construct more than three of such armories yearly is a limitation upon this duty. Except for this limitation the matter is in the discretion of the commission, and if they in good faith construct armories as rapidly as possible for the accommodation of the volunteer militia they are not required in any one year to begin the construction of either one, two or three new armories. I am of the opinion that the limitation above referred to means that the commission shall not have under construction in any one year more than three such armories.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

License — Keeper of Hospital for Care of Insane and Feeble-minded — Suitable Person — Resident or Consulting Physician.

Under the provisions of St. 1909, c. 504, § 24, that “the governor and council may, upon the recommendation of the state board of insanity, license any suitable person to establish and keep a hospital or private house for the care and treatment of the insane, epileptic, feeble-minded, and persons addicted to the intemperate use of narcotics and stimulants,” a physician who is employed by the owner or owners of such hospital or private house as resident physician in charge, or who is on the staff of consulting physicians connected therewith, is not a suitable person to receive such license.

FEB. 8, 1911.

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

DEAR SIR:— You have requested my opinion in regard to the provisions of section 24 of chapter 504 of the Acts of the year 1909, which is as follows:—

The governor and council may, upon the recommendation of the state board of insanity, license any suitable person to establish and keep a hospital or private house for the care and treatment of the insane, epileptic, feeble-minded, and persons addicted to the intemperate use of narcotics or stimulants, and may at any time revoke such license. No such recommendation shall be made unless the said board is satisfied that the person applying therefor is a duly qualified physician, as provided in section thirty-two, and has had practical experience in the care and treatment of such patients. Any person owning or maintaining such a hospital or private house on the date of the passage of this act shall be entitled to maintain the same under the provisions of law in force at that time, except that every such hospital or house shall be subject to the visitation and supervision of the state board of insanity.

Your specific inquiries are as follows:—

1. Is a physician, who is employed by the owner or owners as resident physician in charge, on a salary or for a share in the profits, a proper person to be granted a license under this section?
2. Is a physician, who is not in charge of or residing in such a hospital or private house and who has no pecuniary interest in the business, but who is on the staff of consulting physicians, a proper person to be granted a license under this section?

In my opinion it is contemplated by the statute that a license “to establish and keep a hospital or private house for the care and treatment of the insane, epileptic, feeble-minded, and persons addicted to the intemperate use of narcotics or stimulants,” shall be granted only to a person who is to be the responsible head of such hospital or private house, that is, “to one who exercises control or proprietorship” of it. Cf. *Commonwealth v. Kimball*, 105 Mass. 465, 467. On this view of the law it is obvious that the answer to your second inquiry must be in the negative. Your first inquiry raises a more difficult question, but in my judgment it must be answered in the same way. The “physician who is employed by the owner or owners as resident physician in charge” is not the responsible head of the hospital or private house in such a sense as to entitle him to be licensed.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

County Treasurer — Salaries of Clerks of the Court, County Commissioners and County Treasurer — Increased Population — Readjustment.

Further legislative authority is required before a county treasurer may lawfully pay increased salaries to the clerks of the courts, the county commissioners and the county treasurer upon the basis of increased population as determined by St. 1904, c. 451, § 1.

MARCH 3, 1911.

FRANK L. DEAN, Esq., *Controller of County Accounts.*

DEAR SIR:— By your letter of February 2 you request my opinion upon the construction to be given to St. 1904, c. 451, "An Act relative to the salaries of clerks of the courts, county commissioners and county treasurers," in which it is provided, in section 1, that—

The counties of the commonwealth, for the purpose of establishing the salaries of clerks of the courts, county commissioners and county treasurers, are hereby divided into nine classes, according to the following table; and the annual salaries of the clerk of the courts, county commissioners and county treasurer, in full for all services performed by them, for each county in a class, shall be as therein specified, payable by the said county in monthly instalments.

Then follow nine classes, A, B, C, D, E, F, G, H and I, of which classes A and D may be taken as examples.

Class A. Counties having a population of less than fifteen thousand, to wit, the counties of Nantucket and Dukes County; salaries:— Clerk of the courts, six hundred dollars; commissioners (Nantucket, none), four hundred dollars; treasurer (Nantucket, none), three hundred dollars.

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Class D. Counties having a population of from sixty thousand to ninety thousand, to wit, none; salaries:— Clerk of the courts, twenty-four hundred dollars; commissioners, twenty-two hundred dollars; treasurer, eleven hundred dollars.

The precise question upon which you desire to be advised is whether or not the county treasurer, upon being satisfied by official information of the result of the latest census, is authorized to pay to the clerks of the courts, the county commissioners and to himself as county treasurer, salaries under the next higher class in any case where the census shows that a county

has gained sufficiently in population to be taken from the class below and placed therein.

The act to which you refer forms one of five statutes passed in 1904; the other four being chapter 452, "An Act to establish the salaries of registers of deeds and assistant registers of deeds;" chapter 453, "An Act to establish the salaries of the justices, clerks and assistant clerks of certain police, district and municipal courts;" chapter 454, "An Act to establish the salaries of the chief justice, associate justices, clerks and assistant clerks of the municipal court of the city of Boston;" and chapter 455, "An Act to establish the salaries of the judges, registers and assistant registers of probate." Chapter 452, relative to the salaries of registers of deeds and assistant registers of deeds, provides, in section 1, that "registers of deeds shall receive annual salaries based upon the following scale," and establishes three classes, A, B, and C. In section 2 it was provided that —

The salaries of registers of deeds and assistant registers of deeds hereinbefore specified shall be readjusted in January, nineteen hundred and six, and every five years thereafter, upon the basis of the average yearly receipts of the respective registries for the five preceding years, in accordance with the classification set forth in section one.

Chapter 455 was substantially similar in form, providing, in section 1, that —

Judges, registers and assistant registers of probate shall receive from the treasury of the commonwealth annual salaries based upon the following scale. If the amount in any case comprised in the first two classes exceeds an even hundred number of dollars by a sum less than fifty dollars, the excess shall be deducted; and if the excess is fifty dollars or more a sum shall be added sufficient to make the excess an even hundred dollars. . . .

Section 2 provides: —

Salaries of judges, registers, and assistant registers of probate shall be readjusted in the year succeeding each national or state census, in accordance with the classification set forth in section one.

Both of these statutes contain express provision for readjustment at regular periods upon the basis of population or receipts of money.

Chapters 451 and 453, which establish classes according to population, contain no such provision for readjustment, and do not refer to the State or national census, or to any other official determination of the population upon which the divisions are to be based. They both purport to establish salaries, and not to establish divisions by which the salaries are to be determined from time to time.

Chapter 451 has been several times amended. St. 1905, c. 179; St. 1906, cc. 276, 290; St. 1907, c. 253; St. 1910, c. 537; and see St. 1907, c. 145, § 2; St. 1909, c. 232. But none of these amendments is of much assistance in determining the question now under consideration. In the case of chapter 453, however, a statute which in form is substantially like chapter 451, the amendments are more instructive. Thus, in St. 1905, c. 165, it is provided that —

The police court of Lowell, being a court the judicial district of which has, and has had since the twenty-fifth day of April in the year nineteen hundred and four, a population of more than one hundred thousand, shall be included in class B as defined in section one of chapter four hundred and fifty-three of the acts of the year nineteen hundred and four, entitled "An Act to establish the salaries of the justices, clerks and assistant clerks of certain police, district and municipal courts"; and the salaries of the justice, special justices, clerk and assistant clerk of the police court of Lowell shall be those which are established by said chapter for the courts included in the said class B, to be so allowed from the first day of July in the year nineteen hundred and four.

And in St. 1908, c. 323, which, in like terms, transferred the police court of Lawrence from Class D, where it was placed by chapter 453, to Class C, such transfer was made by reason of an increased population which entitled it to be so transferred. See also St. 1906, c. 325. Of more significance than either of these, however, is St. 1905, c. 339, which provided for a specific readjustment after the taking of the decennial census of the year 1905, to be "effected in each case by the county treasurer of the county concerned, in accordance with the provisions of said chapter [St. 1904, c. 453]; and, beginning with the first day of January in the year nineteen hundred and six, the said salaries shall be paid according to the said readjustment." And finally, in St. 1910, c. 501, it was provided, in section 1, that —

The salaries of the justices, clerks and assistant clerks of the district, police and municipal courts, other than the municipal court of the city of Boston, and the classes into which said courts are distributed, when the population of the judicial district of each of said courts as ascertained by the last preceding national or state census permits it, shall be so readjusted, by the officer paying the salary, as to correspond with the classes and salaries provided for by chapter four hundred and fifty-three of the acts of the year nineteen hundred and four, and acts in amendment thereof and in addition thereto. Payment of salaries so readjusted shall begin on the first day of July of the year in which said census is taken.

The obvious purpose of this statute was to establish a method by which the salaries of the officers included within the provisions of St. 1904, c. 453, might be readjusted in accordance with the schedules of salaries contained in that chapter without further recourse to the Legislature, and furnishes the strongest evidence that without such additional provision the Legislature did not deem that the statute as originally enacted authorized such readjustment. Since St. 1904, c. 451, is in form substantially similar to chapter 453, I can see no reason why the construction given to the latter chapter should not apply to the former, and I must, therefore, advise you that in my opinion further legislative authority is required before the county treasurer may lawfully pay increased salaries to the clerks of the courts, the county commissioners and the county treasurer upon the basis of an increased population of the county concerned.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

State Board of Health — Sources of Water Supply — Regulation — Artificial Reservoirs — Boating and Fishing.

R. L., c. 75, § 133, as amended by St. 1907, c. 467, § 1, providing in part that the State Board of Health "may make rules and regulations to prevent the pollution and to secure the sanitary protection of all such waters as are used as sources of water supply," and "may delegate the granting and withholding of any permit required by such rules or regulations to state boards and commissions and to selectmen in towns and to boards of health, water boards and water commissioners in cities and towns, to be exercised by such selectmen, boards and commissions . . . ; and upon complaint of any person interested said board shall investigate the granting or withholding of any such permit and make such orders relative thereto as it

may deem necessary for the protection of the public health," does not authorize the State Board of Health, upon petition of certain inhabitants of a town requesting such Board to cause suitable rules and regulations to permit fishing in certain reservoirs artificially constructed and now owned and used as a source of water supply by such town, to require the water and sewer board thereof to issue permits for fishing, since the regulation of boating or fishing or of any use of such reservoirs which does not directly relate to the preservation of the purity thereof is for such town to establish.

MARCH 7, 1911.

HENRY P. WALCOTT, M.D., *Chairman, State Board of Health.*

DEAR SIR:— By a communication dated February 25 you seek my opinion upon certain questions respecting the rights of the State Board of Health in the matter of a petition which has been entered by certain inhabitants of the town of Winchester, requesting that the Board cause suitable rules and regulations to permit fishing in certain reservoirs owned and used as a source of water supply by the town of Winchester. The facts as presented by the communication of the Board and the papers annexed thereto, so far as material, appear to be substantially as follows —

Under the provisions of St. 1872, c. 265, and St. 1873, c. 277, the town of Winchester was authorized to construct, own and maintain reservoirs in the territory lying along the easterly side of the town within its limits and in the adjoining towns of Medford and Stoneham, and subsequently did construct, and now owns and maintains, three reservoirs on small streams which are the headwaters of certain tributaries of the Aberjona River or Mystic Lake. One of these reservoirs, known as the North Reservoir, is situated partly in Stoneham and partly in Winchester; another, the South Reservoir, is wholly within the limits of the city of Medford, and the Middle Reservoir is situated chiefly in Stoneham but partly also in Winchester and Medford. A large part of the area which constitutes the watershed of these reservoirs is the property of the town of Winchester and the remaining portion of these watersheds is within the limits of the metropolitan parks reservation. I am advised, and, therefore, assume, that the town of Winchester owns in fee the beds of the several reservoirs and the land surrounding them, and that none of the three is a great pond or charged with any of the public rights to which, in the absence of restrictive legislation, great ponds are subject.

On April 1, 1909, acting upon the petition of the water and

sewer board of the town of Winchester, the State Board of Health adopted certain rules and regulations for the purpose of preventing the pollution and securing the sanitary protection of the three reservoirs above mentioned. These rules were adopted under authority of R. L., c. 113, § 75, and, among other things, provided:—

13. No person shall bathe in, and no person shall, unless permitted by a written permit of the water and sewer board of the town of Winchester, fish in, or send, drive or put any animal into, North Reservoir, so called, in the towns of Stoneham and Winchester, Middle Reservoir, so called, in the towns of Stoneham and Winchester and the city of Medford, or South Reservoir, so called, in the city of Medford, said reservoirs being used by the town of Winchester as sources of water supply. No person other than a member, officer, agent or employee of said water and sewer board, or public officer whose duties may so require, shall, unless so permitted by a written permit of said board, enter or go, in any boat, skiff, raft or other contrivance, on or upon the water of either of said reservoirs, nor shall enter or go upon, or drive any animal upon, the ice of either of said reservoirs.

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The granting and withholding of permits required by rules 13 and 14 is hereby delegated by the State Board of Health to the water and sewer board of the town of Winchester.

The petition filed with the State Board of Health recites that “at divers times since the adoption of the aforesaid Rules and Regulations by said State Board of Health, they (the petitioners) have made application to the water and sewer board of the town of Winchester for permits to fish in said reservoirs, but that said Board has always refused to grant the same,” and that a petition presented to said Board by the same petitioners, requesting that permission to fish might be issued under rules and regulations which should be sufficient to preserve the purity of the water, was refused by the Winchester Water and Sewer Board. The petition then prays that the State Board “cause to be prepared forthwith suitable rules and regulations under which fishing in said reservoirs may be carried on, and that said Winchester water and sewer board, or such other board or boards, individual or individuals, as may in the judgment of this Board be deemed expedient, be directed to grant such permits in accordance with such rules and regulations.”

The jurisdiction of the State Board of Health in the premises

is founded upon the provisions of R. L., c. 75, § 113, which, as amended by St. 1907, c. 467, § 1, provides as follows:—

Said board may cause examinations of such waters to be made to ascertain their purity and fitness for domestic use or their liability to impair the interests of the public or of persons lawfully using them or to imperil the public health. It may make rules and regulations to prevent the pollution and to secure the sanitary protection, of all such waters as are used as sources of water supply. Said board may delegate the granting and withholding of any permit required by such rules or regulations to state boards and commissions and to selectmen in towns and to boards of health, water boards and water commissioners in cities and towns, to be exercised by such selectmen, boards and commissions, subject to such recommendation and direction as shall be given from time to time by the state board of health; and upon complaint of any person interested said board shall investigate the granting or withholding of any such permit and make such orders relative thereto as it may deem necessary for the protection of the public health.

While the duty of the State Board of Health under this and the preceding section (section 112), which vests in said Board 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, is primarily to prevent pollution and to secure the sanitary protection of waters which are used as sources of water supply, it has, by reason of the amendment contained in St. 1907, c. 467, not only the right to delegate power to grant or withhold permits to boat, fish or cut ice upon sources of water supply, but also the duty, upon complaint, to investigate the granting or withholding of such permits, which partakes of the nature of an appellate jurisdiction; and, in the case of a great pond, a petition like the present would probably require some action upon the part of the Board in the nature of a review of the proceedings of the State or local authorities to whom had been delegated the granting and withholding of any permits required by the rules and regulations of the Board, and a consideration of their action with respect to the withholding or granting of any particular permit or permits concerning which complaint was made by the petitioner.

In the present case, however, upon the assumption already made, the town of Winchester, in its corporate capacity, owns the shores, the bed and the waters of all three reservoirs; and,

while the State Board of Health may restrict their use because they are sources of water supply, it can have no right, without the consent of the town, or of the authorized agents of the town, in the premises, who may be assumed to be the Water and Sewer Board of Winchester, to require any use thereof which is not necessary for the purpose of protecting them as such sources of water supply. In the case of a great pond a rule which permits fishing or boating either continues an existing public right or revives one which for a time has been prohibited, but here the Board is not dealing with a great pond, but with an artificial reservoir in which the public have no rights, and which, apart from such regulations as may be necessary to protect its purity as a source of water supply, is subject to such use for fishing or boating as the town of Winchester, or its agents, may see fit to make of it, subject to the general laws which govern the preservation and the taking of fish.

I am, therefore, of opinion that the State Board of Health has no authority to require the water and sewer board of Winchester to issue permits for fishing, and that the regulation of boating or fishing, or of any use of the reservoirs in question which is not directly required to preserve the purity thereof, is for the town of Winchester to establish or determine.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Civil Service — City of Boston — Veterinary Inspector, Veterinary Medical Inspector and Veterinarian.

The positions of "veterinary inspector," "veterinary medical inspector" and "veterinarian" are within the classification established by civil service rule 7, class 11, which includes "inspectors other than inspectors of work, and persons doing similar work, excepting railroad inspectors, in the service of the Commonwealth or of any city thereof," and are therefore subject to the civil service law and rules.

MARCH 11, 1911.

WARREN P. DUDLEY, Esq., *Secretary, Civil Service Commission.*

DEAR SIR:—In behalf of the Civil Service Commission you request my opinion as to whether the positions in the health department of the city of Boston, termed, respectively, "veterinary inspector," "veterinary medical inspector" and "veterinarian," are classified under the civil service law and rules.

You state that the duties of the persons holding such positions are as follows:—

The duties of the person acting as “veterinary inspector” are the general inspection of dressed meat and of animals intended for slaughter at the abattoir. The duties of the “veterinary medical inspector” and of the two “veterinarians,” whom the board of health is about to appoint, are stated by the board of health as follows: the duties are to examine for diseases in animals and to report to the board of health for its action; to investigate the sources of outbreaks of diseases and their communication from animal to animal, and from animal to man; and to examine and report upon diseases of animals in life and pathological conditions at the autopsy and on the meat market; and the board of health states that the successful performance of the work requires the special qualification of professional training.

The facts stated do not bring the positions within any of the general statutory exceptions from the application of the civil service law (R. L., c. 19, § 9), nor am I aware of any statute which specifically excepts these positions therefrom. The question is, therefore, whether they are classified under the civil service rules.

Civil service rule 7, which provides for the classification of the official service, includes as class 11, —

Inspectors other than inspectors of work, and persons doing similar work, excepting railroad inspectors, in the service of the commonwealth or of any city thereof.

In my opinion the positions in question are classified within this rule. The word “inspector” has a broad meaning. It is defined in the Century Dictionary as follows:—

One who inspects or oversees; one whose duty it is to secure by supervision the proper performance of work of any kind, or to ascertain by examination the quality or condition of the work, or of any article offered for sale or transfer; a public officer charged with such duties; as, the *inspectors* of election or of police; an *inspector* of weights and measures.

The form of the rule itself indicates that the word “inspector” is not limited in its meaning to an inspector of work. Inspectors of work are classified with foremen of laborers, in class 22. Class 11 includes all other inspectors. Without at-

tempting to define precisely the meaning of the word "inspector," I advise you that in my opinion it is broad enough to include the positions of veterinary inspector, veterinary medical inspector and veterinarian, as such positions are described by you. In my judgment the fact that "the successful performance of the work requires the special qualification of professional training" does not except the positions from the application of the civil service law and rules.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Amendment to Constitution — Submission to People.

Where a proposed amendment to the Constitution was duly agreed to by a majority of the Senate and two-thirds of the members of the House of Representatives in two successive years, as provided in Article IX. of the Amendments of the Constitution of the Commonwealth but no further action was taken with respect thereto, it may be submitted to the people as required by said article by a resolve passed in the usual manner by a subsequent Legislature.

MARCH 15, 1911.

RUSSELL D. CRANE, Esq., *House Chairman, Committee on Constitutional Amendments.*

DEAR SIR:— You have submitted to me a proposed resolve (House, No. 795) providing for submitting to the people the article of amendment to the Constitution authorizing the use of voting machines at all elections. This article provides that,—

Voting machines or other mechanical devices for voting may be used at all elections under such regulations as may be prescribed by law: *provided, however,* that the right of secret voting shall be preserved.

The proposed amendment was duly agreed to by a majority of the senators and two-thirds of the members of the House of Representatives present and voting thereon during the legislative session of 1909, and was referred to the General Court next to be chosen, which in 1910 agreed thereto, as required by Article IX. of the Amendments to the Constitution of the

Commonwealth. No further action was taken by the Legislature of that year, and your present communication requires my opinion upon the question whether or not the present General Court may submit such proposed amendment to the people, as provided in the article of the amendment above cited.

Article IX. is in full as follows: —

If, at any time hereafter, any specific and particular amendment or amendments to the constitution be proposed in the general court, and agreed to by a majority of the senators and two-thirds of the members of the house of representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the general court then next to be chosen, and shall be published: and if, in the general court next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two-thirds of the members of the house of representatives present and voting thereon, then it shall be the duty of the general court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting thereon at meetings legally warned and holden for that purpose, they shall become part of the constitution of this commonwealth.

The article contains no specific direction as to the precise time when a proposed amendment shall be submitted to the people, and does not expressly limit the authority of the Legislature in this respect to the General Court which agrees to a proposed amendment already passed upon by the General Court of the previous year, and if such limitation exists it exists only by necessary implication. I am aware of no decision of the court upon the point raised by your inquiry, and the question seems to be one of novel impression. In the absence of judicial authority in the premises I am inclined to the opinion that no sufficient reason is apparent for limiting the power of the General Court to submit to the people a proposed amendment of the Constitution to the particular Legislature by which such proposed amendment was agreed to; and if no action with respect to submission was taken by such Legislature, an amendment so adopted may be submitted to the people for their action by a subsequent Legislature, in the form of a resolve passed in the usual manner.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Co-operative Bank — Unincorporated Association — Way or Manner of transacting Business — Savings Bank.

An unincorporated association formed for the purpose of accumulating a fund for the purchase of real estate and for building thereon, for making loans and for accumulating a fund to be returned to the stockholders, the property of which is vested in trustees and the shares of which mature when they reach the value of \$500, with provision for assignment or withdrawal, and which does not offer to its members—who are persons having one or more shares of stock who have signed the articles of association—the money so accumulated according to the premium or rate of interest paid by them for priority, but invests such money as the funds of a savings bank are invested, does not transact “the business of accumulating the savings of its members and loaning to them such accumulation in the manner of a co-operative bank” in violation of the prohibition of R. L., c. 114, § 1.

Quære, whether the way or manner in which such association transacts its business might not lead the public to believe that such business was that of a savings bank.

MARCH 28, 1911.

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

DEAR SIR:—You have requested my opinion upon certain questions relative to the Attleborough Savings and Loan Association.

The Attleborough Savings and Loan Association is unincorporated. Its purpose, as stated in the preamble to its Articles of Association, is that “of accumulating a fund for the purchase of real estate and for building thereon, for removing incumbrances therefrom, for making loans, and for the further purpose of accumulating a fund to be returned to stockholders.” Any person holding one or more shares of the stock and having signed the Articles of Association is a member of the association. Articles of Association, Article 1. The title to the property of the association is vested in trustees, Article 4. Investments may be made in loans “on first mortgages of real estate, in Massachusetts and Rhode Island, upon shares of this association, and upon such other securities as savings banks are authorized to take under the laws of Massachusetts,” also “in real estate in the town of Attleborough,” Article 8. Members pay monthly dues of \$2 per share and fines for default of payment, Article 10. Shares mature when they reach the value of \$500, Article 13. Provision is made for assignment or withdrawal of shares, Article 9. You further state that “the money accumulated is

not offered to the members according to the premiums or rate of interest bid by them for priority, but is invested almost precisely as are the funds of a savings bank.”

Your first inquiry is as follows:—

Is this association, on the evidence submitted, transacting the business of accumulating the savings of its members and loaning to them such accumulations in the manner of a co-operative bank, contrary to the provisions of section 1 of chapter 114 of the Revised Laws?

R. L., c. 114, § 1, provides, in part, that—

No person, and no association or corporation, except foreign associations and corporations duly licensed by the board of commissioners of savings banks prior to the fourteenth day of April in the year eighteen hundred and ninety-six to transact business in this commonwealth, shall transact the business of accumulating the savings of its members and loaning to them such accumulations in the manner of a co-operative bank, unless incorporated in this commonwealth for such purpose.

I am of opinion that the association in question does not transact “the business of accumulating the savings of its members and loaning to them such accumulations in the manner of a co-operative bank,” contrary to the provisions of the statute quoted.

It would be difficult to distinguish the manner in which the association in question transacts the business of accumulating the savings of its members from that of a co-operative bank. The association, however, does not loan to them such accumulations in the manner of a co-operative bank. The loaning of such accumulations to such of the members as make the best offers is characteristic of a co-operative bank. See *Atwood v. Dumas*, 149 Mass. 167, 169; *Attorney-General v. Pitcher*, 183 Mass. 513, 516. The loaning of money to its members upon their shares is merely incidental in the case of the association in question. There are no provisions that such loans shall be made to those members who offer the greatest premiums or rates of interest, as in the case of a co-operative bank. R. L., c. 114, § 11.

Your second inquiry is as follows:—

In this association soliciting or receiving deposits or transacting business in the way or manner of a savings bank contrary to the provisions of section 16 of chapter 590 of the Acts of 1908?

St. 1908, c. 590, § 16, provides as follows:—

No corporation, either domestic or foreign, and no person, partnership or association except savings banks and trust companies incorporated under the laws of this commonwealth, or such foreign banking corporations as were doing business in this commonwealth and were subject to examination or supervision of the commissioner on June first, nineteen hundred and six, shall hereafter make use of any sign at the place where its business is transacted having thereon any name, or other word or words indicating that such place or office is the place or office of a savings bank. Nor shall such corporation, person, partnership or association make use of or circulate any written or printed or partly written and partly printed paper whatever, having thereon any name, or other word or words, indicating that such business is the business of a savings bank; nor shall any such corporation, person, partnership or association, or any agent of a foreign corporation not having an established place of business in this commonwealth, solicit or receive deposits or transact business in the way or manner of a savings bank, or in such a way or manner as to lead the public to believe, or as in the opinion of the commissioner might lead the public to believe, that its business is that of a savings bank.

Though it is not absolutely clear that its way or manner of transacting business is that of a savings bank, I advise you that you may properly be of the opinion that the way or manner in which it transacts its business might lead the public to believe that its business is that of a savings bank.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Public Highways — Use — Erection of Structures over Public Ways — Eminent Domain — Public Purpose.

A proposed bill which provides that upon petition and after public notice and a public hearing the board of street commissioners of the city of Boston may, with the approval of the mayor, issue a permit to certain individuals named therein "to construct and maintain a bridge across Avon Street in said city for the purpose of connecting buildings owned by them on opposite sides of said street or for the purpose of a fire escape, on such conditions and subject to such restrictions as said board may prescribe," purports to confer upon such individuals an absolute right to be granted by the city of Boston, and in so far as the grant of such right would be inconsistent with the rights of other persons, to require the exercise of the power of eminent domain without provision for compensation.

A proposed bill which authorizes the city of Boston through its mayor, if it shall sell the whole or a part of its real estate on Mason Street in said city, "to grant to the purchaser of said estate, and his successors in title, the right to connect the real estate so sold with property on Tremont Street opposite said real estate by means of a covered passageway or bridge over Mason Street," and provides for the compensation of any person whose property may be injured by the erection of the structure so authorized, appears to contemplate the exercise of the power of eminent domain, not for a public purpose but for the benefit of certain individuals who may purchase the real estate described therein.

Both bills are therefore objectionable upon constitutional grounds.

MARCH 31, 1911.

D. T. MONTAGUE, Esq., *House Chairman, Committee on Cities.*

DEAR SIR:— You have submitted to me on behalf of the joint standing committee on cities certain bills now pending before that committee, and have stated that my opinion is desired upon the following specific question: "With reference to House bills numbered 817 and 451, would either or both of these bills, if passed, be in your opinion constitutional; or, to put it in another way, is there any constitutional objection to the passage of these bills?"

House Bill No. 817 is entitled "An Act to authorize the Construction of a Bridge over Avon Street in the City of Boston," and provides in section 1 that—

Upon petition and after seven days' public notice published in at least three newspapers published in the city of Boston, and a public hearing thereon, the board of street commissioners of the city of Boston may, with the approval of the mayor, issue a permit to Eben D. Jordan and Edward J. Mitten to build and maintain a bridge across Avon street in said city for the purpose of connecting buildings owned by them on opposite sides of said street, or for the purpose of a fire escape, on such conditions and subject to such restrictions as said board may prescribe.

House Bill No. 451 is entitled "An Act to authorize the Bridging of Mason Street in the City of Boston," and provides that—

The city of Boston by its mayor is hereby authorized and empowered, if it shall sell the whole or part of its real estate on Mason street in said city, to grant to the purchaser of said estate and his successors in title the right to connect the real estate so sold with property on Tremont street opposite said real estate by means

of a covered passageway or bridge over Mason street, said covered passageway to be not more than twenty feet in width and at the bottom of the floor not less than twenty feet above the street level.

In section 3 provision is made for the compensation of any person whose property may be damaged by the erection of the structure so authorized.

I assume that both Avon Street and Mason Street were laid out and constructed as public highways, and that although the fee of the land remains in the landowner, the public have acquired in such streets an easement of travel which includes "every kind of travel and communication for the movement or transportation of persons or property which is reasonable and proper in the use of a public street." *New England Telephone & Telegraph Co. v. Boston Terminal Co.*, 182 Mass. 397, 399; see also *Cheney v. Barker*, 198 Mass. 356, 362. The easement so acquired extends to the use of structures either above or below the surface of the way, when such structures "are used by the public or a part of the public, or are held and used in private ownership for the benefit of the public." *New England Telephone & Telegraph Co. v. Boston Terminal Co.*, *supra*; *Sears v. Crocker*, 184 Mass. 586, 588. But these uses and the facilities therefor must be "reasonable in reference to their effect upon adjacent property, as well as their effect upon other kinds of public uses of the street," and "a use of the street which would constitute a grave private nuisance to property at the side of the street could not have been contemplated by the law as being acquired by a taking for a highway or street." *Lentell v. Boston & Worcester Street Ry. Co.*, 202 Mass. 115, 119. Thus, elevated structures in the street for the use of street railways or other instrumentalities of transportation have been declared by the Legislature to impose an additional servitude upon land taken for street purposes, and provision has been made for any injury to property caused by them. St. 1894, c. 548, § 8; and see St. 1903, c. 163, § 3. *Lentell v. Boston & Worcester Street Ry. Co.*, *supra*; *Baker v. Boston Elevated Ry. Co.*, 183 Mass. 178. This would seem to have been the theory upon which one of the two bills now before me (House Bill No. 817) was drafted, for it contains, in section 3, provision for compensation to any person whose property may be injured by the construction of the bridge authorized in section 1. House Bill No. 451, however, contains no such provision, and, if the structure authorized by it may be considered to be

an instrumentality of public travel, transportation or communication, fairly raises the question whether the erection and maintenance of such a structure should be held to be a reasonable and proper use of a public street, or is a use which was not included in the original easement and imposes a new servitude upon the land taken for which compensation must be made. This question is not free from difficulty. The court has declared, in *Sears v. Crocker*, 184 Mass. 586, at page 588, that —

Our system, which leaves to the landowner the use of a street above or below or on the surface, so far as he can use it without interference with the rights of the public, is just and right, but the public rights in these lands are plainly paramount and they include, as they ought to include, the power to appropriate the streets above or below the surface as well as upon it, in any way that is not unreasonable, in reference either to the acts of all who have occasion to travel or to the effect upon the property of abutters.

Abutters are bound to withdraw from occupation of streets above or below the surface whenever the public needs the occupied space for travel. The necessary requirements of the public for travel were all paid for when the land was taken, whatever they may be, and whether the particulars of them were foreseen or not. The only limitation upon them is that they shall be of a kind which is not unreasonable.

The question in each case must depend primarily upon public necessity and the conditions which exist with reference to the particular locality affected. If the public use of the streets at or near Avon Street or Mason Street require that there should be an elevated structure over either or both of those streets, in order that *public* travel, transportation or communication may be maintained between points upon either side of such streets, I am inclined to the opinion that the erection of such a structure might well be held to impose no additional servitude upon the highway beneath.

But it is essential that the need for such means of communication should be a *public* need, and that it should be open to the public. Nothing in either of said bills shows that the structures therein authorized are required by any public necessity or are to be instrumentalities of public travel. On the contrary, it seems that they are not designed primarily for the use of the public, as such, but to serve the convenience of abutting owners and to enhance the value of their property. In

House Bill No. 817 the permission which may be granted upon compliance with the requirements therein set forth is to two individuals, and is "for the purpose of connecting buildings owned by them on opposite sides of said street;" and in House Bill No. 451 the right to maintain such structure is granted to the purchasers of certain real estate now held by the city of Boston, and is made appurtenant thereto.

Where a public highway is laid out and constructed the easement secured by the public is no more than an easement of travel. The fee remains in the landowner, who may make any use of his property not inconsistent with its use as a highway. *Commonwealth v. Morrison*, 197 Mass. 199, 205; *Cheney v. Barker*, 198 Mass. 356, 362. If the erection and maintenance of structures like those contemplated by the two bills aforesaid are not inconsistent with the paramount rights of the public in the streets over which such structures are to pass, the landowner requires no permission from the Legislature to erect them. "The Legislature is the supreme authority in regard to public rights in the streets and highways" (*Boston Electric Light Co. v. Boston Terminal Co.*, 184 Mass. 566, 570), and it may define or limit the extent of the rights which it deems necessary for the public, or may even abandon some of them by permitting uses of abutting property which, without such permission, would involve an interference with the public use, provided that such abandonment does not go far enough to amount to an appropriation of public property to private uses. The proposed acts seem to be more than a legislative declaration that the use of private property in the manner which they describe does not interfere with the public easement of travel, — or, in other words, a definition or limitation of the public use, — and are, in my opinion, objectionable upon constitutional grounds, in that they assume to confer upon private persons rights with respect to the use of abutting property which are made paramount to the rights of other persons, which, to that extent, would be an appropriation of those rights, requiring the exercise of the power of eminent domain. In House Bill No. 871 the exercise of this power is clearly contemplated, for it provides in section 3 for the compensation of any one whose property may be injured by the erection of the structure authorized. House Bill No. 451 contains no such provision, but, since it purports to confer an absolute right to be granted by the city of Boston, would necessarily require the exercise of such power

in so far as the grant of such right would interfere with the rights of others. No information has been submitted to me respecting the exact limits of the property affected by the proposed legislation or the nature of the title by which it is held. Said property is not even certainly described in the bills themselves. For this reason I am necessarily confined to a discussion of the general principles which appear to be applicable in the premises. These lead me to the opinion that there is constitutional objection to the passage of either of the bills submitted to me.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Appropriation of Money raised by Taxation — Public Purpose — Museum of Fine Arts.

The Constitution of the Commonwealth, in chapter V, section II, imposes upon the Legislature the duty "in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them," and "to encourage private societies and public institutions, rewards and immunities, for the promotion of . . . arts, sciences, . . . and a natural history of the country," and the appropriation of money in the reasonable performance of the duty so imposed would be for a public purpose.

A proposed bill authorizing the city of Boston to appropriate money, not exceeding \$50,000 in any single year, for the maintenance and support of the Museum of Fine Arts in said city, subject to certain conditions to be performed by the trustees of such museum, as therein prescribed, would therefore be constitutional.

Under existing law, however, the city of Boston has no authority to appropriate money for such purpose.

MARCH 31, 1911.

D. T. MONTAGUE, Esq., *House Chairman, Committee on Cities.*

DEAR SIR: — You have required my opinion upon the following question: —

With reference to House Bill No. 1527, is there any constitutional objection to the passage of this bill; and, if not, does the city of Boston now have, in your opinion, the right, without additional legislation, to appropriate money for the purposes named in the bill?

House Bill No. 1527 authorizes and empowers the city of Boston to appropriate money, not exceeding \$50,000 in any

single year, for the maintenance and support of the Museum of Fine Arts, subject to the condition that the trustees thereof—

shall continue to open their buildings and collections for free admission to the people of Boston the same number of days in the week as they now do, and that said trustees shall annually report to the mayor and the school committee of the city of Boston statistics showing the financial condition of said museum, its income and disbursements, and the nature and kind of instruction given by it and the number of its teachers and pupils.

Money raised by taxation may be expended only for a public purpose. *Lowell v. Oliver*, 8 Allen, 247, 253; Opinion of the Justices, 204 Mass. 607, 611. The power of the Legislature to authorize an appropriation by the city of Boston for the benefit of the Museum of Fine Arts must depend upon whether or not the purpose for which such institution was established is a public purpose. In *Kingman v. Brockton*, 153 Mass. 255, in discussing a statute authorizing the erection of a memorial hall at the public expense the court said:—

That statute . . . may be vindicated on the same ground as statutes authorizing the raising of money for monuments, statues, gates or archways, celebrations, the publication of town histories, parks, roads leading to points of fine natural scenery, decorations upon public buildings, or other public ornaments or embellishments, designed merely to promote the general welfare, either by providing for fresh air or recreation, or by educating the public taste, or by inspiring sentiments of patriotism or of respect for the memory of worthy individuals. The reasonable use of public money for such purposes has been sanctioned by several different statutes, and the constitutional right of the Legislature to pass such statutes rests on sound principles.

This language was cited with approval in the case of *Attorney-General v. Williams*, 174 Mass. 476. See *Williams v. Parker*, 188 U. S. 491; see also *Higginson v. Nahant*, 11 Allen, 530; *Hubbard v. Taunton*, 140 Mass. 467.

I have before me no precise and definite information as to the purposes for which the Museum of Fine Arts was organized and is maintained, but I assume that among the objects of that institution is the promotion of the education and culture of the public generally in the fine arts, and upon such assumption I am of opinion that its maintenance may well be held to be

a public purpose within the principles laid down in the decisions above cited. The Constitution itself imposes upon the Legislature the duty, "in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them," and "to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures and a natural history of the country" (C. V., § II.); and the appropriation of money in the reasonable performance of this duty would doubtless be for a public purpose. *Attorney-General v. Williams, supra*, p. 480; *Hanscom v. Lowell*, 165 Mass. 419; and see *Commonwealth v. Boston Advertising Co.*, 188 Mass. 348, 351. For authority that the citizens of Boston may be directly taxed, see *Merrick v. Amherst*, 12 Allen, 500.

You have further required my opinion as to whether or not the city of Boston now has the right, without additional legislation, to appropriate money for the purposes named in House Bill No. 1529. In my opinion it has not. The only provision of law which could now authorize such an expenditure is R. L., c. 26, § 28, which is as follows:—

The city council may, by a yea and nay vote of two-thirds of the members of each branch thereof present and voting, appropriate money for armories for the use of the state militia, for the celebration of holidays, and for other public purposes to an amount not exceeding in any one year one-fiftieth of one per cent of its valuation for such year.

This section was construed in *Hubbard v. Taunton*, already cited, in which the court, in refusing to restrain the expenditure of the sum of \$200 to pay for twelve public band concerts, used the following language:—

The word "other" implies that the celebration of holidays is a public purpose within the meaning of the act, and indicates that purposes which are public only in that sense are included within its scope, although they look rather more obviously to increasing the picturesqueness and interest of life than to the satisfaction of rudimentary wants, which alone we generally recognize as necessary. We know of no simple and merely logical test by which the limit can be fixed. It must be determined by practical considerations. The question is one of degree. But, in reply to the petitioners' argument, we may say that, if the purpose is within the act, we do not see why the city council may not create the occasion. Tak-

ing into account the history and language of the act, the safeguards attached to the exercise of the power, the smallness of the sum allowed to be expended, and the fact that it has long been assumed to be within the power of cities to give such concerts in the open air, we are not prepared to say that a case is presented for an injunction.

In view of the language above quoted I do not think that the section above cited should be held to authorize the expenditure of money for public purposes which are permanent and enduring, and which may require a large annual appropriation of money raised by taxation.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Public Highways — License — Use for Commercial or Advertising Purposes.

A city may constitutionally be authorized to require, and to issue through its board of supervisors, licenses for the use of specified parts of public streets therein for the storage and sale of merchandise for purposes necessary for the construction or repair of works or buildings and for commercial or advertising purposes in cases where the consent of the abutting owner or owners has been obtained. The issuance of such licenses, if confined within reasonable limits, constitutes a definition by public authority of the public use of a highway.

APRIL 4, 1911.

PAUL I. LOMBARD, Esq., *Joint Committee on Cities.*

DEAR SIR:— On behalf of the joint committee on cities you have requested my opinion “as to the constitutionality of the enclosed bill entitled ‘An Act relative to the use of streets in the city of Springfield.’” More precisely, I assume the question to be whether or not the use of the public streets for the purposes and in the manner described in said act is constitutional.

Section 1 of said proposed bill provides that—

The board of supervisors of the city of Springfield may require and issue licenses, subject to the provisions hereof, for the use of specified parts of public streets in said city, for the storage and sale of merchandise, for purposes necessary for the construction or repair of works or buildings and for all other purposes requiring

the opening of streets, the use thereof for commercial or advertising purposes or for purposes causing more than the ordinary interruption or impairment of travel thereon.

Section 2 provides that any person who desires such a license shall make written application therefor, stating his name, residence and place of business, and describing the location, shape and dimensions of the space which he desires to occupy, the structures which he proposes to use, and the kinds of merchandise which he wishes to store or sell. It further provides that —

He shall submit as part of his application the written consent to the issuance of said license on the part of the owner or owners of the premises in front of which he desires to carry on business and of the tenants of the ground floor of such premises, if the license requested is for the sale or storage of merchandise. When the privilege for which a license is asked is to be exercised in front of the premises owned by the city of Springfield, the owner's consent herein provided for shall not be required.

Such a use of the streets does not fall within the limits of the public easement of travel (*Commonwealth v. Morrison*, 197 Mass. 199, 203; *Haberlil v. Boston*, 190 Mass. 358), and the Legislature could confer no authority in the premises without the consent of the owner of the fee. Such consent, however, appears to be provided for in the bill submitted to me, and if the use therein licensed does not amount to such a great and permanent obstruction as to constitute a public nuisance or an appropriation of public property to private uses, I am of opinion that the Legislature may authorize the issuance of such license by the city government of Springfield.

Said act may be construed as permitting the supervisors of the city of Springfield to define the limits of the public use and to determine what uses by a private person may be permitted without conflicting therewith. If confined within reasonable limits such use would be constitutional.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Constitutional Law — Taxation — Exemption — Charitable Corporation — Land acquired by Institution incorporated for Care of Insane.

A proposed bill which provides that "no private corporation or association now existing or hereafter incorporated for the care of the insane shall acquire land . . . to be exempt from taxation without the consent of the legal voters of the town or governing board of a city where such land is situated," would not be unconstitutional as creating an unreasonable exception from the provisions of law for exemption applicable to property of charitable corporations generally, or because it delegates to cities and towns power to determine whether specific land therein which may be acquired by such institutions shall be included within the exemption applicable to land owned by charitable institutions generally.

APRIL 12, 1911.

ARTHUR S. DAVIS, Esq., *Chairman, House Committee on Bills in the Third Reading.*

DEAR SIR:— In behalf of the committee on bills in the third reading of the House of Representatives, you have requested my opinion as to whether House Bill No. 1170, if enacted, will be constitutional and valid. It provides that —

No private corporation or association now existing or hereafter incorporated for the care of the insane shall acquire land in a city or town of the commonwealth to be exempt from taxation without the consent of the legal voters of the town or governing board of a city where such land is located.

I am of opinion that the bill, if enacted, will be constitutional and valid. My reasons for this view follow.

The property of institutions for the care of the insane is now exempted from taxation so far as it is included within the provisions of St. 1909, c. 490, Part I., § 5, cl. 3, which exempts from taxation —

The personal property of literary, benevolent, charitable and scientific institutions and of temperance societies incorporated within this commonwealth, the real estate owned and occupied by them or their officers for the purposes for which they are incorporated, and real estate purchased by them with the purpose of removal thereto, until such removal, but not for more than two years after such purchase. Such real or personal property shall not be exempt if any of the income or profits of the business of such corporation is divided among the stockholders or members, or is used or appro-

priated for other than literary, educational, benevolent, charitable, scientific or religious purposes, nor shall it be exempt for any year in which such corporation wilfully omits to bring in to the assessors the list and statement required by section forty-one.

The effect of the bill in question, if enacted, will be to exclude from this exemption land thereafter acquired by an institution for the care of the insane, unless at the time such land is acquired the city or town within which it is situated votes that it shall be exempt from taxation.

The constitutional provision relative to the taxation of land requires that taxes shall be reasonable and proportional. Const. Mass., Part 2, c. I., § 1, Part IV. It is now too late to argue that this provision prohibits exemptions. *Day v. Lawrence*, 167 Mass. 371. "We have . . . constitutional requirements for the encouragement of literature and science, the diffusion of education among the people, and the promotion of 'general benevolence, public and private charity' and other kindred virtues. (Const. Mass., c. 5, § 2.) As taxation of the people may be imposed for these objects, property used for literary, educational, benevolent, charitable or scientific purposes may well be exempted from taxation. Such exemptions do not prevent the taxation of the people from being proportional and equal." *Opinion of the Justices*, 195 Mass. 607, 608-9.

The questions raised by you are, therefore:—

1. Whether land held by an institution for the care of the insane may be excepted from the provision for exemption applicable to property of charitable institutions generally.

2. Whether, if such land may be so excepted, the Legislature may delegate to the cities and towns in which the land lies the power of determining whether specific land thereafter acquired by an institution for the care of the insane, charitable in its nature, shall be included within the exemption applicable to land owned by charitable institutions generally.

The only limitation upon exemptions is that they must be reasonable. See *Minot v. Winthrop*, 162 Mass. 113, 124. The purpose for which they are made must be proper. See *Opinion of the Justices, supra*. They must not be "such as to render the general tax on property throughout the Commonwealth unequal and disproportionate." See *Commonwealth v. People's Five Cents Savings Bank*, 5 Allen, 428, 437. It is, however, "peculiarly within the discretion of the Legislature to deter-

mine what exemptions should be made in apportioning the burdens of taxation among those who can best bear them." *Minot v. Winthrop, supra*. Even if it was required that all persons or institutions similarly situated be treated alike, the Legislature could undoubtedly find that there was a reasonable ground for distinguishing between land and other property, between property already acquired and property to be acquired, and between institutions for the care of the insane and other charitable institutions. The first question must, therefore, be answered in the affirmative.

The question as to whether the Legislature may delegate to the cities and towns in which the land lies the power of determining whether specific land thereafter acquired by an institution for the care of the insane, charitable in its nature, shall be included within the exemption applicable to land owned by charitable institutions generally, in turn divides itself into two, namely: (a) Whether the State may make such a special exemption; and (b) if the State may do so, whether it may delegate the power to make such special exemptions to the cities and towns in which the property is respectively situated. Both must, in my opinion, be answered in the affirmative.

Since the adoption of the Constitution, and before, the Legislature has made such exemptions and has limited general exemptions in particular cases. See for a collection of statutes House Document, 1910, No. 1395, appendix B; *Phillips Academy v. Andover*, 175 Mass. 118. These statutes have been considered by the court, though their validity seems not to have been discussed. See *Harvard College v. Kettell*, 16 Mass. 204; *Hardy v. Waltham*, 7 Pick. 108; *Phillips Academy v. Andover, supra*; *Rice v. Bradford*, 180 Mass. 545; *Evangelical Baptist Society v. Boston*, 192 Mass. 412. In *Northampton v. County Commissioners*, 145 Mass. 108, the court affirmed the constitutionality, in certain aspects, of a special statute in regard to the taxation of a particular charity. Long acquiescence, therefore, furnishes a strong reason for supporting special exemptions of particular charitable institutions, in the absence of clear objections thereto. There is, however, in my judgment, no objection on constitutional grounds to such statutes. As already stated, the justification for a special exemption of a charitable institution is, that since taxation may be imposed for the purposes for which such institution is organized, the property used for such purposes may be exempted from taxation. The Legislature may undoubtedly appropriate money raised by

taxation for the use of one charitable institution without making an appropriation for the use of others of the same class. The same result is accomplished indirectly by specifically exempting from taxation the property of such institution. The propriety of such legislation seems to have been recognized by the Supreme Court of the United States. *Grand Lodge v. New Orleans*, 166 U. S. 143, 149; see, however, *Baltimore City v. Starr Church*, 106 Md. 281.

As the Legislature may make such a special exemption, so it may delegate the power to do so. The Legislature may delegate to cities and towns legislative power over subjects which are proper for municipal control. *Stone v. Charlestown*, 114 Mass. 214; *Opinion of the Justices*, 160 Mass. 586, 590; *Brodvine v. Revere*, 182 Mass. 598, 600. It has delegated many powers relating to taxation. In *Merrick v. Amherst*, 12 Allen, 500, the court sustained as constitutional a statute authorizing a town to raise money by taxation for an agricultural college to be established therein by the Commonwealth. It would seem that the exemption from taxation of the property of an institution which was used for a public purpose might equally well be delegated. See *Caverly-Gould Co. v. Springfield*, 83 Vt. 396, 403. The language to the contrary in *Brewer Brick Co. v. Brewer*, 62 Me. 62, has been criticised. In Gray on Limitations of Taxing Power, p. 292, the author says:—

Inasmuch as the delegation of power to municipalities to impose taxes and to fix the rate is so integral a part of the governmental system, it cannot be believed that constitutional requirements of uniformity were intended to prohibit such delegations of power. And if this be so, the Maine decision seems unfounded.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Constitutional Law — Free Transportation of Letter Carriers in Uniform on Street Railways — Safety, Health or Proper Convenience of the Public.

A statute requiring street railway companies to carry free on their passenger cars United States letter carriers in uniform in the city or town in which such letter carriers are employed, does not tend to promote the safety, health or proper convenience of the public, but is an arbitrary enactment in favor of the persons designated, letter carriers in uniform, and, as such, is unconstitutional and void.

APRIL 22, 1911.

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 twenty-fourth day of March, 1911, which is as follows:—

Ordered, That the Attorney-General be requested to inform the House of Representatives whether, in his opinion, a statute requiring street railway companies to carry free on their passenger cars United States letter carriers in uniform, in the city or town in which they are employed, would be constitutional and valid.

Under date of April 10, 1901, Attorney-General Knowlton advised the Honorable Senate that a bill requiring transportation of letter carriers at a rate less than that collected from ordinary passengers was in his opinion unconstitutional so far as it concerned the Boston Elevated Railway Company, on the ground that such bill, if enacted, would impair the obligation of the contract contained in the charter of that company. II Op. Atty.-Gen. 261. This opinion was undoubtedly correct, and is applicable with equal or greater force to a statute such as is described in the order above set forth.

I am, however, of opinion that such a statute would be unconstitutional as applied to street railway companies generally. The right of the Legislature to regulate fares charged by street railway companies is undoubted, but it cannot, "under pretence of regulating fares and freights," require a street railway company "to carry persons or property without reward." See *Stone v. Farmers' Loan & Trust Co.*, 116 U. S. 307, 331. The rate fixed must be reasonable. Obviously, a requirement that any class of persons (here "United States letter carriers in uniform") be carried free is not a reasonable or proper exercise of the distinctively rate-making power.

If the statute is to be justified at all, it must be justified under the police power in its broader sense, *i.e.*, the power to legislate "for the safety, health or proper convenience of the public." *Lake Shore & Michigan Southern Ry. Co. v. Smith*, 173 U. S. 684, 698, 699. Legislation for these purposes is not necessarily bad because it imposes an incidental pecuniary loss upon the carrier. *Atlantic Coast Line R.R. Co. v. North Carolina Corporation Commission*, 206 U. S. 1, 24, 25; *Interstate Railway Co. v. Massachusetts*, 207 U. S. 79, 87. It cannot, of course, be assumed that any class of persons can be carried free

by a street railway company without some, though perhaps slight, pecuniary loss to the company. A requirement of such free transportation cannot be sustained under the police power unless such requirement is reasonably adapted to promote "the safety, health or proper convenience of the public." The free transportation of United States letter carriers as a class, even though limited to carriers who are in uniform, does not tend to promote the public safety, the public health or the public convenience. It does not benefit the public generally, but is "an arbitrary enactment in favor of the persons spoken of" (*i.e.*, United States letter carriers in uniform). See *Lake Shore & Michigan Southern Ry. Co. v. Smith*, *supra*, p. 699. No reason appears which justifies the discrimination between United States letter carriers in uniform, as a class, and all other persons. See *Lake Shore & Michigan Southern Ry. Co. v. Smith*, *supra*, pp. 694, 695; *Interstate Railway Co. v. Massachusetts*, *supra*.

For these reasons I am of opinion that a statute "requiring street railway companies to carry free on their passenger cars United States letter carriers in uniform, in the city or town in which they are employed," would not be constitutional and valid.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Intoxicating Liquors — License — Licensed Place — Licensed Premises.

In R. L., c. 100, § 13, as amended by St. 1910, c. 476, § 1, providing in part that "in cities and towns which vote to authorize the sale of intoxicating liquors, the number of places licensed for the sale of such liquors shall not exceed one for each one thousand of the population," and that "Nowhere in the commonwealth shall a fourth or fifth class license be granted to be exercised upon the same premises with a license of any of the first three classes" with certain exceptions therein stated, the words "licensed places" must be construed to mean places where a license is to be exercised, and such places are identical with licensed premises, except where two or more licenses are granted to the same person to be exercised upon the same premises.

A proposed bill providing that a licensed place "may consist of one or more rooms or premises adjoining but having no interior connection or means of communication with each other," would directly affect the provisions of R. L., c. 100, § 13, as amended by St. 1910, c. 476, § 1, for the reason that under its provisions a license of the fourth

or fifth class might be exercised with a license of any of the first three classes at a single licensed place, although in a room or rooms physically separated from those in which was exercised any license of the first three classes.

MAY 1, 1911.

HON. ALLEN T. TREADWAY, *President of the Senate.*

DEAR SIR:—I have to reply to an order of the Honorable Senate requesting my opinion upon the following questions of law:—

(1) Whether or not the provisions of section 1 of the bill now pending before the Senate, and printed as Senate Bill No. 454, a copy of which is transmitted herewith, directly or indirectly nullify or repeal the provisions of chapter 476 of the Acts of 1910, being an act relative to the granting of licenses for the sale of intoxicating liquor?

(2) Is the definition of "licensed place" in the accompanying bill, printed as Senate Bill No. 454, inconsistent with the meaning of the "place which may be licensed" under the provisions of chapter 476 of the Acts of 1910?

(3) Does the existing law regarding the sale of intoxicating liquors permit two separate licensed rooms, if adjoining but having no interior connection or means of communication with each other, to be counted as one "place licensed for the sale of such liquors" within the meaning of chapter 476 of the Acts of 1910?

Section 1 of chapter 476 of Statutes of 1910 amended Revised Laws, chapter 100, section 13, by inserting at the ninth and tenth lines the following provision:—

Nowhere in the commonwealth shall a fourth or fifth class license be granted to be exercised upon the same premises with a license of any of the first three classes, except that a licensed innholder, who has a license of any of the first three classes may likewise be granted a license of the fourth or fifth class for the purpose of supplying liquor to guests who have resorted to his inn for food or lodging.

Section 13, therefore, now reads as follows:—

In cities and towns which vote to authorize the granting of licenses for the sale of intoxicating liquors, the number of places licensed for the sale of such liquors shall not exceed one for each one thousand of the population as ascertained by the last preceding national or state census, but one such place may be licensed in any town having a population of less than one thousand. In Boston, one such place

may be licensed for each five hundred of the population, but in no event shall the total number of licensed places therein exceed one thousand. Nowhere in the commonwealth shall a fourth or fifth class license be granted to be exercised upon the same premises with a license of any of the first three classes, except that a licensed innholder, who has a license of any of the first three classes may likewise be granted a license of the fourth or fifth class for the purpose of supplying liquor to guests who have resorted to his inn for food or lodging. No more than one license shall be granted by any one vote of the licensing board. Such licenses shall be numbered in regular order as granted, and any license granted contrary to, or in excess of, the provisions of this section shall be void; but in a town voting as aforesaid at its last annual town meeting which has less than five thousand permanent residents according to the last preceding state or national census but has an increased resident population during the summer months, the selectmen may, on or before the fifteenth day of May in any year, apply to the chief of the bureau of statistics of labor to have an enumeration made of the temporary or summer residents of such town. Said chief shall thereupon make such enumeration, between the twenty-third and the twenty-eighth day of June next following, under such rules as he shall establish. A person who has not been a resident of such town for at least three days preceeding the enumeration shall not be regarded as a temporary or summer resident thereof. Said chief may employ, for such enumeration, such persons as may be necessary, who shall in all cases be residents of the town if suitable and competent persons can be found; otherwise, non-residents may be employed. The chief shall report the total number of such temporary or summer residents to the selectmen of the town on or before said twenty-eighth day of June. The expenses incurred in making such special enumeration shall be paid by the commonwealth. The treasurer and receiver general shall thereupon issue his warrant, as provided in section thirty-four of chapter twelve, requiring the assessors of such town to assess a tax to the amount of the expense incurred in making this special enumeration, and such amount shall be collected and paid over to the treasurer and receiver general in the same manner as other state taxes. The selectmen may, in April, receive applications for such licenses and investigate and publish the same; and may grant one such license for each five hundred of such temporary resident population, not including the permanent inhabitants of such town, as ascertained by said special enumeration, to take effect on the first day of July and to expire on the first day of October next following. A selectman, member of a licensing board or census enumerator who violates any provision of this section shall be punished by a fine of five hundred dollars.

Section 18 of chapter 100 of the Revised Laws contains a definition of the five classes of licenses hereinbefore referred to.

First class. To sell liquors of any kind to be drunk on the premises.

Second class. To sell malt liquors, cider and light wines containing not more than fifteen per cent of alcohol, to be drunk on the premises.

Third class. To sell malt liquors and cider, to be drunk on the premises.

Fourth class. To sell liquors of any kind, not to be drunk on the premises.

Fifth class. To sell malt liquors, cider and light wines containing not more than fifteen per cent of alcohol, not to be drunk on the premises.

The bill which in the order of the Honorable Senate is stated to be now pending before that body provides in section 1 that —

A license of the fourth or fifth class to sell intoxicating liquors may be granted and issued to be exercised with a license of any of the first three classes in any place licensed for the sale of intoxicating liquors. Within the meaning of this act a licensed place may consist of one or more rooms or premises adjoining but having no interior connection or means of communication with each other. Each license when so issued shall specify the room or rooms or premises in such licensed place in which each license is to be exercised and no sales of intoxicating liquors shall be made under a fourth or fifth class license in any room or rooms specified in a license of any of the first three classes, or having, except in licensed inns, any interior connection or means of communication with the room or rooms where intoxicating liquor is sold under a license of any of the first three classes.

The answers to the specific inquiries above quoted must depend upon the definition given to the words "places licensed" as found in section 13 of chapter 100 of the Revised Laws, and "licensed premises" as used in said chapter. The latter term clearly signifies the premises described in the application for the license, and in the license itself, as those upon which such license is to be exercised and enjoyed. See R. L., c. 100, §§ 14, 15 and 17.

Upon careful consideration of these and other provisions contained in chapter 100 of the Revised Laws, I am of opinion that the "licensed places" referred to in section 13 must be

construed to mean places where a license is to be exercised; or, in other words, the places of business described in the application for the license, in the notice of such application and in the license itself, as provided in sections 10, 13 and 14, and that in meaning this phrase is identical with "licensed premises," except in cases where two or more licenses are granted to the same person to be exercised upon the same premises, in which case all such licenses, being exercised upon the same premises, would be exercised at one licensed place, and the number of licensed places with reference to population would not be increased thereby.

Upon this construction of the phrases "licensed premises" and "licensed places," St. 1910, c. 476, § 1, as hereinbefore quoted, in providing that fourth and fifth class licenses shall not be granted to be exercised upon the same premises with a license of the first three classes, except in the case of a licensed innholder, in effect requires that licenses of the fourth and fifth classes shall not be exercised at licensed places where a license of the first three classes is exercised, with the result that the number of licensed places will be increased to the extent that fourth and fifth class licenses are granted to licensees who are not innholders and who must, therefore, exercise such licenses upon licensed premises not described in any license of the first three classes. Senate Bill No. 454, to which the first and second inquiries of the Honorable Senate are directed, defines a licensed place as "one or more rooms or premises adjoining but having no interior connection or means of communication with each other," and provides that a license of the fourth and fifth classes may be exercised at the same licensed place with a license of any of the first three classes, or, in substance, that a licensed place may include two or more licensed premises described in separate licenses. Such, in my opinion, being the effect of the proposed bill, I reply specifically to the inquiries of the Honorable Senate as follows:—

1. I am of opinion that while Senate Bill No. 454 cannot be said to directly or indirectly nullify or repeal the provisions of chapter 476 of the Acts of 1910, it does directly affect such provisions in that, under existing laws, as above construed, a fourth or fifth class license may not be exercised in the same licensed place or upon the same premises with a license of the first three classes, whereas, under the proposed bill a license of the fourth or fifth class may be exercised with a license of any

of the first three classes at a single licensed place although not upon the same licensed premises, with the result that the number of licensed places will be substantially the same as they were before the enactment of St. 1910, c. 476, although licenses of the fourth and fifth classes must still be exercised in a room or rooms physically separated from the room or rooms in which was exercised any license of the first three classes.

2. I am of opinion that the definition of "licensed places" in Senate Bill No. 454 is inconsistent with the definition of the "place which may be licensed" as referred to in R. L., c. 100, § 13, as amended by St. 1910, c. 476, for the reason that under existing laws a place which may be licensed or a licensed place is substantially identical with the phrase "licensed premises," where only one license is exercised upon such premises.

3. This inquiry in terms purports to require my opinion upon the question whether or not existing law regarding the sale of intoxicating liquor permits two separate licensed rooms to be counted as one place licensed for the sale of liquor, within the meaning of R. L., c. 100, § 13, as amended by St. 1910, c. 476, § 1. Replying, therefore, to the inquiry as phrased, I am of opinion that under the conditions described therein the rooms might be considered as a single place "licensed for the sale of such liquors," within the meaning of the section cited, if they were both described as the "licensed premises" in an application for a single license of any one of the five classes, and were used in the exercise of such license, or if they were both described in two or more applications for licenses of different classes which may be legally exercised by the same licensee, as, for instance, an innkeeper. Upon the other hand, such rooms could not be counted as one such licensed place if each were described in a separate application for a license of any one of the five classes, or if one were described in an application for a license for one of the first three classes and the other were described in an application for a license of the fourth or fifth class. I assume, however, that the Honorable Senate in fact desires to be advised whether or not, if a license of any one of the first three classes be exercised in one of the rooms described in the inquiry, and a license of the fourth or fifth class be exercised in the other room so described, the two rooms together may be counted as one licensed place; and upon this assumption I am constrained to answer in the negative. Each

room, being described as the licensed premises in a separate license, is, in my opinion, a place licensed for the sale of such liquors within the meaning of R. L., c. 100, § 13, as amended by St. 1910, c. 476, § 1.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Rates — Street and Elevated Railway Corporations — Boston Elevated Railway Company — Impairment of Obligation of Contract — Discrimination — Equal Protection of Law.

A proposed bill, providing that "on all street and elevated railways in this commonwealth the fares which are now five cents shall be reduced to three cents between the hours of six and eight in the morning and five and seven in the evening," would, in the case of the Boston Elevated Railway Company, be unconstitutional and void because it would impair the obligation of the contract established by the charter of that corporation (St. 1907, c. 500, § 10) authorizing such corporation to establish and take a toll or fare not exceeding five cents, which sum should not be reduced by the Legislature during a period of twenty-five years after the passage of such statute. Such proposed bill would not be unconstitutional as to other street or elevated railway corporations as constituting so unjust a discrimination in favor of the Boston Elevated Railway Company and against such other companies as to deny the latter the equal protection of the laws.

MAY 3, 1911.

HON. FRANK P. BENNETT, JR., *Chairman, Committee on Street Railways.*

DEAR SIR:— You have requested my opinion as to whether House Bill No. 1370, if enacted, would be constitutional. This bill is in the following terms:—

SECTION 1. On all street and elevated railways in this commonwealth the fares which are now five cents shall be reduced to three cents between the hours of six and eight in the morning and five and seven in the evening.

SECTION 2. Violation of this act shall be punished by fine or imprisonment at the discretion of the court.

That the Legislature has the power to regulate the rates of fare on street and elevated railways within the Commonwealth cannot be doubted. *Dow v. Beidelman*, 125 U. S. 680; *Smyth v. Ames*, 169 U. S. 466; *Minneapolis & St. Louis R.R. Co. v.*

Minnesota, 186 U. S. 257; *Interstate Railway Co. v. Massachusetts*, 207 U. S. 79; *S. C., sub nomen Commonwealth v. Interstate Consolidated Railway Co.*, 187 Mass. 436. This power, however, does not extend to the regulation of foreign or interstate commerce. *Wabash, St. Louis & Pacific R.R. Co. v. Illinois*, 118 U. S. 557. It must not be so exercised as to impair the obligation of any contract contained in the charter of a street or elevated railway company (*Georgia Railroad & Banking Co. v. Smith*, 128 U. S. 174, 179; *Stone v. Farmers' Loan & Trust Co.*, 116 U. S. 307, 325), or to deny to the company the equal protection of the laws, or to deprive it of property without just compensation and without due process of law. See cases *supra*.

A rate-regulating statute which exceeds the power of the Legislature in any of these respects is, of course, unconstitutional. Whether such a statute is beyond the legislative power depends upon the facts in each specific case. A rate-regulating statute may be constitutional as to one street or elevated railway company and unconstitutional as to another. It may be constitutional at one time as to a street or elevated railway company and at another time be unconstitutional as to the same company. *Smyth v. Ames*, 171 U. S. 361, 365. I cannot, therefore, give you an opinion of universal application, nor have I the facts before me upon which to give you an opinion as to specific cases except as to the Boston Elevated Railway Company.

In the case of the Boston Elevated Railway Company the bill, if enacted, would be unconstitutional because impairing the obligation of the contract contained in the charter of that corporation. St. 1897, c. 500, § 10, authorizes that corporation to "establish, and take a toll or fare, which shall not exceed the sum of five cents for a single continuous passage in the same general direction on the roads owned, leased or operated by it," and provides that "this sum shall not be reduced by the legislature during the period of twenty-five years, from and after the passage of this act," with a proviso that the Board of Railroad Commissioners may, upon petition, after notice and hearing, reduce such toll or fare, but that such toll or fare shall not, without the consent of the corporation, be so reduced as to yield less than a certain fixed income. This provision, as I have already advised you in an opinion in regard to the constitutionality of House Bill No. 1164, undoubtedly creates a

contract between the Commonwealth and the Boston Elevated Railway Company. II Op. Atty.-Gen. 261, 426, 429; Opinion of the Attorney-General to the House of Representatives, April 22, 1911. The right to charge a toll or fare of five cents, which shall not be reduced except in a prescribed manner, is of the essence of the contract. A change in this particular is clearly an impairment of the contractual rights of the company under its charter. *Detroit v. Detroit Citizens' St. Ry. Co.*, 184 U. S. 368, 398; *Minneapolis v. Minneapolis St. Ry. Co.*, 215 U. S. 417, 434; see, also, *Interstate Ry. Co. v. Massachusetts*, *supra*, p. 86.

Since the bill, if enacted, would be unconstitutional as to the Boston Elevated Railway Company, it may be urged that it would therefore be unconstitutional as to all other street and elevated railway companies, for the reason that it denies to them the equal protection of the laws in that it requires them to carry passengers at a lower rate than that fixed for passengers upon the lines of that corporation. In the absence of the facts of each specific case, however, I cannot say that there is not a reasonable ground for distinction between that corporation and all other street and elevated railway companies. See *Interstate Ry. Co. v. Massachusetts*, *supra*, p. 85; *Covington & Lexington Turnpike Co. v. Sanford*, 164 U. S. 578, 597, 598. But even if the facts of each case do not justify the distinction between the Boston Elevated Railway Company and other companies, the fact that the former cannot be subjected to the act in question without violating its contractual rights, which are protected by the Constitution, is probably in itself sufficient to justify the discrimination. As was said by Mr. Justice Holmes in *Interstate Ry. Co. v. Massachusetts*, *supra*, p. 85:—

If the only ground were that the charter of the Elevated Railway contained a contract against the imposition of such a requirement, it would be attributing to the Fourteenth Amendment an excessively nice operation to say that the immunity of a single corporation prevented the passage of an otherwise desirable and wholesome law.

It may be, though I do not think so, that the bill, if enacted in its present form, would not be held to be separable, and that since unconstitutional as to the Boston Elevated Railway Company it would be unconstitutional as to all street and elevated railway companies. I cannot, however, conceive of any way in which this question can be raised, since companies other than

the Boston Elevated Railway Company could object to the statute only on the ground that it was unconstitutional as to them. See *Hatch v. Reardon*, 204 U. S. 152, 160; *Interstate Ry. Co. v. Massachusetts*, *supra*. I am therefore of opinion that the bill, if enacted, would not be unconstitutional as to companies other than the Boston Elevated Railway Company on the ground that it discriminated against them.

As to whether it would be unconstitutional as to such other companies on other grounds, it is, as I have said, impossible to determine upon the facts before me. Whether in any case it would be unconstitutional as interfering with foreign or interstate commerce, or as impairing the obligation of a contract, could readily be determined. Whether in any case it deprives a corporation of its property without just compensation and without due process of law involves a detailed knowledge as to the financial condition of the corporation and the amount of business done by it.

I advise you, therefore, that in my opinion the bill, if enacted, would be unconstitutional as to the Boston Elevated Railway Company, and that it would not be unconstitutional as to other street and elevated railway companies on the ground that it discriminated between them and the Boston Elevated Railway Company, but that no further advice can be given as to its constitutionality as to such other companies upon the facts before me.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Constitutional Law — Contract — Boston Elevated Railway Company — Free Transfers.

St. 1897, c. 500, § 10, which provides that the Boston Elevated Railway Company may "establish, and take a toll or fare, which shall not exceed the sum of five cents for a single continuous passage in the same general direction upon the roads owned, leased or operated by it," which "sum shall not be reduced by the legislature during the period of twenty-five years, from and after the passage of this act," with the further provision that the Board of Railroad Commissioners may, upon petition and after notice and a hearing, reduce such toll or fare, but that such toll or fare shall not, without the consent of the corporation, be so reduced as to yield less than a certain fixed income, and which further provides that "said corporation shall also provide free transfer from elevated to surface and from surface to elevated cars at all stations of the elevated

lines reached by surface lines and from one elevated car or train to another at junction points entitling a passenger to a continuous ride in the same general direction," and such further free transfers on all the surface lines as may be required by the Board of Railroad Commissioners, created a contract between the Commonwealth and the Boston Elevated Railroad Company; and a proposed amendment to the section above quoted, providing in part that such corporation "may establish for its sole benefit a toll or fare which shall not exceed the sum of five cents for a single continuous passage between the terminals and transfer points of said roads, and transfer checks shall be issued or transfers made on demand without additional payment, which shall entitle the passenger to a continuous ride from any station or transfer point to any other station or transfer point on the system," such transfers to be issued from and between midnight and six o'clock in the morning, on cars leaving certain specified stations, so as to render to passengers the same amount of service during the hours from midnight to 6 o'clock in the morning for the same fare as they receive during the other hours of the day, is unconstitutional and void, for the reason that it changes the requirements as to transfers established by such contract.

MAY 3, 1911.

HON. FRANK P. BENNETT, Jr., *Chairman, Committee on Street Railways.*

DEAR SIR:— You have requested my opinion as to whether House Bill No. 1164, if enacted, would be constitutional. This bill is entitled "An Act relative to free transfers on the cars of the Boston Elevated Railroad Company," and amends St. 1894, c. 548, by substituting for section 16 thereof a new section. As St. 1894, c. 548, § 16, is not now in force, having been repealed by St. 1897, c. 500, § 22, it is obvious that the bill is not in proper form. I assume, however, that the intention is to amend St. 1897, c. 500, § 10, which is the section now in force dealing with the same subject-matter, and I answer your question upon that assumption.

From the title of the bill and from the petition which accompanies it, I infer that the purpose of the bill is to change the requirement as to transfers, and I therefore consider primarily its constitutionality in this aspect.

St. 1897, c. 500, § 10, authorizes the Boston Elevated Railway Company to "establish and take a toll or fare which shall not exceed the sum of five cents for a single continuous passage in the same general direction on the roads owned, leased or operated by it," which "sum shall not be reduced by the legislature during the period of twenty-five years, from and after

the passage of this act," with a provision, however, that the Board of Railroad Commissioners may, upon petition, after notice and hearing, reduce such toll or fare, but that such toll or fare shall not, without the consent of the corporation, be so reduced as to yield less than a certain fixed income. The section further provides that —

Said corporation shall also provide free transfer from elevated to surface and from surface to elevated cars at all stations of the elevated lines reached by surface lines and from one elevated car or train to another at junction points entitling a passenger to a continuous ride in the same general direction, and such further free transfers on all the surface lines of railway owned, leased or operated by it, as may be satisfactory to or required by the board of railroad commissioners.

The proposed act provides, in part, as follows: —

Said corporation may establish for its sole benefit a toll or fare which shall not exceed the sum of five cents for a single continuous passage between the terminals and transfer points of said routes. And transfer checks shall be issued or transfers made on demand, without additional payment, which shall entitle the passenger to a continuous ride from any station or transfer point to any other station or transfer point on the system and said transfers shall be issued from and between the hours of twelve midnight and six in the morning on cars leaving and arriving at Adams square, Hanover street, Scollay square and Northampton street, Boston, and Harvard square, Cambridge, and Uphams Corner, Dorchester, so as to render passengers the same amount of service during the hours of twelve midnight and six in the morning for the same fare as they receive during the other hours of the day.

The provisions of St. 1897, c. 500, § 10, undoubtedly created a contract between the Commonwealth and the Boston Elevated Railway Company (II Op. Atty.-Gen. 261, 426, 429; Opinion of the Attorney-General to the House of Representatives, April 22, 1911), and this contract is still in force. The right to charge a toll or fare of a fixed amount which shall not be reduced except in a prescribed manner is of the essence of the contract. So is the limitation as to the transfers which may be required. A change in the rate other than in the prescribed manner, or, what is equivalent thereto, a change in the requirements as to transfers, is an impairment of the contractual

rights of the company. See *Detroit v. Detroit Citizens' St. Ry. Co.*, 184 U. S. 368, 398; *Minneapolis v. Minneapolis St. Ry. Co.*, 215 U. S. 417, 434; see also, *Interstate Ry. Co. v. Massachusetts*, 207 U. S. 79, 86.

The proposed act clearly changes the requirements as to transfers. It substitutes for a requirement that the corporation shall provide "such further free transfers on all the surface lines of railway owned, leased or operated by it, as may be satisfactory to or required by the board of railroad commissioners," certain absolute requirements. It is immaterial that the railroad commissioners might make even more stringent requirements than are made by the proposed act. The corporation is entitled to have the requirements made in the manner fixed by its contract. To this extent at least, the bill, if enacted, would be unconstitutional. I do not imply that there are not other aspects in which it would be unconstitutional.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Governor — Statement or Estimate of Proposed Expenditures — Investigation of Officers, Departments or Institutions of the Commonwealth — Employment of Agents or Experts.

The authority of the Governor under St. 1910, c. 220, § 1, in substance requiring that certain statements and estimates should be submitted to the Governor and Council, and that the Governor should transmit the same to the General Court with such recommendations, if any, as he might deem proper, was not extended by the provisions of St. 1911, c. 82, authorizing him "to employ such persons as he may deem proper to make such investigation of any of the commissions, departments or institutions of the commonwealth as he believes is necessary to enable him to carry out the provisions of chapter two hundred and twenty of the acts of the year nineteen hundred and ten," and his power to investigate, by means of agents, investigators or experts employed under the provisions of the chapter last cited, any officer, department or institution, must be predicated upon the existence of a statement of proposed expenditures and of other matters required by St. 1910, c. 220, which is to be transmitted to the Legislature.

It follows, therefore, that after the Governor has transmitted to the Legislature the statements or estimates of expenditure in relation to any particular officer, department or institution there is no longer authority or occasion for any such investigation.

MAY 11, 1911.

HON. ELMER A. STEVENS, *Treasurer and Receiver-General.*

DEAR SIR:— You submit for my consideration a communication dated May 8, 1911, in which you say, in part, that—

Under authority of His Excellency the Governor, given by chapter 82 of the Acts of the year 1911, on or about the middle of March last, Mr. Harvey S. Chase began an investigation of the department of the Treasurer and Receiver-General. He was granted free access to every book and record in the department and there was shown and explained to him everything he desired.

On March 28 he rendered a report to the Governor, the Executive Council and the joint committee on ways and means. This report was sent to the Legislature by the Governor and referred to the joint committee on ways and means.

and, further, that Mr. Chase—

has demanded of me the privilege of further investigating this department and thus covering the same ground of his previous investigation.

I desire, therefore, to be advised of the extent of the authority for investigating this department given by chapter 82 of the acts of the General Court of this year.

You further state that Mr. Chase was appointed by the Governor to conduct an investigation, on March 17, 1911, by a written authority, in part as follows:—

Acknowledging your favor of to-day, you are hereby authorized to conduct an investigation in regard to the offices of the Treasurer, . . . in accordance with the provisions of the legislative act approved March 2, 1911, a copy of which is hereto attached.

Said chapter 82 of the Acts of 1911 did not extend the general power of the Governor with respect to investigations, as defined and described in an opinion rendered to the Governor by the Attorney-General, dated April 26, 1909. The statute was passed solely for the purpose set forth therein, namely, to enable the Governor "to carry out the provisions of chapter two hundred and twenty of the acts of the year nineteen hundred and ten," which is the so-called "Walker act."

The effect of this latter statute was determined by the Supreme Court in an opinion of the justices to the Senate, dated April 7, 1911, which is, in part, as follows:—

The St. of 1910, c. 220, has made but a very small change in the law of the Commonwealth. . . .

The only new provision in this particular is the requirement that it [estimates and statements] shall be submitted "to the governor and council for examination, and the governor shall transmit the same to the general court with such recommendations, if any, as he may deem proper." . . . Under this statute, after the document has been printed it is to be formally submitted to the Governor and Council for examination, as well as distributed to the members of the General Court; while under the former statute the governor was left to obtain a copy as he might. Under the present statute he is to transmit it to the General Court, so that they may know that he has had an opportunity to examine it, and he may make recommendations or not, as he chooses. . . . The only material effect of this statute is to give a legislative invitation to the Governor to examine the documents prepared by the Auditor, and to make recommendations upon the subjects contained in them if he chooses, and also to give him an implied assurance that his recommendations as to the amount of the appropriations will receive respectful consideration.

The duty and power of the Governor in the premises, therefore, being confined to the transmission of the statements of estimates for appropriations submitted to the Auditor by the various State officers, boards and commissions, and transmitted by the Auditor to the Governor, to be accompanied by a recommendation or not, as he sees fit, it follows that his power to investigate any officer, department or institution must be predicated upon the existence of a statement of proposed expenditures and of other matters required by St. 1910, c. 220, which may be transmitted by him to the Legislature. The employment of agents, investigators and "experts" is only such as the Governor believes is necessary to enable him to carry out the provisions of said St. 1910, c. 220. If there are no such estimates for the current year before him for transmission, and upon which before transmission he seeks further information, it follows that there is no authority or occasion for any investigation under said St. 1910, c. 220, or St. 1911, c. 82.

With reference to this you state that —

The regular appropriations for salaries and expenses of this department were approved by the Governor on February 11, being chapter 26 of the acts of this year, and on February 17 His Excellency sent a special message to the House of Representatives recommending the enactment of a bill authorizing the payment of the sum of \$343,691, the sinking fund requirements for the payment of the

direct debt of the Commonwealth for the year 1911, and \$167,833.33 for the payment of certain serial bonds falling due during said year. This bill was passed and approved by His Excellency on March 17, being chapter 157 of the acts of this year.

It appears, therefore, that when Mr. Chase was first appointed by the Governor the statement or estimate of expenses from the department of the Treasurer, which had been before the Governor under the requirements of said St. 1910, c. 220, had already been transmitted to the Legislature by the Governor, and the appropriation had been made and approved by the Governor. Further, it appears that the statement with reference to the sinking funds had also been transmitted to the Legislature and had been enacted into law, with the approval of the Governor. So far, then, as relates to the department of the Treasurer itself, or to the sinking fund requirements, the Governor did not have before him any statement or estimate under the provisions of said St. 1910, c. 220. There was, therefore, no ground for an investigation by the Governor, or his agent, "to enable him to carry out the provisions of chapter two hundred and twenty of the acts of the year nineteen hundred and ten," as specified in St. 1911, c. 82. I am of opinion, therefore, that so far as relates to the operation, maintenance and management of the department of the Treasurer and Receiver-General Mr. Chase was without authority from the beginning, and that the investigation that has been made was made by the consent and with the acquiescence of the Treasurer.

I am of opinion, therefore, that as Mr. Chase has no authority to conduct an investigation into the management or methods or details of the department of the Treasurer and Receiver-General, you are within your rights in refusing him permission so to do.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Public Park — Change of Use — Back Bay Fens — Proprietary Rights.

It is within the power of the Legislature to authorize the park commissioners of the city of Boston to permit the erection of a public schoolhouse upon land known as the Back Bay Fens, acquired in fee by the city of Boston under authority of St. 1875, c. 185, which provided in section 3 that such commissioners should "have

the power to locate within the limits of the city of Boston one or more public parks, and for that purpose from time to time to take in fee, by purchase or otherwise, any and all such lands as said board may deem desirable therefor, . . ." since the proposed use of the land in question is undoubtedly for a public use and no proprietary rights will be affected thereby.

MAY 11, 1911.

HON. ALLEN T. TREADWAY, *President of the Senate.*

DEAR SIR:— I have the honor to acknowledge the receipt of an order of the Honorable Senate requiring my opinion upon the following question of law: "Are the provisions of section 1 of the bill printed as Senate, No. 441, now pending in the Senate, a copy of which is transmitted herewith, constitutional?"

The section to which the order refers is as follows:—

SECTION 1. The park commissioners of the city of Boston are hereby authorized, upon the request of the schoolhouse commissioners of the said city, with the approval of the school committee of said city, to permit the erection of a building for the high school of commerce within the limits of the Back Bay Fens in said city of Boston.

The Back Bay Fens, so called, were acquired in 1877 by the park commissioners of the city of Boston, under authority of St. 1875, c. 185. This statute provided in section 3 that said commissioners should "have power to locate within the limits of the city of Boston one or more public parks; and for that purpose, from time to time, to take in fee, by purchase or otherwise, any and all such lands as said board may deem desirable therefor; . . ." By section 6 it was provided that—

The fee of all lands taken or purchased by said board under this act shall vest in the city of Boston, and said city shall be liable to pay all damages assessed or determined, as provided in the preceding section, and all other costs and expenses incurred by said board in the execution of the powers vested in them by this act. Said city shall also be authorized to take and hold in trust or otherwise any devise, grant, gift or bequest that may be made for the purpose of laying out, improving or ornamenting any parks in said city.

Section 17 contained a provision making the act effective upon acceptance by a majority of the legal voters of the city of Boston present and voting; and the act was accepted in accordance

with such provision on June 9, 1875. I am informed by the corporation counsel of the city of Boston that the park commissioners acquired title by purchase and without condition, and that in order to perfect the title of the city said lands were subsequently taken in fee under authority of the provision of St. 1875, c. 185, § 3, above quoted.

From this statement of the situation it appears that the Back Bay Fens are held for park purposes and that the fee therein is in the city of Boston. The question is whether it is within the power of the Legislature to authorize the park commissioners of said city to permit the erection of a public schoolhouse upon this land now held for park purposes.

This question must, in my opinion, be answered in the affirmative. The proposed use of the land in question is undoubtedly for public purposes. The legal title to the land, though acquired at the expense of the city, is held by it in trust for the public. *Holt v. City Council of Somerville*, 127 Mass. 408. The Legislature represents the interests of the public and controls the use which is made of the park. No action on the part of tax-paying citizens or voters or of the city council is required. *Codman v. Crocker*, 203 Mass. 147, 152, 153. The power of the Legislature in this respect is extensive. In *Commonwealth v. Davis*, 162 Mass. 510, 511, the court pointed out that "when no proprietary right interferes, the Legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the lesser step of limiting the public use to certain purposes." On this principle it may, it seems, subject to this limitation, change the public use. *Cf. Mt. Hope Cemetery v. Boston*, 158 Mass. 509, 511. This principle is, therefore, broad enough to justify the proposed act if such act does not affect proprietary rights. Upon the facts before me it does not appear that there are any proprietary rights which will be affected by the erection of a schoolhouse in the park. Upon that assumption, the provisions of section 1 of the bill are, therefore, constitutional.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Taxation — National Banks — Tax on Deposits.

A proposed bill, in substance imposing upon all or certain of the deposits in national banks within the Commonwealth an annual tax of not more than one-half of one per cent., if enacted, would be unconstitutional as a tax upon the property of the depositors or upon the property of the bank because it is not proportional within requirement of the Constitution of Massachusetts, Part II., c. 1, § 1, Art. IV., that taxes levied upon property must be "proportional and reasonable."

Such a bill would also be unconstitutional as a tax upon the property of the bank because it is in conflict with Revised Statutes of the United States, § 5219, which restricts the power of a State to tax national banks to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank.

As an excise upon the privileges of the depositors, such bill would be unconstitutional because the mere right to take and hold property cannot be made the subject of an excise tax; and as an excise upon any privileges of the bank, it would be unconstitutional because it would be in conflict with the provisions of Revised Statutes of the United States, § 5219, above cited.

MAY 13, 1911.

NORMAN H. WHITE, Esq., *Chairman, Committee on Ways and Means.*

DEAR SIR: — In behalf of the committee on ways and means of the House of Representatives you have requested my opinion as to whether or not House Bill No. 1827 is constitutional, "and whether the State can legislate on a matter of this kind pertaining to national banks."

House Bill No. 1827 is as follows: —

SECTION 1. The provisions of chapter three hundred and forty-two of the acts of the year nineteen hundred and nine shall apply to national banks having a place of business in the commonwealth of Massachusetts, and said provisions shall only apply to such of the deposits therein referred to as do not exceed in amount the limits imposed upon deposits in savings banks by section forty-six of chapter five hundred and ninety of the acts of the year nineteen hundred and eight and acts in amendment thereof and addition thereto.

SECTION 2. This act shall take effect upon its passage.

St. 1909, c. 342, referred to in this bill, imposes upon "every trust company having a savings department, . . . an annual tax on the amount of its deposits therein," substantially such as is imposed upon savings banks (St. 1909, c. 490, Part

III., §§ 21-23), — that is, “an annual tax of one half of one per cent on the amount of its deposits,” — except that for the years 1910, 1911 and 1912 a smaller rate is fixed; and section 4 exempts from local taxation deposits taxed under the provisions of that act. St. 1908, c. 590, § 46, as amended, referred to in the bill, permits savings banks to “receive on deposit from any person not more than one thousand dollars,” and to allow interest thereon, “and upon the interest accumulated thereon, until the principal, with the accrued interest, amounts to two thousand dollars.” See St. 1909, c. 491, § 7. The effect of the bill, if enacted and valid, would be to impose upon all or certain of the deposits in the national bank an annual tax of not more than one-half of one per cent. It is not necessary for me to consider the construction of the act, since upon any construction it is, in my opinion, invalid upon fundamental grounds.

The Constitution of this Commonwealth contains two provisions authorizing taxation, which are to be found in Part II., c. I., § I., Art. 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.

Section 5219 of the Revised Statutes of the United States “is the measure of the power of a State to tax national banks, their property or their franchises. By its unambiguous provisions the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank. Any state tax therefore which is in excess of and not in conformity to these requirements is void.” *Owensboro National Bank v. Owensboro*, 173 U. S. 664, 669. See also *Third National Bank of Louisville v. Stone*, 174 U. S. 432.

The tax sought to be imposed by the bill in question would be unconstitutional as a tax upon the property of the depositors or upon the property of the bank because not proportional (Opinion of the Justices, 195 Mass. 607); and as a tax upon

the property of the bank would be void because in conflict with the federal statute referred to. It would be unconstitutional as an excise upon the privileges of the depositors, for the depositors are merely owners of money on deposit, that is, creditors of the bank, and "the mere right to own and hold property" such as this "cannot be made the subject of an excise tax" (Opinion of the Justices, *supra*, p. 614): and would be void as an excise upon any privilege of the bank, because in conflict with the federal statute referred to. The tax cannot in any view be considered as a tax on the "shares of stock in the names of the shareholders" or "an assessment of the real estate of the bank." See *Owensboro National Bank v. Owensboro*, *supra*.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Citizen — Voters — Formation of Credit Union.

Under the provision of St. 1909, c. 419, § 3, that "seven or more citizens of this commonwealth who have associated themselves by an agreement in writing for the purpose of forming a credit union, may . . . become a corporation . . .," the persons signing such agreement need not be voters.

MAY 24, 1911.

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

DEAR SIR: — By your letter of May 23 you require my opinion "as to whether the law (St. 1909, c. 419, § 3) requires all of the applicants for a credit union to be citizens in the sense that they must be voters."

The section cited provides that —

Seven or more citizens of this commonwealth who have associated themselves by an agreement in writing for the purpose of forming a credit union may, with the consent of the board of bank incorporation, become a corporation upon complying with all the provisions of section three of chapter one hundred and fourteen of the Revised Laws, except those which relate to the limit of capital to be accumulated.

Your letter states you have before you an agreement of association signed "by seven applicants, only five of whom are naturalized citizens of this Commonwealth." I assume the two remaining applicants are unnaturalized aliens.

The language of the section above quoted is explicit and requires that all the parties to the agreement therein provided for must be citizens of the Commonwealth. An unnaturalized alien is not a citizen of the United States, and therefore cannot become even by residence a citizen of the Commonwealth. It follows that the board of bank incorporation may not consent to the formation of a corporation by such applicants.

Replying to your specific inquiry, however, I have to advise you that the act does not require that citizens who may associate themselves for the purpose of forming a credit association should be voters. A citizen is not necessarily a voter.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Mercantile Establishment — Premises of Telegraph Company.

Premises maintained by a telegraph company do not constitute a mercantile establishment within the provision of St. 1909, c. 514, § 17, that “‘mercantile establishments’ shall mean any premises used for the purpose of trade in the purchase or sale of any goods or merchandise, and any premises used for the purposes of a restaurant or for publicly providing and serving meals.”

MAY 31, 1911.

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

DEAR SIR:— By a communication dated May 19 you request my opinion upon the question whether or not the Postal Telegraph Company and similar corporations are to be considered as mercantile establishments, and therefore as coming within the provision of St. 1909, c. 514, § 56, that “no child under the age of fourteen years, and no child who is over fourteen and under sixteen years of age who does not have a certificate as required by the four following sections . . . shall be employed in any factory, workshop or mercantile establishment.”

The act in which the above provision of law is found is a codification of the laws relating to labor, and in section 17 certain words and phrases as used in such codification, including the phrase “mercantile establishments,” are defined. The provision is as follows:—

“Mercantile establishments” shall mean any premises used for the purposes of trade in the purchase or sale of any goods or merchandise, and any premises used for the purposes of a restaurant or for publicly providing and serving meals.

I am of the opinion that the premises maintained by the Postal Telegraph Company are not used for the purposes of trade in the purchase or sale of any goods or merchandise, or for the purposes of a restaurant or for publicly providing and serving meals. It follows, therefore, that such premises are not to be considered as a mercantile establishment.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Hours of Labor — Vacations — Persons employed at State House — Governor — Governor and Council.

Neither the Governor nor the Governor and Council have any power to determine the hours of labor or the length of vacations for persons employed at the State House.

JUNE 1, 1911.

His Excellency EUGENE N. FOSS, *Governor.*

SIR:— You have requested my opinion as to “what power, if any, the Governor or the Governor and Council have with regard to determining the hours of labor for employees at the State House, and with regard to the length of their vacations.”

In my opinion neither the Governor nor the Governor and Council have any power in regard to the hours of labor for employees at the State House, or in regard to their vacations, except so far as they may have power over employees in the executive department. The hours of labor of the different employees are to be determined, in my opinion, by the head of the department in which such employee is employed. So long as such heads of departments act reasonably there is apparently no authority in any one to interfere.

I am aware that on July 15, 1872, the Council adopted the following order:—

Ordered, That all persons employed in the various departments in the State House shall be on duty daily from 9 o'clock A.M. to 4 o'clock P.M., with an intermission of one hour for dinner; and that a vacation not longer than one month be allowed to each employee.

This was apparently adopted under authority of St. 1866, c. 67, which gave to the Executive Council the right to fix the office hours of the departments. This statute, however, was repealed by St. 1879, c. 236.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

*Constitutional Law — Governor — Bills and Resolves — Action
— Five Days — Sundays — Holidays.*

Under the provision of the Constitution of the Commonwealth, Part II., c. I., § I., Art. II., that "if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law," the governor is to be allowed five full days, beginning at 12 o'clock midnight next following the time when the bill is presented, in which to exercise his right either to signify his approval by signing such bill or to return it with his objections in writing to the Senate or House of Representatives.

In computing such period of five days, Sunday is to be excluded and holidays included.

JUNE 1, 1911.

His Excellency EUGENE N. FOSS, *Governor.*

SIR:—I have the honor to reply to the inquiry of Your Excellency, transmitted to me through your secretary, whether or not, under the provision of the Constitution of the Commonwealth, Part the Second, Chapter I., section I., Article II., "if any bill or resolve shall not be returned by the governor within five days after it shall have been presented, the same shall have the force of a law," the five days may be construed to begin upon midnight of the day on which the bill is presented to the Governor, exclusive of Sundays and holidays.

I am of opinion that in acting under the constitutional provision above quoted the Governor is to be allowed five full days, beginning at 12 o'clock midnight next following the time when the bill is presented, in which to exercise his right either to signify his approval of such bill by signing it or to return it with his objections, in writing, to the Senate or House of Representatives, and that in the computation of such periods of five days Sundays are to be excluded.

With reference to the question of holidays, I have not been able to find any judicial decisions on the point. It is a general rule, however, that anything may be legally done on a holiday which is not expressly prohibited, and that as to the legality of business done, holidays are different from Sundays. My conclusion from the cases I have examined on this point is that in the case of Sunday it is to be inferred that no work shall be done, but that in the case of a holiday any work may be done which is not prohibited by law. There is no prohibition upon the Governor forbidding him to veto a bill on a holiday, and I therefore assume that he may do so. As he may express his

veto on a holiday, I am of the opinion that the better rule is to include the holiday as one of the five days allowed under the constitutional provision.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Statute — Presumption of Lawful Passage — Administrative Officers.

The presumption arising from the proper custody and due authentication of an act of the Legislature that such act was passed in accordance with the requirements of the Constitution, should be regarded as binding upon administrative officers, and such act should be regarded by them as having "the force of a law."

JUNE 7, 1911.

WARREN P. DUDLEY, Esq., *Secretary, Civil Service Commission.*

DEAR SIR:— In behalf of the Civil Service Commission you request my opinion as to whether St. 1911, c. 119, which is entitled "An Act relative to qualifications for examination by the civil service commission," has the "force of a law." This act, after having passed both branches of the General Court, was "laid before the Governor for his revisal," and was by him returned to the House of Representatives, in which branch it originated, without his approval. Thereupon, as appears from the journal, a quorum being present, more than two-thirds of the members present but less than two-thirds of the entire membership (unless the members paired in favor be counted) agreed to pass it. Thereafter, it was sent to the other branch, and was approved by two-thirds of the members present. You seek my advice as to whether upon these facts the act was legally passed; that is, whether the constitutional requirement for the passage of a bill over the Governor's veto, that two-thirds of the Senate or House of Representatives, in which it originated, should agree to pass it (Const., Part II., c. I., § I., Art. II.), was complied with.

The bill is now deposited with the Secretary of the Commonwealth, who, under the Constitution (Part II., c. II., § IV., Art. II.), has the custody of the records of the Commonwealth. It bears the statements, signed, respectively, by the speaker of the House and the president of the Senate, that it was passed to be enacted by those branches. It also bears the statement, signed by the speaker and by the clerk of the House, that the bill,

“having been returned to the House of Representatives by His Excellency the Governor with his objections thereto in writing, is passed by the House of Representatives notwithstanding said objections, two-thirds of the members having voted in the affirmative;” and the statement, signed by the president and by the clerk of the Senate, that it “has been passed in concurrence by the Senate, the objections of His Excellency the Governor to the contrary notwithstanding, two-thirds of the members present having approved the bill.” Said bill is, therefore, in the proper custody and duly authenticated, and is presumed to have been enacted in accordance with constitutional requirements. Whether such presumption can be overcome by reference to the legislative journals is a matter upon which the courts are not in agreement. The Supreme Court of the United States holds that a bill which is in proper custody and duly authenticated is conclusive evidence of its execution and valid enactment (*Field v. Clark*, 143 U. S. 649; *Flint v. Stone-Tracy Co.*, 220 U. S. 107), and the same view is held by numerous State courts. Other State courts take a different view. Without expressing an opinion as to the view which is likely to be adopted by the Supreme Judicial Court of this Commonwealth when the case comes before it, I advise you that the presumption arising from proper custody and due authentication should be regarded as binding upon administrative officers, and that said act should be regarded by your commission as having the “force of a law.” I do not, of course, intend by so advising you to imply that if the journals were referred to it would appear that the bill was not legally enacted. Upon careful consideration I have concluded that I ought not to express an opinion in answer to that inquiry.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Corporation — Charter — Purpose — Holding Company — Acquisition of Stock of Domestic Street Railway, Gas and Electric Light Corporations.

Under the provisions of St. 1903, c. 437, § 7, as amended by St. 1906, c. 286, § 7, that “three or more persons may associate themselves by a written agreement of association with the intention of forming a corporation under general laws for any lawful purpose which is not excluded by the provisions of section one except to buy and sell real estate,” a corporation may be organized for the purpose

“to buy and hold a majority of the shares of the capital stock of any street railway, gas and electric light companies organized under the laws of this commonwealth to do business within this commonwealth.”

JUNE 9, 1911.

HON. WILLIAM D. T. TREFRY, *Commissioner of Corporations.*

DEAR SIR:— You request my opinion as to whether “a corporation may be organized under chapter 437 of the Acts of the year 1903 for the following purpose: ‘to buy and hold a majority of the shares of the capital stock of any street railway, gas and electric light companies organized under the laws of this Commonwealth to do business within this Commonwealth.’”

It is well established in this Commonwealth that a corporation may be organized under the general laws for the purpose of acquiring the stock of other corporations under the provisions of St. 1903, c. 437, § 7, as amended by St. 1906, c. 286, § 7, which is as follows:—

Three or more persons may associate themselves by a written agreement of association with the intention of forming a corporation under general laws for any lawful purpose which is not excluded by the provisions of section one except to buy and sell real estate.

By section 1, as amended by St. 1910, c. 385, it is provided that the purposes excluded from its provisions are:—

the purpose of carrying on the business of a bank, savings bank, co-operative bank, trust company, surety or indemnity company, or safe deposit company, or to corporations organized under general or special laws of this commonwealth for the purpose of carrying on within the commonwealth the business of an insurance company, railroad, electric railroad or street railway company, telegraph or telephone company, gas or electric light, heat or power company, canal, aqueduct or water company, cemetery or crematory company, or to any other corporations which now have or may hereafter have the right to take or condemn land within the commonwealth, or to exercise franchises in public ways granted by the commonwealth or by any county, city or town; but, except as hereinbefore provided, the provisions of this section shall not be construed to prohibit the organization of a corporation under the provisions of this act for the purpose of carrying on any lawful business outside of this commonwealth.

The question is then presented whether the ownership of stock for purposes of investment or control is a lawful purpose under the foregoing provisions of law.

In and of itself the ownership of stock is undoubtedly a lawful purpose; and if expressly authorized, stock may be acquired and held for purposes of investment or bought and sold for purposes of profit. It is only when contrary to public policy as declared by express statute or by the principles of common law that such holding will become unlawful. Is such acquisition and ownership unlawful when the stock to be owned and the corporations to be controlled are not business corporations but public-service corporations, such as gas and electric light or street railway companies? I am aware of no provision of law which expressly forbids such ownership in the case of public-service corporations.

It has been suggested that the organization of a business corporation to acquire the stock of or to control public-service corporations is in effect the organization of public-service corporations under the business corporation law (St. 1903, c. 437), which constitutes a violation of so much of section 1 as provides that it shall not apply to the corporations enumerated, including street railway companies and electric light companies. In my opinion, however, this contention is disposed of by the language of the court in *Pullman Car Co. v. Missouri Pacific Co.*, 115 U. S. 587, and in *Peterson v. Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364, 391, where the court said:—

It is true that the Pacific company practically owns the controlling stock in the Gulf company, and that both companies constitute elements of the Rock Island system. But the holding of the majority interest in the stock does not mean the control of the active officers and agents of the local company doing business in Texas. That fact gave the Pacific company the power to control the road by the election of the directors of the Gulf company, who could in turn elect officers or remove them from the places already held; but this power does not make it the company transacting the local business.

This record discloses that the officers and agents of the Gulf company control its management. The fact that the Pacific company owns the controlling amounts of the stock of the Gulf company, and has thus the power to change the management, does not give it present control of the corporate property and business.

This conclusion, however, is based upon the assumption that the holding corporation is organized in good faith to conduct the business of acquiring and owning the stock specified, and is not a device or trick to avoid the consequences of illegal acts or to accomplish a purpose which would not be permitted to a public-service corporation.

The question whether the organization of a holding company for the purpose of acquiring the stock of and controlling a public-service corporation is against public policy as tending to create a monopoly is a more difficult one. Numerous cases in other jurisdictions have decided contrary to such organization. In this Commonwealth, however, it appears to be the established policy to restrict competition in the case of such public-service corporations as gas and electric light companies and street railway companies, subject to regulation by the State. See *Weld v. Gas and Electric Light Commissioners*, 197 Mass. 556, 558. Indeed, it may be said that in this Commonwealth all public-service corporations are so supervised and controlled by the public authorities that there is no longer unrestricted competition, upon the theory that the rights of the public are better served by careful regulation than by unregulated competition.

In this Commonwealth, also, there appears to be no public policy opposed to the creation of holding companies, so called, even when they are for the purpose of holding the stock of public-service corporations. Thus, by St. 1909, c. 519, the Boston Railroad Holding Company was incorporated for the 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 . . ." For many years voluntary associations, resembling in many of their attributes corporations, have been organized and are maintained to acquire the stock of public-service corporations.

I am, therefore, of the opinion that the public policy of the Commonwealth does not appear to be opposed to the creation of holding companies created for the purpose of acquiring and holding the stock of street railways or gas and electric light companies, and that a provision authorizing such acquisition and holding, in the charter of a business corporation organized under the general laws, would not express an unlawful purpose as against public policy. That is, in my opinion a corporation may be organized under chapter 437 of the Acts of 1903 for the purposes set forth in your inquiry.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Hours of Labor — Dumping Inspectors — Civil Engineer.

Dumping inspectors employed by the Board of Harbor and Land Commissioners, whose duty it is "to see that all material which is to be dumped in tidewater is transported and dumped in its proper locality, none of it being deposited in any other place," are not "workmen, laborers or mechanics" within the meaning of St. 1911, c. 494, § 1, providing that "the service of all laborers, workmen and mechanics now or hereafter employed by the commonwealth . . . is hereby restricted to eight hours in any one calendar day."

The further provision of such section that "engineers shall be regarded as mechanics within the meaning of this act" does not extend to or include persons who follow the profession of civil engineering.

JUNE 24, 1911.

HON. HEMAN A. HARDING, *Board of Harbor and Land Commissioners.*

DEAR SIR:— You have requested my opinion with reference to the standing of dumping inspectors under the provision of section 1 of chapter 494 of the Statutes of 1911, that "the service of all laborers, workmen and mechanics now or hereafter employed by the commonwealth . . . is hereby restricted to eight hours in any one calendar day."

You state that the duties of dumping inspectors, who are civil service appointees, are, "To see that all material which is to be dumped in tidewater is transported and dumped in its proper locality, none of it being deposited in any other place. The inspectors are quartered on the towboats towing the loaded scows to sea. They practically live on the boats. They are required to be on duty from the time the towboat starts with the tow until the material is dumped. They cannot leave the towboat at that time, and have to remain until she returns to her wharf or anchorage. They are not required to do any service on the return trip. As soon as the scows are dumped they may turn into their bunks and sleep until she returns to her dock or anchorage. They are fed on board the towboat."

The duties of a dumping inspector, as defined by you, appear to require special knowledge and powers of supervision, and do not appear to involve any manual labor, which has generally been regarded as an important element in the words "laborers, workmen and mechanics." *Meands v. Park*, 95 Me. 527; *Bloom v. Richards*, 2 Oh. St., 387, 401; *Savannah & C. R. Co. v. Callahan*, 49 Ga. 506, 511; *Adams v. Goodrich*, 55 Ga. 233, 234. I am, therefore, of the opinion that a dumping inspector is not

a laborer, workman or mechanic within the meaning of the statute.

You further inquire whether the statute, by virtue of the provision that "engineers shall be regarded as mechanics within the meaning of this act," extends to and includes the chief engineer and several assistant engineers, draftsmen and helpers who do such civil engineering work as the commission may require. I am of opinion that the word "engineers," as used in St. 1911, c. 494, § 1, is not to be construed to include persons who follow the profession of civil engineering. Whether or not those who assist them in the performance of such duties are to be regarded as laborers, workmen or mechanics must depend upon the nature of the services which they perform.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Towns — Water Supply — Indebtedness — Vote — Two-thirds Majority.

A town which accepts by a majority vote an act authorizing it to supply itself and its inhabitants with water, in incurring debt therefor must comply with the provisions of R. L., c. 27, § 8, requiring a two-thirds vote in order that it may incur debt for such purpose.

JULY 7, 1911.

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

DEAR SIR: — You request my opinion as to "whether a town which accepts, by a majority vote, an act authorizing it to supply itself and inhabitants with water may incur debt therefor without being required to comply with the provisions of section 8 of chapter 27 of the Revised Laws, which makes necessary a two-thirds vote in order that it may incur debt for such a purpose." I infer that your inquiry is made with especial reference to the town of West Brookfield, which town, by chapter 373 of the acts of this year, is authorized to supply itself and its inhabitants with water. Section 5 of this act is as follows: —

Said town, for the purpose of paying the necessary expenses and liabilities incurred under the provisions of this act, may issue from time to time bonds, notes or scrip to an amount not exceeding thirty thousand dollars. Such bonds, notes or scrip shall bear on their face the words, Town of West Brookfield Water Loan, Act of 1911; shall be payable at the expiration of periods not exceeding thirty years from the dates of issue; shall bear interest, pay-

able semi-annually, at a rate not exceeding four and one half per cent per annum; and shall be signed by the treasurer of the town and countersigned by the water commissioners hereinafter provided for. Said town may sell such securities at public or private sale, upon such terms and conditions as it may deem proper: *provided*, that the securities shall not be sold for less than their par value.

Section 10 is as follows:—

This act shall take effect upon its acceptance by a majority vote of the legal voters of the town of West Brookfield present and voting thereon at a legal meeting called for the purpose within three years after its passage; but it shall become void unless the town of West Brookfield shall begin to distribute water to consumers in said town within three years after the date of the acceptance of this act as aforesaid. For the purpose of being submitted to the voters as aforesaid this act shall take effect upon its passage.

As appears from the section last quoted, the general provisions of the act do not take effect until “its acceptance by a majority vote of the legal voters of the town of West Brookfield present and voting thereon at a legal meeting called for the purpose within three years after its passage.” If the act is so accepted, the town is authorized to issue “bonds, notes or scrip to an amount not exceeding thirty thousand dollars.” Such bonds, notes or scrip, however, if issued, must be issued in accordance with a vote of the town. There is nothing in the act from which it is to be implied that the vote by which the act is accepted is also a vote to issue bonds, notes or scrip. In voting to issue bonds, notes or scrip the town must, of course, follow the statutory requirements. So far as the special act prescribes the details of such issue it is to be followed; in other respects the general law controls. *Cf.* I Op. Atty.-Gen., 263. The special act does not state whether the vote to issue bonds, notes or scrip shall be a majority or a two-thirds vote. The general law (R. L., c. 27, § 8) requires, in the case of a town, “a vote of two thirds of the voters present and voting at a town meeting,” and, in the case of a city, “of two thirds of all the members of each branch of the city council.” It follows that “a vote of two thirds of the voters present and voting” is required to authorize the issue of bonds, notes or scrip under authority of the act here in question. The correctness of this view appears from the fact that it is expressly provided by general law (R. L., c. 27, § 21) that where a city accepts by a vote

of two-thirds of the legal voters an act to supply it with water, "a vote of the majority of the members of each branch of the city council" is sufficient to authorize the issue of bonds. By this statute it is recognized that in cases not within this exception a vote "of two thirds of all the members of each branch of the city council" or "of two thirds of the voters present and voting at a town meeting", as the case may be, is necessary. Cf. St. 1876, c. 19.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Attorney-General — Duties — Limit of Time — Constitutional Law — Referendum — Matter of Local Self-government.

The Senate has no authority to fix a limit of time within which the Attorney-General is to perform his duties or any of them.

A provision in a proposed bill that "this act shall be submitted to the qualified voters of the Commonwealth at the next State election, in answer to the question, 'Shall a law enacted by the General Court of the year 1911 relative to the development of the Port of Boston and authorizing the expenditure of \$9,000,000 for that purpose, be accepted' . . ." does not fall within the exception permitting a referendum in matters of local self-government, and would, therefore, be unconstitutional.

JULY 13, 1911.

HENRY D. COOLIDGE, Esq., *Clerk of the Senate*.

SIR: — I have the honor to transmit herewith my opinion in response to the following order to the Honorable Senate, dated July 12, 1911: —

Ordered, That the Attorney-General be requested to furnish to the Senate forthwith his opinion on the following question: Whether the following pending amendment of the Senate Bill relative to the development of the port of Boston (printed as Senate, No. 570), referring the measure by referendum to the voters of the Commonwealth, is constitutional, to wit: striking out section 19 and inserting in place thereof the following new section: — "*Section 19*. This act shall be submitted to the qualified voters of the commonwealth at the next state election in answer to the question 'Shall a law enacted by the general court of the year nineteen hundred and eleven relative to the development of the port of Boston and authorizing the expenditure of nine million dollars for that purpose be accepted?' If a majority of the voters voting thereon vote in the affirmative, this act shall thereupon take effect; otherwise it shall be null and void."

YES.

NO.

The form of the order compels me to respectfully remind the Honorable Senate that it has no authority to fix the limit of time within which the Attorney-General shall perform his duties or any of them. Therefore, so much of the order as requires my opinion forthwith I respectfully disregard. My desire, however, to assist the Honorable Senate in the performance of its duties, as well as the deference I owe that honorable body, has caused me to give attention to the question submitted as early as I could consistently with the other duties of my office.

In my opinion the proposed referendum as set forth in said order is unconstitutional within the principles now well established in this Commonwealth, as stated in the Opinion of the Justices, 160 Mass. 586, and in the decisions and discussions in the following cases: *Brodvine v. Revere*, 182 Mass. 598; *Graham v. Roberts*, 200 Mass. 152; and *Wyeth v. Cambridge Board of Health*, 200 Mass. 474; and in the opinion of my learned predecessor, Attorney-General Malone, to the committee on the judiciary, under date of April 3, 1907 (Attorney-General's Report, 1907, p. 14). While the proposed legislation in some respects may be said to be a statute of local concern, it appears that the expenses are to be borne by the State at large, and the referendum is directed to the voters of the State at large. Said referendum, therefore, does not come within the exception permitting a referendum in matters of local self-government, within the meaning of said decisions.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Attorney-General — Opinion — Statement of Facts — Monopolies — Public Policy — Legislature.

The Attorney-General is not required to express an opinion upon any case or to take any other action relative thereto upon the request of a State officer, board or commission unless sufficient facts are stated to enable him to come to a definite conclusion in the premises. The determination of the attitude of the Commonwealth toward monopolies is primarily a function of the Legislature, and does not fall within the scope of the duties of the Attorney-General.

JULY 14, 1911.

His Excellency EUGENE N. FOSS, *Governor*.

SIR: — To your letter of July 3, 1911, I have been giving as careful and earnest consideration as the contents thereof permit. In it you make the following statements: —

Complaints are current that the prosperity of the shoe industry in this Commonwealth has been seriously impaired and is further threatened by the existence of a monopoly in shoe machinery. . . .

It is represented that practically all the shoe machinery in use in Massachusetts is owned by a single corporation which, though organized under the laws of another State, has its principal office here. It is practically impossible for any shoe manufacturer to buy his machinery or any part of it. He can secure it only upon lease and upon terms arbitrarily fixed by this corporation, which is said to be without competition in the manufacture of shoe machinery. The company has since the date of its organization, by various methods, acquired or destroyed the business of every competitor. It accordingly now has a complete and absolute monopoly of the entire field. . . .

Complaints are rife that the corporation has used its power to the disadvantage of our local industry. It has enforced oppressive terms and has discriminated against localities, and in a measure has discriminated against manufacturers here in favor of those located in other States. There is a well-founded current belief that the arbitrary restrictions imposed by this monopoly are responsible for the depression of the industry of which our manufacturers are beginning seriously to complain.

I call your attention to the fact that within the year last past, when its monopoly was threatened by competition, this corporation acquired the machines, the manufacturing plants and the patents of a prominent, independent shoe machinery manufacturer. If this transaction could have been prevented it would have afforded distinct relief and protection against the present situation of absolute monopoly and autocratic control. It is of importance now to determine whether the current belief as to its invalidity is justified, and if so, what remedy may be applied.

You then proceed as follows:—

Assuming the facts to be as outlined above, I respectfully request your opinion upon the following points:—

1. Is the existing law sufficient to enable you, as the chief law officer of the Commonwealth, successfully to accomplish the destruction of this monopoly, or the relief in any measure of the shoe industry of the Commonwealth from the power of this corporation absolutely to control and dominate our shoe manufacturers?

2. Was the acquisition by this corporation of the shoe machinery, the manufacturing plants and the letters patent of an independent manufacturer in September, 1910, in violation of any existing law of the Commonwealth?

3. If, in your opinion, the existing law is insufficient to give relief, what other or further legislation is in your opinion necessary or expedient to curb or break the power of this alleged monopoly?

From a legal standpoint, and as a basis for an opinion that will be of any value whatever, I am unable to find in your letter anything that permits or enables me to come to any conclusion. It contains no statement of facts or evidence such as is necessary as a basis for legal consideration or action.

However, the deference that I owe to the office of the Chief Executive of this Commonwealth has led me to consider said letter in a broad and general way as a request from you for (1) a statement as to existing law, and (2) a statement as to the necessity or expediency of further legislation concerning the subject of manufacturing monopoly in this Commonwealth. So far as I am able I advise you, therefore, along the lines of these inquiries.

As to Existing Law.—There are now upon the books three statutes which bear upon the subject of monopolies.¹ These are R. L., c. 56, § 1; St. 1907, c. 469; and St. 1908, c. 454. There are also important common law principles, a consideration of which would be essential to any complete statement of the law of monopolies. Unless, however, it appears that no relief can be obtained under the statutes cited, it is unnecessary to consider whether relief could be obtained apart from these statutes.

R. L., c. 56, § 1, prohibits making "it a condition of the sale of goods, wares or merchandise that the purchaser shall not sell or deal in the goods, wares or merchandise of any other person, firm, corporation or association," and imposes a penalty for the violation of the provisions of the section. There is no suggestion in your letter that these provisions have been violated by the corporation to which you refer.

St. 1907, c. 469, prohibits inserting in or making "it a condition or provision of any sale or lease of any tool, implement, appliance or machinery that the purchaser or lessee thereof shall not buy, lease or use machinery, tools, implements or appliances or material or merchandise of any person, firm, corporation or association other than such vendor, or lessor," and imposes a penalty for the violation of the provisions of the act.

If Your Excellency has any evidence or sources from which such evidence might be obtained of the violation of either of the foregoing statutes, I have to advise you that the same should be submitted to the district attorney for the district in which such violation was committed, since he has charge of the administration of the criminal law in that regard.

¹ The effect of St. 1911, c. 503, is limited to procedure.

St. 1908, c. 454, is entitled "An Act relative to monopolies and discriminations in the sale of articles or commodities in common use." Its first and second sections are as follows:—

SECTION 1. Every contract, agreement, arrangement or combination in violation of the common law in that thereby a monopoly in the manufacture, production or sale in this commonwealth of any article or commodity in common use is or may be created, established or maintained, or in that thereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or in that thereby, for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restrained or prevented, is hereby declared to be against public policy, illegal and void.

SECTION 2. The attorney-general, or, by his direction, a district attorney, may bring an action in the name of the commonwealth against any person, trustee, director, manager, or other officer or agent of a corporation, or against a corporation, to restrain the doing in this commonwealth of any act herein forbidden or declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made. The superior court shall have jurisdiction to restrain and enjoin any act herein forbidden or declared to be illegal.

Obviously, this statute is of broad application. It is impossible for me, however, to advise you either as to the probable outcome of a proceeding brought thereunder against the corporation to which you refer, or as to the legality of the contract in question, without having a complete knowledge of the facts involved. I therefore respectfully suggest that you submit to me the facts and evidence upon which your conclusions are based, that I may institute proceedings under this statute if the facts appear to justify such action. It is impossible for me to predicate any opinion or official action upon manifest hearsay or assumptions.

As to the Necessity or Expediency of Further Legislation.— For the purpose of advising you as to the necessity or expediency of further legislation I have the same need of detailed information as to the facts as for the purpose of advising you as to the application of existing law. Furthermore, the determination of the Commonwealth's attitude toward monopoly is primarily

a legislative function, and does not fall within the scope of the duties of the Attorney-General.

It is as much my earnest desire as it is that of Your Excellency that the laws of the Commonwealth shall be strictly enforced, and that such corrections or amendments shall be provided as may appear necessary in any proper case. Manifestly, however, action or legislation based upon insufficient information and evidence would result in disaster and confusion, a result which Your Excellency, I assume, as well as I myself, would greatly deplore.

Very respectfully yours,

JAMES M. SWIFT, *Attorney-General.*

Charles River Basin — Metropolitan Park Commission — Lechmere Canal — Authority to widen and deepen.

The Metropolitan Park Commission, under the provisions of St. 1903, c. 465, which in section 4 required the Charles River Basin Commission to "dredge navigable channels in the basin" and to "dredge Lechmere canal to such depths as will afford to and at the wharves thereon not less than seventeen feet of water up to and including Sawyer's lumber wharf, and not less than thirteen feet of water from said wharf to the head of the canal at Bent street," and of St. 1909, c. 524, § 1, by which such commission succeeded to "all the powers, rights, duties and liabilities" of the Charles River Basin Commission, has authority to widen a part of Lechmere Canal, to reinforce the adjoining land by piling and to dredge the part of the canal so widened to the depth prescribed in said chapter 465.

AUG. 1, 1911.

GEORGE LYMAN ROGERS, Esq., *Secretary, Metropolitan Park Commission.*

DEAR SIR: — You have requested my opinion in behalf of the Metropolitan Park Commission as to whether it has authority under St. 1903, c. 465, and St. 1909, c. 524, to widen a part of Lechmere Canal, to reinforce the adjoining land by piling and to dredge the part of the canal thus widened to the depth prescribed in said chapter 465.

By St. 1909, c. 524, § 1, the Metropolitan Park Commission succeeds to "all the powers, rights, duties and liabilities" of the Charles River Basin Commission. By St. 1903, c. 465, § 4, the Charles River Basin Commission was required to "dredge navigable channels in the basin," and to "dredge Lechmere canal

to such depths as will afford to and at the wharves thereon not less than seventeen feet of water up to and including Sawyer's lumber wharf, and not less than thirteen feet of water from said wharf up to the head of the canal at Bent street." The section further provided as follows:—

The commission shall do all such dredging and all strengthening of the walls of the canals and of the basin where dredging is done by the driving of prime oak piles two feet on centres along the front of said wharves or walls, and all removing and relocating of pipes and conduits made necessary by such dredging, so that vessels requiring a depth of water not exceeding the respective depths above prescribed can lie alongside of, and in contact with, the wharves; and this work shall be done in such manner as to cause the least possible inconvenience to abutters, and shall be finished on or before the completion of the dam; and after the walls or wharves have been so strengthened, all repairs on or rebuilding of the walls and wharves shall be done by the abutters.

The commission shall do such dredging in the basin outside of the channels aforesaid as may be necessary for the removal of sewage, sludge or any offensive deposit; shall do such other dredging as it shall deem proper, and shall take all proper measures for the destruction of malarial mosquitoes in the basin and its vicinity.

The part of the canal in question is northwest of Commercial Avenue and runs from Commercial Avenue to the point where the canal turns toward the south. The canal is here 100 feet wide and is bounded on the southwest by land of the heirs of John T. Scully. The southwest side of this part of the canal is an "open shore." It is proposed that the heirs of John T. Scully allow a part of their land to become a part of the canal, and that the commission reinforce the adjoining land by piling and dredge the canal to a width of 115 feet. Your inquiry is as to whether this proposed scheme may legally be carried out.

So far as the widening of the canal is concerned I am of opinion that there can be no legal objection to permitting the abutting owners to allow their land to become a part of the canal to the extent proposed. So far as the dredging of the canal is concerned the only express requirement here material is that it be dredged "to such depths as will afford to and at the wharves thereon not less than seventeen feet of water . . ." If as a matter of fact the proposed dredging is reasonably incidental to the fulfilling of this requirement, such dredging is authorized. So far as the driving of piles is concerned, the statute makes cer-

tain specific requirements. Even if these express requirements do not apply in front of open shores, the commission is authorized to "take such measures as are necessary to protect the channel of the canals." I advise you, therefore, as my predecessor advised the Charles River Basin Commission in reply to a similar inquiry, that "if . . . in your opinion, as a matter of fact, the driving of the piles in question is a reasonable method of protecting a channel dredged under the statutory requirement that Lechmere canal be dredged, you have . . . authority to do such driving of piles."

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Taxation — Bonds of Domestic Electric Light Corporation secured by Mortgage on Real Estate and Personal Property — Exemption.

The bonds of a domestic electric light corporation secured by a mortgage of real estate within the Commonwealth and of personal property are not exempt from taxation under the provisions of St. 1909, c. 490, Part I., § 4, cl. 2, that personal estate, for the purpose of taxation, shall not include "any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate."

AUG. 11, 1911.

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

DEAR SIR:—You have requested my opinion as to whether the mortgage bonds of the Boston Electric Light Company, a domestic corporation, are exempt from taxation. The bonds in question are secured by a mortgage of real estate within the Commonwealth and of personal property. The amount of the issue of bonds is less than the assessed valuation of the mortgaged real estate.

The bonds are taxable under St. 1909, c. 490, Part I., § 4, cl. 2, which provides that personal estate for the purpose of taxation shall include "money at interest, and other debts due the person to be taxed more than he is indebted or pays interest for; but not including in such debts due him or indebtedness from him any loan on mortgage of real estate, taxable as real estate, except the excess of such loan above the assessed value of the mortgaged real estate," unless such bonds constitute a "loan on mortgage of real estate, taxable as real estate," within the meaning of the

statute. In *Brooks v. West Springfield*, 193 Mass. 190, it was held that bonds secured by mortgage of real estate in this Commonwealth, real estate in other States and personal property were not exempt from taxation under this statute, then R. L., c. 12, § 4. The principles therein laid down are applicable to bonds secured by mortgage of real estate in this Commonwealth and personal property. They are, in my opinion, applicable though the amount of the issue of bonds is less than the assessed valuation of the mortgaged real estate, as in the case of the bonds in question. I advise you, therefore, that the mortgage bonds of the Boston Electric Light Company are taxable.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

Extradition — Governor — Duty of Executive — Discretion.

Where the papers accompanying the demand of the Executive of another State for the arrest and extradition of an alleged fugitive from the justice of that State appear to be legal and in proper form, and no question is raised as to the identity of the person demanded, or testimony offered to contradict the sworn evidence in the affidavits accompanying such demand that on or about the date of the alleged crime such person was in the demanding State and thereafter left it and has been found within the Commonwealth, it is the duty of the Governor to honor such demand, and he has no legal discretion to refuse to honor it, even if upon full hearing he should be of opinion that under all the circumstances the interests of justice would be served by such refusal.

SEPT. 11, 1911.

His Excellency EUGENE N. FOSS, *Governor*.

SIR: — In the matter of the demand of the Executive of Connecticut for the extradition of Nathan Berman and Louis Brooks, Your Excellency has requested my opinion as to “whether, in view of the fact that the requisition papers have been found by me to be in proper form, and of other admitted facts,” Your Excellency would have “any legal discretion to deny the requisition of the Governor of Connecticut even if upon full hearing” Your Excellency “should be of opinion that under all the circumstances the interests of justice would be served by denying the requisition.”

In reply I have the honor to advise Your Excellency that the duties of the Governor of this Commonwealth with reference to the demand upon him from the Executive of another State for

the extradition of an alleged fugitive from justice, who has been charged with crime in the demanding State and has been found within this Commonwealth, are prescribed in clear and unequivocal terms in the Constitution of the United States and in the Revised Statutes of the United States.

The Constitution of the United States provides, in Article IV., section 2, as follows:—

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

In discussing this provision of the Constitution, the Supreme Court of the United States, in *Kentucky v. Dennison*, 24 How. (U. S.) 66, said:—

Looking, therefore, to the words of the Constitution—to the obvious policy and necessity of this provision to preserve harmony between States, and order and law within their respective borders, and to its early adoption by the colonies, and then by the Confederate States, whose mutual interest it was to give each other aid and support whenever it was needed—the conclusion is irresistible, that this compact engrafted in the Constitution included, and was intended to include, every offence made punishable by the law of the State in which it was committed, and that it gives the right to the Executive authority of the State to demand the fugitive from the Executive authority of the State in which he is found; that the right given to “demand” implies that it is an absolute right; and it follows that there must be a correlative obligation to deliver, without any reference to the character of the crime charged, or to the policy or laws of the State to which the fugitive has fled.

The duty of providing by law the means of carrying this provision of the Constitution into execution, from the nature of the duty and the object in view, devolved upon Congress, and, Congress, therefore, passed the act of 1793, February 12, which, as codified in the Revised Laws of the United States, section 5278, provides as follows:—

Whenever the executive authority of any State or Territory demand any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made

before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from which the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand shall be paid by such State or Territory.

In discussing the provision of the act of 1793, in the same case (*Kentucky v. Dennison*), the Supreme Court of the United States said:—

The demand being thus made, the act of Congress declares that “it shall be the duty of the Executive authority of the State” to cause the fugitive to be arrested and secured, and delivered to the agent of the demanding State. The words “it shall be the duty,” in ordinary legislation, imply the assertion of the power to command and to coerce obedience. But looking to the subject-matter of this law, and the relations which the United States and the several States bear to each other, the court is of opinion the words “it shall be the duty” were not used as mandatory and compulsory, but as declaratory of the moral duty which this compact created when Congress had provided the mode of carrying it into execution. The act does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the Executive of the State; nor is there any clause or provision in the Constitution which arms the government of the United States with this power.

And, further, the court said:—

It does not purport to give authority to the State Executive to arrest and deliver the fugitive, but requires it to be done, and the language of the law implies an absolute obligation which the State authority is bound to perform. And when it speaks of the duty of the Governor, it evidently points to the duty imposed by the Constitution in the clause we are now considering. The performance of this duty, however, is left to depend on the fidelity of the State Executive to the compact entered into with the other States when it

adopted the Constitution of the United States, and became a member of the Union. It was so left by the Constitution, and necessarily so left by the act of 1793."

See also *McNichols v. Pease*, 207 U. S. 100, and cases there cited.

The provisions of the Constitution of the United States and of the Revised Statutes of the United States above quoted are the supreme law of the land with reference to extradition, and no statute of this Commonwealth can impose restrictions or limitations upon the operation of this law of the United States. No statute of this Commonwealth, therefore, can alter the duty imposed upon the Executive of this Commonwealth by the Constitution and laws of the United States. For this reason the provision of the Revised Laws of Massachusetts, chapter 217, section 12, that the Governor may consider the question of the expediency of complying with an application for extradition, is to be construed as giving Your Excellency the right to consider questions of expediency or discretion only upon applications by this Commonwealth upon other States, or upon demands for persons held here in custody to answer for crimes against this Commonwealth or the United States, or by force of any civil process.

This ruling is in harmony with the settled practice in this Commonwealth and with the opinion of one of my predecessors in this office, given on Aug. 21, 1902, in which the Governor of this Commonwealth was advised as follows, in response to a request for an opinion not only as to the law of the case but also as to the expediency of the Governor's favorable action upon the demand of the Executive of North Carolina for the extradition of a negro who contended that mob violence would prevent him from having a fair trial in a southern State:—

I am of opinion, however, that my investigation must be confined to the legal aspects of the case, and that Your Excellency's action must be controlled by the requirements of the Constitution and statutes of the United States, and that the Massachusetts statutes cannot be operative except in so far as is consistent with the federal law. Upon this view, the right of Your Excellency to consider questions of expediency or discretion exists only upon applications for requisition going from this Commonwealth, or upon demands for persons held here in custody to answer for crimes against this Commonwealth, or the United States, or by force of any civil process. (II Op. Atty.-Gen. 368.)

The case now before Your Excellency is not a case which falls within the class in which the law may be said to authorize the exercise of discretion, and the scope of proper inquiry by Your Excellency as a guide to action is, therefore, narrowly limited by law. Certain questions of law and of fact are, however, open to Your Excellency's inquiry. The duty to surrender to the demanding State the alleged fugitives does not arise unless the demand is in proper form. Your Excellency, therefore, is justified in inquiring into the technical sufficiency of the application for extradition and the accompanying documents.

In accordance with the long-established practice, upon receipt of the extradition papers by Your Excellency from the Executive of Connecticut, they were referred to the Attorney-General for an opinion as to whether, as matter of law, the papers were in proper form and the requisition might lawfully be complied with.

In accordance with Your Excellency's request, I examined the papers in these cases with reference to their technical sufficiency. The law requires that the person demanded shall be charged with the commission of an offence against the laws of the demanding State, in these cases Connecticut. It is immaterial under the law whether the offence charged is a crime under the laws of this Commonwealth. If a crime is substantially charged in the papers, that is sufficient, and it is immaterial that the complaint or indictment is inartificially drawn or is imperfect as a matter of pleading, if it substantially charges a crime. *Pierce v. Creecy*, 210 U. S. 387, and cases cited. In my opinion the papers in these cases satisfied that requirement of the law.

Your Excellency is also justified in satisfying yourself that the persons demanded are fugitives from justice. The term "fugitive from justice" is frequently misunderstood, for the reason that it is popularly supposed that to be a fugitive from justice one must have fled to escape detection or avoid prosecution. That, however, is not the legal meaning of the term as defined by the United States Supreme Court. In *Roberts v. Reilly*, 116 U. S. 80, at page 97, the court said: —

To be a fugitive from justice, in the sense of the act of Congress regulating the subject under consideration, it is not necessary that the party charged should have left the State in which the crime is alleged to have been committed, after an indictment found, or for the purpose of avoiding a prosecution anticipated or begun, but simply that having within a State committed that which by its laws

constitutes a crime, when he is sought to be subjected to its criminal process to answer for his offence he has left its jurisdiction and is found within the territory of another.

The motive with which the demanded person left the demanding State is, therefore, not material to the decision of the questions presented for Your Excellency's determination in this Commonwealth. It appeared by sworn evidence in the papers accompanying the demand of the Governor of Connecticut that the persons demanded were in Connecticut at the time when the crime is alleged to have been committed, and that they subsequently left the State and have been found within this Commonwealth. Nothing appeared to contradict that statement, and Your Excellency is, in my opinion, justified in finding that requirement of the law satisfied. See *Appleyard v. Massachusetts*, 203 U. S. 222.

Your Excellency may also satisfy yourself that the persons demanded are in fact the persons now held in this Commonwealth under the fugitive warrant. No question was raised as to the matter of identity; and it appeared by sworn evidence in the papers that the persons now held under the fugitive warrant in this Commonwealth are the persons demanded by the Executive of Connecticut.

The affidavits in the papers appear to have been taken before *magistrates* under the law of Connecticut. No question as to the good faith of the Executive of Connecticut was raised. The papers were certified as authentic by the Executive of Connecticut; that certification of the papers by that Executive in itself sufficiently authenticates the complaints or affidavits as being sworn to before a magistrate, and such certification, under the ruling of the United States Supreme Court, precludes Your Excellency from going behind such certificate to the truth of the facts so stated. In the case of *Kentucky v. Dennison*, cited above, the court said:—

It will be observed that the judicial acts which are necessary to authorize the demand are plainly specified in the act of Congress; and the certificate of the Executive authority is made conclusive as to their verity when presented to the Executive of the State where the fugitive is found. He has no right to look behind them, or to question them, or to look into the character of the crime specified in this judicial proceeding. The duty which he is to perform is, as we have already said, merely ministerial—that is, to cause the

party to be arrested and delivered to the agent or authority of the State where the crime was committed.

The constitution of the United States, in Article IV., section 1, provides that —

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

I have already quoted above the law enacted by Congress with respect to requisitions; and since the proof of these records and judicial proceedings of the State of Connecticut complies with the requirements of the statutes, that proof is to be accepted by Your Excellency as conclusive.

After careful consideration of all these matters, I have reported to Your Excellency that the demand of the Executive of Connecticut was proper in form, and that the requisition might lawfully be complied with.

Since, therefore, the demand of the Executive of Connecticut appears to be in proper form, and since the specified facts concerning which Your Excellency may lawfully inquire have been established in the manner prescribed by law, I must advise Your Excellency that, under the provisions of the Constitution and laws of the United States and of this Commonwealth, Your Excellency has no legal discretion to deny the requisition of the Governor of Connecticut.

In reply to the further inquiry of Your Excellency as to whether the petitioners have been afforded by me opportunity for a full hearing at which they could present all proper objections to the granting of the application, I have the honor to reply that counsel for Mr. Brooks and Mr. Berman was, at his request, afforded an opportunity for a full hearing upon all points which I am authorized by law to investigate and consider in cases of demands by other States upon this Commonwealth, and that representatives of labor organizations interested were present, and that opportunity was given to every person present to speak upon the points in issue, or to ask for information. The questions of the innocence or guilt of the persons involved, or of the justice or injustice of the prosecution of the charge were not inquired into, since those questions may be tried only in Con-

necticut, the State having jurisdiction of the offence charged, and may not lawfully be inquired into by me.

Counsel for both the complainant and Mr. Brooks and Mr. Berman were heard at length. Counsel for Mr. Brooks and Mr. Berman discussed thoroughly and forcibly the matter of the technical sufficiency of the papers, and attacked the validity of the papers on various points. The arguments were taken down by a stenographer, and all objections were carefully noted. After careful consideration of all contentions I reached the conclusion which I have already stated herein, and notified the offices of both counsel for the complainant and for Mr. Brooks and Mr. Berman of my decision.

In reply to the further inquiry whether, if Your Excellency should honor the requisition of the Governor of Connecticut, "the petitioners will still have ample opportunity of applying to the courts of this Commonwealth for such protection as they may be legally entitled to under the laws of Massachusetts," I advise you that Revised Laws of Massachusetts, chapter 217, section 14, provides that —

A person who is arrested upon such a warrant shall not be delivered to such agent of a state or territory until he has been notified of the demand for his surrender and has had an opportunity to apply for a writ of habeas corpus, if he claims such right of the officer who makes the arrest.

If, therefore, Your Excellency honors the requisition by issuing the executive warrant, Mr. Brooks and Mr. Berman, under this provision of the statutes, are entitled to be given the opportunity to petition for a writ of *habeas corpus*, if they claim the right to so apply. In such a proceeding the lawfulness of the extradition would be passed upon by the court, but the warrant of Your Excellency would, according to the language of the Supreme Court in *Davis' Case*, 122 Mass. 324, be held to be "*prima facie* evidence, at least, that all necessary legal prerequisites have been complied with, and, if the previous proceedings appear to be regular, is conclusive evidence of the right to remove him (the prisoner) to the state from which he fled."

Very respectfully yours,

JAMES M. SWIFT, *Attorney-General*.

Governor — Appropriations for State Commissions, Departments or Institutions — Employment of Persons to investigate Statements and Estimates — Contract — Compensation.

Under the provisions of St. 1911, c. 82, that "the governor is hereby authorized to employ such persons as he may deem proper to make such investigation of any of the commissions, departments or institutions of the commonwealth as he believes is necessary to enable him to carry out the provisions of chapter two hundred and twenty of the acts of the year nineteen hundred and ten," and that for such purpose he may "expend such sums out of the amount authorized by chapter five hundred and forty-nine of the acts of the year nineteen hundred and eight as may be approved by the governor and council," the governor, acting independently of the council, has no power to determine, by contract or otherwise, the rate of compensation to be paid to the persons employed by him to make the required investigations.

Since the purpose of St. 1910, c. 220, providing in substance that statements or estimates for appropriations for State commissions, departments or institutions shall annually be submitted to the Governor and Council, and transmitted by the Governor to the Legislature, with such recommendations as he may deem necessary, the Governor and Council may not legally allow persons employed under authority of St. 1911, c. 82, above cited, compensation for investigations or for reports thereon made since the prorogation of the General Court for the year in which they were employed, nor compensation for time spent in appearing before the joint committee on ways and means of the General Court to explain their reports or to be questioned in regard to them, or for time spent in explaining their charges for services to the council or to any committee thereof.

SEPT. 27, 1911.

E. F. HAMLIN, Esq., *Executive Secretary.*

DEAR SIR: — On behalf of the committee on finance, accounts and warrants of the Council you request my opinion upon the following questions: —

1. Has the Governor, acting independently of the Council, the power to determine conclusively, by contract or otherwise, the rate of compensation to be paid to the persons employed by him under the provisions of chapter 82 of the Acts of the year 1911?

2. Can the Governor and Council legally allow such persons compensation, to be paid from the treasury of the Commonwealth, 1st, for time spent in appearing before the joint committee on ways and means of the General Court to explain their reports or be questioned in regard to them; 2d, for time spent in explaining their charges for services to the Council or its committees; 3d, for any services performed since the prorogation of the General Court of the present year; and if so, for what services?

St. 1911, c. 82, is as follows:—

The governor is hereby authorized to employ such persons as he may deem proper to make such investigation of any of the commissions, departments or institutions of the commonwealth as he believes is necessary to enable him to carry out the provisions of chapter two hundred and twenty of the acts of the year nineteen hundred and ten. Such persons shall report in writing to the governor, and copies of every report shall, at the same time, be sent by said persons to the governor's council and to the joint committee on ways and means of the general court. For this purpose the governor may expend such sums out of the amount authorized by chapter five hundred and forty-nine of the acts of the year nineteen hundred and eight as may be approved by the governor and council.

In my opinion the first question must be answered in the negative. The act provides specifically that "the governor may expend such sums . . . as may be approved by the governor and council." While the person may be designated and employed by the Governor, the compensation is to be fixed by the Governor and Council.

The second question concerns the basis for the allowance of compensation. It requires consideration of the duties and powers provided by law, as set forth in St. 1910, c. 220, and St. 1911, c. 82.

The effect of St. 1910, c. 220, has been judicially determined by the Supreme Judicial Court in an Opinion of the Justices to the Senate, dated April 7, 1911, which in part is as follows:—

The St. of 1910, c. 220, has made but a very small change in the law of the Commonwealth. . . .

The only new provision in this particular is the requirement that it (estimates and statements) shall be submitted "to the governor and council for examination, and the governor shall transmit the same to the General Court, with such recommendations, if any, as he may deem proper." . . . Under this statute, after the document has been printed, it is to be formally submitted to the governor and council for examination, as well as distributed to the members of the General Court; while under the former statute the governor was left to obtain a copy as he might. Under the present statute he is to transmit it to the General Court, so that they may know that he has had an opportunity to examine it, and he may make recommendations or not, as he chooses. . . . The only material effect of this statute is to give a legislative invitation to the governor to examine the documents prepared by the auditor and to make recommendations upon the subjects contained in them if he chooses, and

also to give him an implied assurance that his recommendations as to the amount of the appropriations will receive respectful consideration.

The effect of both statutes was passed upon in an opinion of the Attorney-General to the Treasurer and Receiver General, dated May 11, 1911, which in part is as follows:—

The duty and power of the Governor in the premises, therefore, being confined to the transmission of the statements of estimates for appropriations submitted to the Auditor by the various State officers, boards and commissions and transmitted by the Auditor to the Governor, to be accompanied by a recommendation or not, as he sees fit, it follows that his power to investigate any officer, department or institution must be predicated upon the existence of a statement of proposed expenditures and of other matters required by St. 1910, c. 220, which may be transmitted by him to the Legislature. The employment of agents, investigators and "experts" is only such as the Governor believes is necessary to enable him to carry out the provisions of said St. 1910, c. 220. If there are no such estimates for the current year before him for transmission, and upon which before transmission he seeks further information, it follows that there is no authority or occasion for any investigation under said St. 1910, c. 220, or St. 1911, c. 82.

Answering, first, the third subdivision of the second question submitted, the Governor and Council may not legally allow persons employed under authority of St. 1911, c. 82, compensation for any investigation or report thereon made since the prorogation of the General Court.

As to the other subdivisions of the second question submitted, it is to be observed that the services for which payment may be made under St. 1911, c. 82, are the making of investigations and the making of reports in writing upon such investigations. There is no express provision for payment of compensation for the explanation of such reports to the ways and means committee, nor is there any implication that such reports shall require oral explanation. In my opinion it cannot fairly be implied that the persons employed under said statute were to have compensation for oral explanations of their written reports. The examination of such persons before the ways and means committee upon the subjects of their reports appears to be of the same kind as the examination of any persons appearing before such committee as witnesses. Their right to compensation would be the right which

witnesses ordinarily have to compensation for appearance before such committees. See R. L., c. 6, § 51; R. L., c. 204, § 21.

As to the second subdivision of the second question submitted, I am of opinion that the explanation to the Council of charges for services is not a service performed for the Commonwealth but by the persons interested, in their own behalf, for which they are not entitled to extra compensation. So far as appears in your communication they appeared voluntarily before the Council. If, however, they do not so appear, but are summoned, their standing is only that of witnesses. In that case they would be entitled only to the witness fees provided by law. See R. L., c. 175, § 7; R. L., c. 204, § 2.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Constitutional Law — Public Office — Truant Officer — Woman.

Under existing statutes a woman may not be appointed to or exercise the duties of the office of truant officer, as established by R. L., c. 46, § 12, although there appears to be no constitutional objection thereto.

SEPT. 28, 1911.

WARREN P. DUDLEY, Esq., *Secretary, Civil Service Commission.*

DEAR SIR:—The Civil Service Commission desires my opinion upon the question whether or not a woman may be appointed to the position of truant officer, an office which is included within the classified civil service by Civil Service Rule 7, clause 19.

Truant officers, under the provisions of section 12 of chapter 46 of the Revised Laws, are appointed by the school committees of the several cities and towns, and the duties to be performed by such officers are to be found in section 13 of the same chapter, which is as follows:—

Truant officers shall inquire into all cases arising under the provisions of sections one and six of chapter forty-four and sections three, four and five of this chapter, and may make complaints and serve legal processes issued under the provisions of this chapter. They shall have the oversight of children placed on probation under the provisions of section seven. A truant officer may apprehend and take to school, without a warrant, any truant or absentee found wandering about in the streets or public places thereof. (See also R. L., c. 44, § 1, and St. 1909, c. 514, §§ 62-65.)

From a consideration of the provisions of law above cited, and of the earlier statutes upon the same subject (see St. 1873, c. 262; St. 1874, c. 233, § 2; St. 1894, c. 498, § 20, and St. 1898, c. 496, §§ 33 and 36), it appears that a truant officer is authorized to serve legal process in all cases relating to truancy, to arrest truants under certain circumstances without a warrant, and to enter into factories, workshops or mercantile establishments for the purpose of obtaining information with relation to the employment of minors. This, in my opinion, constitutes a truant officer a public officer within the definition laid down in *Attorney-General v. Drohan*, 169 Mass. 534, which is as follows:—

Without attempting an exhaustive definition of what constitutes a public office, we think that it is one whose duties are in their nature public, that is, involving in their performance the exercise of some portion of the sovereign power, whether great or small, and in whose proper performance all citizens, irrespective of party, are interested, either as members of the entire body politic, or of some duly established division of it.

At common law a woman could not perform the duties of a public officer. Thus, in *Robinson's Case*, 131 Mass. 376, at page 378, the court, after discussing several offices, concludes:—

And we are not aware of any public office, the duties of which must be discharged by the incumbent in person, that a woman was adjudged to be competent to hold, without express authority of statute, except that of overseer of the poor, a local office of an administrative character, in no way connected with judicial proceedings. (Page 379.)

In that case it was held that a woman could not, without statutory authority, be examined for admission as an attorney and counsellor of the Supreme Judicial Court.

There are numerous opinions of the justices relative to the incumbency by women of positions and offices in the public service. Thus, in 107 Mass. 604, the justices held that a woman could not constitutionally hold the office of justice of the peace. In 115 Mass. 602, the justices, in reply to the question, "Under the Constitution of this Commonwealth can a woman be a member of the school committee?" limiting themselves to the effect of the Constitution upon the capacity of a woman to hold such office, and without interpreting existing statutes, held that the question should be answered in the affirmative. It is to be ob-

served, however, that, as in the case of attorneys at law (see St. 1882, c. 139), a special act was passed authorizing women to act as members of a school committee. See St. 1874, c. 389. In 150 Mass., at pages 586, 591, the justices declared that —

The clause of the Constitution which provides for the appointment of notaries public, interpreted with reference to the history and nature of the office and the long-continued and constant practice of the government here and the usage elsewhere, cannot be considered as authorizing the Governor, by and with the advice and consent of the Council, to appoint women to be notaries public.

In 165 Mass. 599, the justices rendered an opinion that an act providing for the appointment of women to be notaries public would be unconstitutional. In an Opinion of the Justices in 136 Mass. 578, it was held that under St. 1879, c. 291, § 2, authorizing the Governor, with the advice and consent of the Council, to appoint nine persons as a State Board of Health, Lunacy and Charity, he might appoint a woman as a member of such board, but this opinion was based upon what the justices declared to be the established policy of the Legislature, evidenced by numerous statutes, that women might serve upon such boards. See, St. 1868, c. 153, § 1; St. 1870, c. 370, § 10; St. 1873, c. 166; St. 1877, c. 195, § 1.

The principle upon which these opinions are based constrains me to hold that in the present case, although the Constitution would not prevent a woman from holding the office of truant officer, such office is a public office requiring the exercise of governmental functions; and that unless expressly authorized by statute the incumbent should not be a woman. This view is confirmed by a consideration of the following cases in which special legislation for that purpose was enacted: Overseers of the Poor, St. 1886, c. 150; Commissioners of Deeds and similar duties, St. 1883, c. 252; Assistant Probation Officers in the Municipal Court of the City of Boston, St. 1897, c. 266. See, further, St. 1907, c. 261.

The following provisions, among others, authorizing the appointment of women to public offices, are found in the Revised Laws: —

C. 165, § 4, which provides that the assistant clerk for the county of Hampden may be a woman.

C. 25, § 62, which provides that an assistant town clerk may be a woman.

C. 20, § 19, which provides that in counties in which there is

no assistant clerk of courts the county commissioners may appoint a clerk *pro tempore*, who may be a woman.

C. 76, § 24, which provides that there shall be a board of registration in dentistry, consisting of five persons, male or female.

C. 222, § 1, which provides that there shall be a board of prison commissioners, consisting of five persons, two of whom shall be women.

C. 22, § 8, which provides that registers of deeds may, subject to the approval of the Superior Court, appoint an assistant register of deeds, who may be a woman.

C. 164, § 17, which provides that the assistant registers of probate in the counties of Bristol, Hampden and Hampshire may be women.

C. 108, § 1, which provides that the inspection department of the district police shall consist of the chief of said force, thirty-three male and two female members.

I am therefore of opinion that, under existing statutes, a woman may not be appointed to or exercise the duties of the office of truant officer.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Water Supply — Great Ponds — State Board of Health — Control and Regulation — Public Rights — Cities and Towns.

Under the provisions of R. L., c. 75, §§ 112 and 113, as amended by St.

1907, c. 467, vesting in the State Board of Health 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 boating, fishing, skating or taking ice, and may delegate the power of granting or withholding permits to the local authorities, "and upon complaint of any person interested . . . shall investigate the granting or withholding of any such permit and make such orders relative thereto as it may deem necessary for the protection of the public health," a city or town may prohibit the public right of boating or fishing upon a great pond used as a source of water supply only in cases where such prohibition is necessarily involved in the use of such great pond as a source of water supply, and where complaint is made with respect to the granting or withholding of a permit by the local authorities, if such board considers that the issuance of the permit so withheld would not endanger the purity of the source of water supply, it may make such order in the premises as it deems necessary for the protection of the public health, and may doubtless require the issuance of the permit.

Oct. 3, 1911.

C. E. MCGILLICUDDY, Esq., *State Board of Health.*

DEAR SIR: — In a letter dated September 30 you state that by vote of the State Board of Health you were authorized to submit certain questions for my determination. These questions are as follows: —

Query 1. — Can any town or city absolutely prevent fishing and boating upon a natural great pond, even though the town or city claims to own in fee the surrounding property of the great pond which has been taken for a water supply?

Query 2. — Can the State Board of Health issue a permit to boat and fish on a great pond, when the properly delegated authorities of a town or city refuse to issue a permit to fish and boat to an individual on a great pond which has been taken for a water supply by a town or city?

The facts upon which your questions arise appear to be as follows: in 1909, the town of Concord, acting under authority of St. 1884, c. 201, § 2, took the water from a certain pond, which I assume to be a great pond, for the purposes of water supply, and thereafter petitioned the State Board of Health to make rules and regulations to prevent the pollution and to secure the sanitary protection of the waters of such pond, under the provisions of R. L., c. 75, § 113, as amended by St. 1907, c. 467, § 1, which provides that —

Said board may cause examinations of such waters to be made to ascertain their purity or fitness for domestic use or their liability to impair the interests of the public or of persons lawfully using them or to imperil the public health. It may make rules and regulations to prevent the pollution and to secure the sanitary protection, of all such waters as are used as sources of water supply. Said board may delegate the granting and withholding of any permit required by such rules or regulations to state boards and commissions and to selectmen in towns and to boards of health, water boards and water commissioners in cities and towns, to be exercised by such selectmen, boards and commissions, subject to such recommendation and direction as shall be given from time to time by the state board of health; and upon complaint of any person interested said board shall investigate the granting or withholding of any such permit and make such orders relative thereto as it may deem necessary for the protection of the public health.

On April 7, 1910, the State Board of Health duly made certain rules and regulations, containing, among others, the regulation that —

No person shall bathe in, and no person shall, unless permitted by a written permit of the board of water and sewer commissioners of the town of Concord, fish in, or send, drive or put any animal into, Nagog Pond, so called. . . . No person other than a member, officer, agent or employee of said board of water and sewer commissioners, or public officer whose duty may so require, shall, unless so permitted by a written permit of said board, enter or go, in any boat, skiff, raft or other contrivance, in or upon the water of said Nagog Pond, nor shall enter or go upon, or drive any animal upon, the ice of said pond.

Acting under this authority the board of water and sewer commissioners of the town of Concord have refused to permit boating and fishing thereon, and one of the persons so refused has petitioned the board to act, under the provisions of R. L., c. 75, § 113, as amended by St. 1907, c. 467, § 1, providing that upon complaint of any person interested the State Board of Health "shall investigate the granting or withholding of any such permit and make such orders relative thereto as it may deem necessary for the protection of the public health."

The questions which you submit are not in terms limited to the specific facts above stated, which appear from the papers accompanying your communication, but I assume that they were framed with those facts in view, to determine the duty of your board in the premises.

It is well established that the appropriation of the waters, or any part thereof, of a great pond by a town for purposes of water supply under legislative authority, does not take away the rights of the public in such pond "excepting so far as they are necessarily lost in the exercise of a right conferred upon the town to use the waters of the pond as a source of water supply." II Op. Atty.-Gen. 239, 240; *Rockport v. Webster*, 174 Mass. 385. It follows, therefore, that unless the public use of a great pond for boating or fishing is so far inconsistent with its use as a source of water supply as to be necessarily lost in the exercise of the right acquired by a town, such town would have no right to absolutely prohibit boating or fishing.

Under the provisions of R. L., c. 75, § 113, as amended by St. 1907, c. 467, § 1, it is to be observed that the State Board of Health is vested with authority to make rules and regulations "to prevent the pollution and to secure the sanitary protection" of all waters which are used as sources of water supply, and, acting under this provision, may require that persons who desire

to exercise the public right of boating or fishing shall secure permits either from the Board itself or from the local board to whom the authority to issue such permits has been delegated, or may forbid the exercise of such public rights altogether. See *Sprague v. Minon*, 195 Mass. 581.

Replying specifically to your first inquiry, therefore, I am of opinion that a city or town is authorized to prohibit the public right of fishing or boating upon a great pond used as a source of water supply only in cases where such prohibition is necessarily involved in the use of such great pond as a source of water supply.

Your second inquiry calls for my opinion upon the powers of the State Board of Health acting under the provisions of R. L., c. 75, § 113, as amended by St. 1907, c. 467, § 1, already cited.

Under these provisions of law the Board may make rules and regulations to protect sources of water supply, and may prohibit the exercise of the public rights of boating and fishing in or upon such sources of water supply, except to such persons as may receive a permit therefor. The authority to issue such permits may be delegated, among others, to selectmen in towns and to boards of health, water boards or water commissioners in cities and towns, to be exercised under the direction of the State Board of Health. Where complaint is made in any case with respect to the granting or withholding of such permit by the Board to whom the issuance thereof has been delegated, the Board shall investigate the matter and make such orders relative thereto as may be deemed necessary for the protection of the public health. If, upon due investigation, the Board in any case determines that a permit withheld by the local authorities may be issued without endangering the purity of the sources of water supply, they may make such order in the premises as they deem necessary for the protection of the public health, and such order may doubtless require the issuance of the permit. In such a case, therefore, the State Board of Health may issue or cause to be issued a permit to boat and fish, notwithstanding that the properly delegated authorities of a city or town have previously refused to do so, provided that such issuance is not inconsistent with the proper protection of the public health.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*Lyman and Industrial Schools — Trustees — Lyman Fund —
Income — Purchase of Land — Title.*

Under the provisions of St. 1911, c. 566, § 3, that the Trustees of the Massachusetts Training Schools “succeed to the trusts, right, powers and duties” of the trustees of the Lyman and Industrial Schools, and of R. L., c. 86, § 1, that the board of trustees of the Lyman and Industrial Schools should be “a corporation for the purpose of taking, holding and investing in trust for the commonwealth any grant, devise, gift or bequest made for the use of any institution of which they are trustees,” the trustees of the Massachusetts Training Schools may purchase, from the accumulated income from the Lyman Fund and Lyman Trust Fund, so called, land for the use of the Lyman School.

The title to the land so purchased should be taken in the name of the trustees, in trust for the Commonwealth.

Without express or implied authority from the Legislature, title to land cannot be taken in the name of the Commonwealth by any public officer or board.

Oct. 18, 1911.

CHARLES M. DAVENPORT, Esq., *Trustee of the Massachusetts Training Schools.*

DEAR SIR:— In behalf of the trustees of the Massachusetts Training Schools you have requested my opinion upon certain questions hereinafter quoted.

Your first question is as follows:—

Have the trustees of the Massachusetts Training Schools (see Acts 1911, c. 566), the successors to the trustees of the Lyman School (as provided in R. L., c. 86), the right to purchase land for the use of the Lyman School from the accumulated income from the Lyman Fund and Lyman Trust Fund, so called?

In replying to this inquiry I assume that the language of the gift of the Lyman Fund and the Lyman Trust Fund, so called, is broad enough to authorize the proposed expenditure of accumulated income, and that the only point upon which you desire my advice is as to the statutory authority of the trustees. As to the statutory authority of the trustees, my opinion is that they have the right to purchase land for the use of the Lyman School from the accumulated income of these funds. I base this opinion upon the statutory provision (St. 1911, c. 566, § 3) that the trustees of the Massachusetts Training Schools “succeed to the trusts, rights, powers and duties” of the trustees of the Lyman

and Industrial Schools; and upon the statutory provision (R. L., c. 86, § 1) that the board of trustees of the Lyman and Industrial Schools was "a corporation for the purpose of taking, holding and investing in trust for the commonwealth any grant, devise, gift or bequest made for the use of any institution of which they are trustees." If the trustees of the Massachusetts Training Schools have the right to expend the accumulated income in question for the use of the Lyman School, and if they have the right to receive grants of land, it follows that they may expend such accumulated income in the purchase of land.

Your second question is as follows:—

If they have this right, how should the title be taken, whether in the name of the trustees, or directly in the name of the Commonwealth?

In my opinion title should be taken in the name of the trustees, in trust for the Commonwealth.

Your third question is as follows:—

Can the Commonwealth take title without legislative sanction, it being in the nature of a gift to the Commonwealth, if purchased by income from accumulated funds, and without appropriation therefor?

Title to land cannot be taken in the name of the Commonwealth by any board or officer who has not express or implied authority from the Legislature to do so. As I have advised you in answer to your first inquiry, I am of opinion that there is statutory authority for the trustees of the Massachusetts Training Schools to take title in the name of the trustees, in trust for the Commonwealth, to land purchased with accumulated income of trust funds.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

*Trust Company — Savings Department — Board of Investment
— Member as Endorser on Note for Money Loaned by Corporation.*

Under the provisions of St. 1908, c. 520, § 2, that all loans or investments of deposits in the savings department of a trust company "shall be made in accordance with statutes governing the investment of deposits in savings banks," and of St. 1908, c. 590, § 44, that no member of a board of investment of a savings bank shall borrow or use

any portion of the funds of such bank or "be surety for loans to others or, directly or indirectly . . . be an obligor for money borrowed of the corporation," a member of the board of investment of a trust company cannot legally be an endorser upon a personal note for money loaned by such company to any person.

Nov. 3, 1911.

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

DEAR SIR:— You have requested my opinion "as to whether a member of the board of investment of a trust company can be an endorser on a personal note for money loaned by said trust company to a borrower without violating the provisions of section 2 of chapter 520, Acts of 1908, as restricted by section 44 of chapter 590, Acts of 1908."

Section 1 of chapter 520 of Statutes of 1908 is as follows:—

Every trust company soliciting or receiving deposits (a) which may be withdrawn only on presentation of the pass-book or other similar form of receipt which permits successive deposits or withdrawals to be entered thereon; or (b) which at the option of the trust company may be withdrawn only at the expiration of a stated period after notice of intention to withdraw has been given; or (c) in any other way which might lead the public to believe that such deposits are received or invested under the same conditions or in the same manner as deposits in savings banks; shall have a savings department in which all business relating to such deposits shall be transacted.

Section 2 provides that—

All such deposits shall be special deposits and shall be placed in said savings department, and all loans or investments thereof shall be made in accordance with the statutes governing the investment of deposits in savings banks. The duties of the board of investment relative to the investment of such deposits shall be performed by a board or committee appointed by the board of directors of such corporation.

Section 44 of chapter 590 of Statutes of 1908 provides that—

No president, treasurer, member of a board of investment or officer of such corporation charged with the duty of investing its funds shall borrow or use any portion thereof, be surety for loans to others or, directly or indirectly, whether acting individually or as trustee holding property in trust for another person, be an obligor for money borrowed of the corporation; . . .

It was the obvious purpose of the Legislature, in St. 1908, c. 520, § 2, to make the investment or loan of deposits in the savings department of a trust company subject to the same regulations and restrictions that are applicable to the investment or loan of deposits in savings banks, and one of these restrictions is that no member of a board of investment or investment committee shall borrow or use any of such deposits, or be surety for loans made to others than himself. It follows, therefore, in my opinion, that a member of a board of investment of a trust company cannot legally be an endorser on a personal note for money loaned by such company to any person.

Very truly yours,

JAMES M. SWIFT, *Attorney-General*.

*Labor Laws — Mercantile or Manufacturing Establishment —
Restaurant — Establishment maintaining Lunch Room and
Food Salesroom.*

An establishment which maintains a lunch room, and also a food salesroom from which supplies are sent to other lunch rooms maintained by the same establishment at other places and lunches are sent to be served at certain high, Latin and normal schools, the receipts of such food salesroom being a little over one-eighth of the total receipts, is not, by reason of the maintenance of such food salesroom, excluded from the definition of "mercantile establishment" in St. 1909, c. 514, § 17, that such establishment "shall mean any premises used for the purposes of trade in the purchase or sale of any goods or merchandise, and any premises used for the purposes of a restaurant or for publicly providing and serving meals," and is not, therefore, a "manufacturing establishment," defined by the same section as "any premises, room or place used for the purpose of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article."

Nov. 6, 1911.

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

DEAR SIR:— You have requested my opinion as to whether the New England Kitchen, so called, maintained by the Women's Educational and Industrial Union of Boston, is a manufacturing or a mercantile establishment within the meaning of those terms as used in the laws relating to labor. The facts, I understand, are these: At the New England Kitchen, which is situated on Charles Street, there is a lunch room and a food salesroom. From this place is sent the food which the Union serves for lunches at the high, Latin and normal schools. From it also are

sent supplies to the place of business of the Union on Boylston Street, where are maintained three lunch rooms, with a common kitchen, and a food salesroom. Receipts from sales of food at the food salesroom of the New England Kitchen constitute about one-ninth of the total receipts of the New England Kitchen, and a little over one-eighth of such total receipts exclusive of supplies sent to Boylston Street. You state that "it is to be noted that the establishment in question [by which I infer that you refer to the New England Kitchen and not to the Union's place of business on Boylston Street] may be considered principally as a restaurant; also that it is a general custom in restaurants to sell such foods as are served therein to persons desiring to use the same off the premises." St. 1909, c. 514, § 17, contains the following definitions of "manufacturing establishments" and "mercantile establishments" as those terms are used in the laws relative to the employment of labor: —

"Manufacturing establishments" shall mean any premises, room or place used for the purpose of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article.

"Mercantile establishments" shall mean any premises used for the purposes of trade in the purchase or sale of any goods or merchandise, and any premises used for the purposes of a restaurant or for publicly providing and serving meals.

The labor laws contain distinct provisions applicable to "manufacturing establishments" and to "mercantile establishments." See, for example, St. 1909, c. 514, § 47, and § 48, as amended by St. 1911, c. 484, § 1. The definitions must therefore be regarded as mutually exclusive. If an establishment is within one of the definitions it is not within the other. The New England Kitchen is, on your statement, to be "considered principally as a restaurant." A restaurant is in express terms within the definition of "mercantile establishments. It is, therefore, immaterial that but for such express inclusion it might be considered as within the definition of "manufacturing establishments." I infer that your inquiry is as to whether the fact that the New England Kitchen maintains a food salesroom excludes it from the definition. As you have stated, the sale at a restaurant of food to be used off the premises is a usual practice, and one which must be taken to have been in the mind of the Legislature when it defined "mercantile establishments" as including restaurants.

The receipts from sales at the food salesroom of the New England Kitchen are a comparatively small part of the total receipts of the establishment; in other words, the food salesroom is incidental to the lunch room, or restaurant. Without attempting to state precisely where the line is to be drawn, I advise you that in my opinion, from the facts stated, the New England Kitchen is not by reason of its maintaining a food salesroom excluded from the definition of "mercantile establishments." It is a mercantile rather than a manufacturing establishment.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Election — Death of Candidate on Morning of Election Day — Failure to elect — Special Election — Governor.

Where a candidate for the office of clerk of the courts died on the morning of the day of the election, but as the fact of his death was not generally known and his name was upon the official ballot the highest number of votes was cast for him, there was a failure to elect, and the Governor should cause a precept to be issued for the election of such officer in accordance with the provisions of St. 1907, c. 560, § 306.

Nov. 27, 1911.

His Excellency EUGENE N. FOSS, *Governor.*

SIR: — You have requested my opinion as to whether William C. Nevin was elected clerk of the courts for the county of Dukes County at the last State election and as to whether a new election will be necessary.

It appears that the name of Samuel Keniston was upon the official ballot as a candidate for such office and that the highest number of votes was cast for him. It further appears that said Keniston died on the morning of election day before the opening of the polls. It does not appear to what extent the fact of the death of said Keniston was known to the voters of the county, but it is not claimed by the said Nevin that such fact was generally known.

Upon these facts I am of opinion that said Nevin was not elected clerk of the courts for said county, but that there was a failure to elect. This view is supported by authority. *Howes v. Perry*, 92 Ky. 260; *State v. Walsh*, 7 Mo. App. 142; *State v. Speidel*, 62 Ohio St. 156. It is an application of the principle that where the person receiving the highest number of votes is ineligible there is a failure to elect, and the person receiving the

next highest number is not elected. This rule seems to be common to England and America. In England, however, and in one or more States of the United States it seems that this rule does not apply where the voters at the time of the election have notice of the ineligibility. The weight of authority in America seems to be, however, that the fact of notice is immaterial. Bowker *et al.*, Petitioners; Loring and Russell, Election Cases, 282, and note; Cooley, Const. Lim. (7th ed.) 931, 932; Dillon, Municipal Corporations (5th ed.), § 373, and note. I am aware of no authority which, in the absence of evidence that the fact of the death of said Keniston was generally known to the voters of Dukes County at the time of the election, would hold said Nevin to have been elected clerk of the courts. According to the weight of authority in this country he would not have been elected even if it appeared that the fact of the death of said Keniston was generally known.

Since there has been a failure to choose a clerk of the courts, St. 1907, c. 560, § 306, becomes applicable. This section provides that the Governor shall cause a precept to be issued for the election of such officer.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

City or Town — Tuberculosis Hospital — Maintenance of Ward or Beds in Private Hospital or General City or Town Hospital — Subsidy from Commonwealth.

The maintenance by a city or town of a tuberculosis ward or bed or beds in a private tuberculosis hospital or in a general city or town hospital does not fulfil the requirements of St. 1911, c. 597, § 1, which provides that "every city or town which establishes and maintains a tuberculosis hospital shall be entitled to receive from the commonwealth a subsidy of five dollars per week for each patient who is unable to pay for his support, or whose kindred bound by law to maintain him are unable to pay for the same."

DEC. 4, 1911.

ARTHUR DRINKWATER, Esq., *Trustee of Hospitals for Consumptives.*

DEAR SIR: — You have submitted to me three inquiries relative to the construction of St. 1911, c. 597, entitled "An Act to encourage and promote the building and use of tuberculosis hospitals in cities and towns." This statute, in section 1, provides that —

Every city and town which establishes and maintains a tuberculosis hospital shall be entitled to receive from the commonwealth a sub-

sidy of five dollars per week for each patient who is unable to pay for his support, or whose kindred bound by law to maintain him are unable to pay for the same, but the city or town shall not become entitled to this subsidy unless, upon examination authorized by the trustees of hospitals for consumptives, the sputum of such patients be found to contain bacilli of tuberculosis, and unless the hospital be subject to the inspection of, and be approved by, said trustees.

Your inquiries are substantially whether or not a city or town is entitled to the subsidy above provided for (1) if it maintains in a private tuberculosis hospital a tuberculosis ward or bed or beds; (2) if it maintains a tuberculosis ward in a general city or town hospital, or a bed or beds for tuberculous patients in such hospitals; and (3) if it maintains a tuberculosis ward in a private general hospital or a bed or beds for tuberculous patients in such hospital.

I am of opinion that all three of these inquiries should be answered in the negative. The purpose of the statute is obviously as stated in the title, "to encourage and promote the building and use of tuberculosis hospitals;" or, in other words, to furnish an inducement to cities and towns to erect and maintain hospitals for persons afflicted with tuberculosis where such patients may be cared for and treated. It follows, therefore, that cities and towns which maintain wards or beds in private hospitals or in general city hospitals are not entitled to the subsidy provided for in the section above quoted.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

*Commonwealth — Employees — Retirement — Massachusetts
Agricultural College — Teachers and Employees.*

The Massachusetts Agricultural College is a public charitable corporation organized for educational purposes, and is not, strictly speaking, a State institution and its teachers and employees are not eligible to participate in the retirement system established by St. 1911, c. 532, for employees of the Commonwealth.

DEC. 4, 1911.

F. SPENCER BALDWIN, Esq., *Department of the Treasurer and Receiver-General.*

DEAR SIR:— You have requested my opinion as to whether teachers and employees of the Massachusetts Agricultural College are eligible for participation in the retirement system for the

employees of the Commonwealth, established by chapter 532 of the acts of the present year. Only employees of the Commonwealth are eligible for such participation. By the terms of the statute "the word 'employee' means any person on the pay roll of the commonwealth, whether employed in the direct service of the commonwealth or in the metropolitan district service, who regularly gives his whole time to that service" (section 1). The teachers and employees of the Massachusetts Agricultural College are not, in my opinion, employees of the Commonwealth, within this definition. Under date of June 13, 1910, my predecessor advised the House of Representatives that the Massachusetts Agricultural College was "a public charitable corporation organized for educational purposes," and that it was not "in the strict sense of the words . . . a State institution." Attorney-General's Report, 1910, pp. 45, 48, 49. Since that time the Massachusetts Agricultural College has transferred its property to the Commonwealth under authority of St. 1911, c. 311. That statute did not, however, change the nature of the institution. Its teachers and employees are, therefore, employees of a public charitable corporation and not of the Commonwealth, even though considerable sums of money are appropriated by the Commonwealth for the support of the corporation.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Civil Service — Vendor of Intoxicating Liquors — Druggist — Sixth-class License.

A druggist who holds a sixth-class license to sell intoxicating liquors is a "vendor of intoxicating liquors" within the meaning of R. L., c. 19, § 16, providing that "no . . . vendor of intoxicating liquors shall be appointed to or retained in any office, appointment or employment to which the provision of this chapter shall apply."

DEC. 11, 1911.

WARREN P. DUDLEY, Esq., *Secretary, Civil Service Commission.*

DEAR SIR:— In behalf of the Civil Service Commission you have requested my opinion as to whether a druggist who holds a sixth-class license to sell intoxicating liquors is a "vendor of intoxicating liquors" within the meaning of section 16 of chapter 19 of the Revised Laws.

Chapter 19 of the Revised Laws deals with the civil service. Section 16 of this chapter is as follows:—

No person habitually using intoxicating liquors to excess and no vendor of intoxicating liquors shall be appointed to or retained in any office, appointment or employment to which the provisions of this chapter apply.

Licenses of the sixth class are "licenses to retail druggists and apothecaries to sell liquors of any kind for medicinal, mechanical or chemical purposes only, and to such persons only as may certify in writing for what use they want them." R. L., c. 100, § 18.

I am of opinion that a druggist who holds a sixth-class license, and by virtue thereof sells intoxicating liquors, is a "vendor of intoxicating liquors" within the meaning of the civil service statute quoted. It may be that the reasons which in the mind of the Legislature make the holder of a license of one of the first five classes an improper person for appointment under the civil service law do not apply to the holder of a sixth-class license. A holder of a sixth-class license who sells intoxicating liquors thereunder is, however, clearly within the ordinary meaning of the words "vendor of intoxicating liquors." In my judgment, the intention of the Legislature to exclude the holder of such a license from the statutory prohibition is not clear enough to justify a departure from the ordinary construction of the phrase.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

Savings Banks — Legal Investment — Bonds of Terminal Corporations — Railroad.

By providing in St. 1908, c. 590, § 68. cl. 3, subdivision *a*, that deposits in savings banks and the income derived therefrom may be invested "in the bonds or notes, issued in accordance with the laws of this commonwealth, of a railroad corporation incorporated therein, . . . or in the first mortgage bonds of a terminal corporation incorporated in this commonwealth," and in subdivision *c* of cl. 3 of said § 68, as amended by St. 1909, c. 491, § 8, that such deposits and the income derived therefrom may be invested "in the first mortgage bonds of a railroad corporation incorporated in any of the New England states, the railroad of which is located wholly or in part therein," the Legislature intended to restrict the investment of such deposits and income to the first mortgage bonds of terminal companies incorporated within the Commonwealth.

The Portland Terminal Company, a corporation organized under the laws of the State of Maine for the purpose of establishing, maintaining, operating and developing a terminal in the city of Portland, and

authorized to acquire and hold any or all of the franchises, rights or properties of certain railroad corporations within the territory designated as such terminal, which within such territory operates trains, issues time-tables, sells tickets therefor, and generally engages in the business of a common carrier of passengers, baggage and express, may, however, be construed to be a "railroad corporation" within the meaning of St. 1908, c. 590, § 68, cl. 3, subdivision *c*, as amended by St. 1909, c. 491, § 8, above quoted.

DEC. 21, 1911.

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

DEAR SIR:— You have submitted for my opinion the following request: "Will you kindly give me your opinion as to whether the bonds of the Portland Terminal Company will be legal investments for Massachusetts savings banks, if in proper form."

While your question is a broad one, from the correspondence and memoranda accompanying your letter I assume that the specific point of inquiry is whether or not the bonds of the Portland Terminal Company would be legal investments for Massachusetts savings banks, or, in other words, whether the Portland Terminal Company is to be considered as a railroad, under the provisions of St. 1908, c. 590, § 68, cl. 3, subdivision *c*, as amended by St. 1909, c. 491, § 8, which, in substance, provides that deposits in savings banks, and the income derived therefrom, shall be invested only as follows:—

c. In the first mortgage bonds or assumed first mortgage bonds or in the bonds secured by a refunding mortgage as described in paragraphs (3) or (4) of subdivision *g*, of a railroad corporation incorporated in any of the New England states, the railroad of which is located wholly or in part therein, which have been guaranteed as to principal and interest by a railroad corporation described in subdivisions *a* or *b* which is in possession of and is operating its own road.

Said company was incorporated under the laws of Maine, by chapter 96 of the Acts of 1887, entitled "An Act providing for a Union Railway Station at Portland." Section 1 of that act named the incorporators and provided that the corporation should be authorized "to erect, maintain, manage and govern a union railway station in Portland, for passengers, with convenient approaches, tracks, round houses, car sheds, signal towers and all other convenient and usual appurtenances of

union railway stations; and for those purposes (was) authorized to purchase, lease or otherwise obtain the right to occupy so much as may be convenient therefor, of the tracks and road-bed of any railroad company, with the consent of the company owning or controlling such tracks or road-bed, and also to acquire, hold and dispose of all such lands and buildings and other property, real or personal, as may be convenient for the purposes aforesaid." By section 2 a provision was made for such rules and regulations for the government of such union station and its grounds and approaches as might be consistent with the laws of the State of Maine and the ordinances of the city of Portland. This section also contained a provision that any railroad entering Portland might have the common use of the station. In section 4 it was provided that any railroad company whose tracks had entered or might thereafter enter the city of Portland should have the lawful right to purchase, hold and dispose of shares in the capital stock or bonds, scrip or other negotiable promises issued by the Union Railway Station Company, "or guaranty to other purchasers or holders thereof, the payment of said bonds, scrip, or other promises or any part thereof."

This chapter was amended during the present year by chapter 189 of the laws of the State of Maine for 1911, by which the name of the corporation was changed to the Portland Terminal Company. By section 2 it was provided that the railroad terminal created by the act should include within its limits any or all the properties of the Union Railway Station Company, the Boston & Maine Railroad, the Maine Central Railroad Company, the leasehold interests of the Maine Central Railroad as lessee of the Portland & Ogdensburg and of the Portland & Rumford Falls Railroad, situated in the cities of Portland, South Portland or Westbrook; and any or all the properties in such cities of any other railroad company using the terminal facilities under agreement with the terminal corporation. Section 3 was as follows:—

For the establishment, maintenance, operation and development of such railroad terminal, and for the regulation of railroad business, passenger, freight and express, within its limits, the Portland Terminal Company may acquire by contract, purchase or lease from the Boston & Maine Railroad and the Maine Central Railroad Company, or from any other railroad company using or desiring to use said terminal, all or any part of the railroad franchises, rights or properties within the limits of said terminal, including lands, rights of way,

tracks, road-beds, bridges, wharves, water rights, round-houses, railroad repair shops, stations, or other buildings; and all title to the same or any interests therein, or any right of exercise or operation thereof or to manage the same, within the limits aforesaid; nothing herein contained, however, shall authorize the Portland Terminal Company to acquire or to renew the use of the abandoned railroad location from Woodfords to the junction with the belt line, so called, running from the foot of Preble street to the Union station in Portland. The tracks on said abandoned location and Pitt street bridge, so called, over the same to be removed by the Boston & Maine Railroad at its own expense within three months after this act takes effect.

Within the limits of said terminal for the purpose of making changes and improvements therein and for all the purposes of its charter, the terminal company shall have the same powers of eminent domain as said railroad companies have by law; damages for real estate taken by condemnation to be estimated and paid in the same manner as provided by law in cases of lands taken for railroad uses.

Any corporation owning, operating, or controlling the same is hereby authorized to make sale, lease or conveyance to the said terminal company of property which the company is hereby authorized to acquire.

The Portland Terminal Company is hereby authorized to purchase or build railway repair shops within its limits and to operate the same under its own management.

Within the railroad locations included in the terminal the terminal company may locate according to law and build, maintain and operate electric railroads; and may purchase or lease, maintain and operate electric street railroads within the limits of said terminal.

Section 6 provided as follows:—

The Boston & Maine Railroad and the Maine Central Railroad Company, and any other railroad company using the terminal facilities by agreement with the terminal company, are each hereby authorized to guarantee the payment of the bonds issued by the Portland Terminal Company under this act, and to lease or convey to said Portland Terminal Company any or all property within the limits of said terminal.

Under these provisions said Portland Terminal Company is authorized, within the limits of the railroad terminal established for the purpose, to operate railroads, both steam and electric, and the amount of trackage comprised within the cities mentioned in the act is of considerable extent. It is, therefore, in a broad sense a "railroad" company, as held in *Coughlan v.*

Cambridge, 166 Mass. 268, and in *Wall v. Platt*, 169 Mass. 398; and see *Attorney-General's Report*, 1906, p. 39. When this last opinion was given, however, the statutes relating to investments for savings banks contained no mention of a terminal company, as such. This first appears in St. 1908, c. 590, § 68, cl. 3, subdivision *a*, in which it is provided that investments may be made as follows:—

In the bonds or notes, issued in accordance with the laws of this commonwealth, of a railroad corporation incorporated therein the railroad of which is located wholly or in part therein, which has paid in dividends in cash an amount equal to not less than four per cent per annum on all its outstanding issues of capital stock in each fiscal year for the five years next preceding such investment, or in the first mortgage bonds of a terminal corporation incorporated in this commonwealth and whose property is located therein, which is owned and operated, or the bonds of which are guaranteed as to principal and interest, or assumed, by such railroad corporation.

The evident intention of the Legislature to distinguish between terminal companies within Massachusetts and those outside of this Commonwealth is significant, and leads me to the conclusion that it was not intended to permit investment by savings banks in the bonds of a terminal corporation, as such, organized and actually situated in some other New England State.

In the present case, while the matter is not entirely free from difficulty, I am of opinion that the bonds of the Portland Terminal Company may be considered bonds of a railroad corporation, and therefore legal investments for savings banks so far as this specific inquiry is concerned.

I have been informed, and assume to be facts, that the Portland Terminal Company has exercised its authority to take over the property of the Boston & Maine Railroad and the Maine Central Railroad within the terminal limits established by the act; that it runs regular passenger trains from Union Station in Portland to Portland Junction on the Grand Trunk Railroad; that it owns fifteen locomotives, rents six, and owns its own equipment of flat cars, derrick cars, and other rolling stock, and operates passenger cars; that it issues time-tables and advertises the arrival and departure of its trains; that it sells its own passenger tickets and receives the compensation therefor; and that it employs a large number of people, including engineers,

firemen, brakemen, conductors, baggage-masters, freight agents, ticket agents, ticket sellers and lost-article agents. Within its limits, therefore, it seems to be doing the business of a common carrier of passengers, baggage and express. It therefore appears that said corporation, in addition to being a terminal company, is a railroad company within the meaning of the provisions of law hereinbefore cited.

The foregoing conclusion is upon the assumption that said bonds, when issued, will be in all other respects in accordance with the requirements of our statute. It appears, however, that a part of the property to be covered by the mortgage securing said bonds is subject to a prior consolidated mortgage of the Maine Central Railroad maturing April 1, 1912. This, in my opinion, will prevent said bonds from becoming legal investments for Massachusetts savings banks until after the expiration of said mortgage on April 1, 1912.

Very truly yours,

JAMES M. SWIFT, *Attorney-General.*

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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:—

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 fourth 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. Auditor's first report filed. Pending.

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. Disposed of.
- 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.
- Stockbridge, Selectmen of, petitioners. Petition for the abolition of "River Road" crossing in Stockbridge. James B. Carroll, Edward B. Bishop and Luther Dean appointed commissioners. 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.
- West Stockbridge, Selectmen of, petitioners. Petition for abolition of grade crossing at Albany Street. Pending.

Bristol County.

- 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.
- 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 fifteenth report filed. Pending.
- Somerset. New York, New Haven & Hartford Railroad Company, petitioner. Petition for abolition of grade crossing at Wilbur Avenue. James D. Colt, Henry H. Baker and Louis Perry appointed commissioners. Commissioners' report filed. Pending.
- Swansea. New York, New Haven & Hartford Railroad Company, petitioner. Petition for abolition of grade crossing at River Road. James D. Colt, Henry H. Baker and Louis Perry appointed commissioners. Commissioners' report filed. 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. Auditor's first report filed. 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.
- 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. Auditor's first report filed. 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.

- 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. Kennefick appointed auditor. Auditor's second report filed. Pending.
- Westfield, Attorney-General, petitioner. Petition for abolition of grade crossings at Lane's and Lee's crossings in Westfield. Patrick H. Cooney, Richard W. Irwin and Franklin T. Hammond appointed commissioners. Pending.

Hampshire County.

- Amherst, Selectmen of, petitioners. Petition for abolition of grade crossings at Whitney, High and Main streets. Railroad commissioners appointed commissioners. Pending.
- 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.
- Easthampton, Selectmen of, petitioners. Petition for abolition of grade crossing at Holyoke Road, Mt. Tom crossing. Pending.
- 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. Disposed of.

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

- 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.
- 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. Disposed of.
- 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 third 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. Disposed of.
- 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 sixth 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. Joseph W. Lund, Esq., appointed auditor. Pending.
- Weston, Selectmen of, petitioners. Petition for abolition of grade crossings at Central Avenue, Conant Road, Church and Viles streets. 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.
- 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.

- 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.
- Norfolk. Agreement approved by the Railroad Commissioners for the abolition of crossing at Grove Street, near City Mills station. 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.

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 tenth 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. Disposed of.
- 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. Disposed of.
- 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 tenth 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. Disposed of.
- 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. Commission-

ers' 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 fourteenth 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. Commissioners' report filed. 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. Disposed of.

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. Disposed of.

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 fourth report filed. Pending.

Harvard. Boston & Maine Railroad, petitioner. Petition for abolition of a grade crossing near Harvard station. 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.
- 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 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 forty-first report filed. Pending.

CASES ARISING IN THE COURTS

UNDER THE

ACTS RELATIVE TO INHERITANCE AND SUCCESSION TAXES.

PETITIONS FOR INSTRUCTIONS.

Bristol County.

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

Essex County.

Nichols, Mary C., estate of. Frank O. Woods, executor. Pending.

Sheridan, Mary F., estate of. Daniel M. Crowley, administrator.
Decree.

Franklin County.

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

Hampshire County.

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

Middlesex County.

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

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

Perry, Emery B., estate of. Thomas Weston, executor. Pending.
Proudfoot, David, *et al. v.* Third Congregational Society in
Cambridge *et al.* Pending.

Rugg, George H., estate of. Phineas C. Kinney, executor. Re-
served for full court. Rescript.

Scott, Julia A., estate of. Emma E. Doty, executrix. Pending.

Whitney, Henry, estate of. William B. Durant, administrator.
Attorney-General waived right to be heard.

Norfolk County.

- Fisher, Charles H., estate of. Lydia M. Fisher, executrix. Pending.
- Tobin, Ellen A., estate of. William Sullivan, executor. Pending.
- Tobin, Lawrence, absentee, estate of. Howard A. Wilson, receiver, petitioner. Pending.

Plymouth County.

- Blenkinsop, James S., estate of. John R. Mills, administrator. Petition for abatement of inheritance tax. Pending.

Suffolk County.

- Baker, Charlotte A., estate of. Frank N. Nay *et als.*, executors. Pending.
- Baxter, Helen F., estate of. Carlton W. Baxter, executor. Petition for abatement of inheritance tax. Rescript.
- Belknap, Henry, estate of. Francis Peabody, Jr., *et al.*, executors. Pending.
- Kelly, Thomas, estate of. Harriet L. Kelly, petitioner. Pending.
- Lincoln, Annie Preston, estate of. State Street Trust Company, trustee. Rescript.
- McCarthy, John A., estate of. Andreas Blume, executor. Decree.
- Sweetser, Frank D., estate of. Charles N. Barney, administrator *c. t. a.* Reserved for full court. Pending.
- Wharton, Nancy Willing, estate of. Laurence Minot *et al.*, trustees. Reserved for full court. Rescript.

Worcester County.

- Buck, Horace B., estate of. Frank G. Fay, administrator. Attorney-General waived right to be heard.
- Gage, Thomas H., estate of. T. Hovey Gage, administrator. Decree.
- Whitcomb, Rebecca, estate of. Carl M. Blair, administrator. Decree.

INVENTORIES.

Barnstable County.

- Clark, Achsah S., estate of. Lewis F. Clark, administrator.
Pending. Unable to locate.
- Smith, Clara P., estate of. Heman N. Smith, administrator.
Dismissed.

Berkshire County.

- Cadron, William H., estate of. Nellie Cadron, administratrix.
Dismissed.
- Jeter, Minta M., estate of. Robert A. Jeter, administrator.
Final decree.
- Kelly, Julia, estate of. James O'Brien, executor. Dismissed.
- Mahanna, Bridget, estate of. Timothy E. Mahanna, executor.
Dismissed.
- Roberts, Herbert I., estate of. Lura M. Roberts, administratrix.
Pending.
- Tymeson, Edward, estate of. William E. Tymeson, administrator.
Pending.
- Urell, Michael, estate of. Ellen Urell, executrix. Dismissed.
- Wolfe, William D., estate of. Orlando C. Bidwell, administrator.
Dismissed.

Bristol County.

- Boulanger, Michael, estate of. Charles Latraverse, executor.
Dismissed.
- Correia, Joseph, estate of. Manuel Correia, administrator. Dis-
missed.
- Gibbs, Lizzie F., estate of. C. P. Sherman, executor. Dismissed.
- Jeudy, Caroline Kurz, estate of. Francis Jeudy, executor. Dis-
missed.
- Rogers, Helen A., estate of. James W. Richardson, adminis-
trator. Disposed of.

Essex County.

- Agganes, Louis N., estate of. George P. Agganes, administrator.
Pending. Unable to locate.
- Callahan, Howard P., estate of. Annie F. Callahan, adminis-
tratrix. Dismissed.
- Cook, Katherine F., estate of. Thomas M. Cook, administrator.
Pending. Unable to locate.

- Crowley, James E., estate of. Mary E. Crowley, administratrix. Dismissed.
- Curran, Hanorah, estate of. Patrick Curran, administrator. Dismissed.
- Delfuocco, Teresa, estate of. Venanzio Delfuocco, administrator. Dismissed.
- Donovan, Daniel J., estate of. Susan A. Donovan, administratrix. Final decree.
- Duffy, Catherine M., estate of. Michael J. Duffy *et al.*, executors. Dismissed.
- Goodrich, William B., estate of. Priscilla F. Goodrich, administratrix. Dismissed.
- Grandmaison, Abraham, estate of. Vena A. Grandmaison, administratrix. Pending. Unable to locate.
- Harris, Henry W., estate of. Rebecca Harris, administratrix. Pending. Unable to locate.
- Hayes, John J., estate of. Ellen T. Sullivan, administratrix. Dismissed.
- Hollingshead, Samuel W., estate of. Benjamin B. Hanson, administrator. Dismissed.
- Mulry, Winifred T., estate of. William A. Mulry *et al.*, executors. Dismissed.
- Roche, Alice, estate of. John O'Brien, Jr., administrator. Dismissed.
- Swiderski, Frank, estate of. Josie Swiderski, administratrix. Dismissed.
- Tallouse, Ethel M., estate of. Fred Tallouse, administrator. Pending. Unable to locate.
- Walshe, Edward, estate of. John B. Walshe, administrator. Final decree.

Hampden County.

- Kurlej, Maryanna Rusin, estate of. Waldyslaw Kurlej, executor. Pending. Unable to locate.
- Noble, Leonard E., estate of. Julia F. Noble, executrix. Dismissed.
- Premont, Rosalie Poulin, estate of. Isidore Lusignan, executrix. Dismissed.
- Tessier, Marie L., estate of. Charles R. Moreau, administrator. Dismissed.

Hampshire County.

- Keating, Ellen, estate of. Honora L. Finn, administratrix. Dismissed.
- McGrath, Robert, estate of. Margaret McGrath, executrix. Dismissed.
- McKenna, Jerry C., estate of. Mary McKenna, administratrix. Dismissed.
- Werner, Andrew J., estate of. Bertha Werner, administratrix. Pending. Unable to locate.

Middlesex County.

- Boudreau, Walter J., estate of. Jane Boudreau, administratrix. Dismissed.
- Brown, Belmore N., estate of. Anna E. Brown, administratrix. Pending. Unable to locate.
- Chadbourne, Marshall W., estate of. Addie Chadbourne, executrix. Pending.
- Clark, George E., estate of. T. Frank Clark *et al.*, administrators. Final decree.
- Crowdle, Annie M., estate of. Mary L. Murphy, executrix. Dismissed.
- DeAngelis, Antonio, estate of. Fredericco DeAngelis, administrator. Dismissed.
- Dubinka, Piotr, estate of. Stasia Wolska, administratrix. Disposed of.
- Fairbank, Abbie B., estate of. George W. Fairbank, administrator. Dismissed.
- Flynn, James F., estate of. Mary F. Flynn, administratrix. Dismissed.
- Friel, Hannah G., estate of. Charles H. Friel, administrator. Dismissed.
- Keefe, Bridget, estate of. John T. Keefe, executor. Dismissed.
- Kenney, Mary E., estate of. Andrew J. Rady, administrator. Dismissed.
- Kleinau, John, estate of. Dorothy S. Kleinau, administratrix. Dismissed.
- Lavender, Stephen S., estate of. Robert M. Lavender, administrator. Dismissed.
- Longley, Asa P., estate of. Ella M. Longley, administratrix. Final decree.

- Masson, Joseph, estate of. Louis H. Masson, administrator. Dismissed.
- McKinnon, Neil A., estate of. Margaret G. McKinnon, executrix. Dismissed.
- Morrissey, Richard J., estate of. John J. Morrissey, administrator. Dismissed.
- Nichols, James, estate of. Maud M. Nichols, administratrix. Dismissed.
- Plunkett, James, estate of. Owen Tighe, executor. Dismissed.
- Pratt, David G., estate of. Eva H. Pratt, administratrix. Pending. Unable to locate.
- Stanton, Catherine, estate of. Thomas Brennan, executor. Dismissed.
- Staples, Mary E., estate of. Mabel D. Thiergerge, executrix. Pending. Unable to locate.
- Zwicker, William B., estate of. Ella M. Zwicker, administratrix. Disposed of.

Norfolk County.

- Butler, William H., estate of. Lizzie F. Butler, administratrix. Dismissed.
- Collins, Michael, estate of. Bridget Collins, executrix. Dismissed.
- Crowther, Rebecca, estate of. J. William Crowther, administrator. Dismissed.
- McPherson, Mary A., estate of. Duncan McPherson, administrator. Pending.
- Wadsworth, Dexter E., estate of. Kate A. Wadsworth, special administratrix. Dismissed.
- White, Asher A., estate of. Samuel White, special administrator. Dismissed.

Plymouth County.

- Hovey, Anna H., estate of. Daisy L. Fisher, administratrix. Dismissed.
- Peres, John, estate of. James F. Kiernan, administrator. Dismissed.
- Russell, Patrick, estate of. William J. Coughlan *et al.*, executors. Pending.

Suffolk County.

- Babson, John M., estate of. Annie R. Bohaker, administratrix. Dismissed.
- Bailey, John, estate of. James Bailey, administrator. Dismissed.

- Bithwell, William, estate of. Mary A. Bithwell, administratrix. Dismissed.
- Boardman, Henry W., estate of. William Greenwood, administrator. Dismissed.
- Bonner, Laura E., estate of. Joseph A. Bonner, administrator. Dismissed.
- Brown, Carlan A., estate of. Mary E. Brown, executrix. Dismissed.
- Campana, Michael E., estate of. George Campana, administrator. Pending. Unable to locate.
- Carty, Patrick, estate of. Mary T. Carty, administratrix. Dismissed.
- Clayton, Frank H., estate of. Minnie A. Clayton, executrix. Pending.
- Colbert, James, estate of. James E. Colbert, administrator. Dismissed.
- Costello, Bridget, estate of. Bridget A. Costello, administratrix. Pending.
- Costello, Catherine, estate of. Michael W. Costello, executor. Final decree.
- Crowley, Daniel J., estate of. Patrick J. Crowley, administrator. Pending. Unable to locate.
- Dion, Louise L., estate of. Napoleon J. Dion, administrator. Disposed of.
- Driscoll, John J., estate of. Catherine Driscoll, administratrix. Pending.
- Dyer, Willie H. S., estate of. Ethel M. Dyer, executrix. Dismissed.
- Evans, Margaret A., estate of. William E. Burke, administrator. Dismissed.
- Fahey, Thomas, estate of. Thomas Fahey, administrator. Dismissed.
- Fallon, Jennie E., estate of. John B. Fallon *et al.*, executors. Final decree.
- Fallon, John F., estate of. Annie McNally, administratrix. Disposed of.
- Fargo, Martha, estate of. Anna F. Rogers, executrix. Pending. Unable to locate.
- Fournier, Eleanor, estate of. Thomas J. Fournier, administrator. Dismissed.
- Fournier, Loraine, estate of. Thomas J. Fournier, administrator. Dismissed.

- Frothingham, Edwin, estate of. Mattie M. Frothingham, administratrix. Disposed of.
- Gerrish, Jennie L., estate of. Herbert W. Angier, administrator. Pending.
- Gleason, Michael J., estate of. Annie Gleason, administratrix. Pending.
- Goodale, George L., estate of. William P. Martin, executor. Pending.
- Gray, James N., estate of. Helen F. Eaton, administratrix. Pending.
- Gray, Mary D., estate of. William P. Gray, administrator. Pending.
- Griffith, Edward, estate of. George A. Griffith, administrator. Pending.
- Ham, Henrietta J., estate of. Edwin A. Bayley *et al.*, administrators. Dismissed.
- Hanson, Mary N., estate of. Andrew Hanson, administrator. Pending.
- Hardy, Lylie M., estate of. Lucy B. Hoadley, administratrix. Pending.
- Harrington, Mary, estate of. Joseph A. Sheehan, administrator. Pending.
- Hedrington, Ellen, estate of. Joseph A. Sheehan, administrator. Dismissed.
- Heffernan, Patrick, estate of. John J. Heffernan, administrator. Dismissed.
- Hogstrom, Victor, estate of. Maria Hogstrom, administratrix. Dismissed.
- Horne, Norman S., estate of. Irene S. Horne, administratrix. Disposed of.
- Howard, May, estate of. John E. Nolan, administrator. Dismissed.
- Hurvitz, Isaac, estate of. Jennie Hurvitz, administratrix. Dismissed.
- Jame, Rebecca, estate of. Barnet Jame, administrator. Pending.
- Jordan, Lena, estate of. Frida Jordan, administratrix. Pending.
- Kalis, Abraham, estate of. Joseph Kalis, administrator. Pending. Unable to locate.
- Kane, Bridget, estate of. Mary Kane, administratrix. Dismissed.
- Kelly, Ellen, estate of. C. I. Quirk, administrator. Dismissed.

- Kenney, Martin, estate of. James J. Kenney, administrator.
Pending.
- Keohane, Hannah, estate of. Nora Coughlin, administratrix.
Dismissed.
- Killeen, Margaret A., estate of. Henry P. Moltedo, executor.
Decree.
- King, David J., estate of. Elizabeth King, administratrix.
Pending. Unable to locate.
- Lydon, Mary A., estate of. Hannah Dooley, administratrix.
Dismissed.
- Marble, Edward D., estate of. Bertha A. Granger, administratrix.
Dismissed.
- Marchant, Henry G., estate of. Lawrence Bond, executor. Dismissed.
- McCallion, Bridget M., estate of. Richard Minton, administrator. Dismissed.
- McCarthy, Maria, estate of. John McCarthy, administrator.
Pending. Unable to locate.
- McGann, Patrick, estate of. Margaret Sheehan, administratrix.
Pending.
- McInnis, Florence, estate of. Daniel McInnis, administrator.
Dismissed.
- McKeen, William, estate of. Katherine M. McKeen, administratrix. Disposed of.
- McKenney, Johannah, estate of. Johannah M. Gallagher, administratrix. Dismissed.
- McLaughlin, Michael, estate of. Catherine McLaughlin, administratrix. Dismissed.
- Mikolajczak, Mary, estate of. Joseph Mikolajczak, administrator. Decree.
- Moffatt, Lydia L., estate of. Stella A. Simpson, administratrix.
Dismissed.
- Murphy, John E., estate of. Thomas Murphy, administrator.
Pending.
- Murtagh, Rose, estate of. John J. Murtagh, administrator. Dismissed.
- Nagle, David J., estate of. Julia B. Nagle, executrix. Dismissed.
- O'Brien, Mary, estate of. Frank O'Brien, administrator. Dismissed.
- Powers, William, estate of. Nellie Powers, administratrix. Dismissed.

- Quinn, Timothy F., estate of. Catherine C. Quinn, administratrix. Dismissed.
- Reddish, Michael H., estate of. Mary Reddish, administratrix. Dismissed.
- Reilly, Honora, estate of. Annie F. Reilly, administratrix. Dismissed.
- Rozander, Hannah, estate of. Emma Crane, administratrix. Dismissed.
- Russell, Patrick F., estate of. Mary E. Russell, administratrix. Dismissed.
- Sanders, Abbie O., estate of. Thornton E. Sanders, administrator. Dismissed.
- Schmidt, John Joseph, Jr., estate of. John Joseph Schmidt, administrator. Dismissed.
- Scollard, Michael J., estate of. Joseph P. Costello, executor. Dismissed.
- Shacat, Isidore C., estate of. Hyman Shacat, administrator. Pending. Unable to locate.
- Sirvain, Marcelin, estate of. Aglar Sirvain, executor. Pending.
- Slattery, Teresa M., estate of. Natabia G. Crotty, administrator. Dismissed.
- Smith, Calvin B., estate of. Francis S. Smith, executor. Final decree.
- Spafford, Isaac B., estate of. Isaac B. Spafford, Jr., administrator. Final decree.
- Sribikr, Longina, estate of. Anastasia Sribikr, administratrix. Pending. Unable to locate.
- Steeves, Henry S., estate of. Austin E. Greene, administrator. Dismissed.
- Strid, August, estate of. Elma Strid, administratrix. Pending. Unable to locate.
- Sullivan, Daniel, estate of. William T. Sullivan, administrator. Pending.
- Swan, Alice C., estate of. Lillian W. Wells, administratrix. Dismissed.
- Thorner, Elmina, estate of. Morris Thorner, administrator. Pending.
- Tower, Abby A., estate of. F. A. Appleton, administrator. Dismissed.
- Trengove, William E., estate of. Charles T. Trengove, administrator. Pending.

- Vincent, Alexander, estate of. William Vincent, administrator.
Pending.
- Wagner, Stephen G., estate of. Mary A. Wagner, administratrix.
Pending.
- Whitehouse, Frank N., estate of. Mary E. Whitehouse, executrix. Dismissed.
- Williams, Sarah M., estate of. John H. Williams, administrator.
Pending.
- Woods, Patrick, estate of. Jane Woods, administratrix. Dismissed.
- Wren, Cornelius, estate of. Edward C. Wren, administrator.
Pending.
- Young, Ellen, estate of. Catherine Driscoll, executrix. Dismissed.

Worcester County.

- Bartlett, Frederick R., estate of. Carrie E. Bartlett, administratrix. Dismissed.
- Dorsey, Catherine, estate of. Timothy Dorsey, administrator.
Pending.
- Gouch, Mary, estate of. Mark N. Skerrett *et al.*, executors.
Dismissed.
- Kumin, Nathan, estate of. Bessie Kumin, executrix. Dismissed.
- Leonard, Ellen, estate of. Mary A. Martin, administratrix.
Dismissed.
- O'Shea, Margaret M., estate of. Michael J. O'Shea, administrator. Dismissed.
- Smith, Everett W., estate of. Charlotte J. B. Smith, administratrix. Dismissed.

PUBLIC CHARITABLE TRUSTS.

Berkshire County.

Mason, Mary A., estate of. Frank H. Wright, petitioner. Petition for leave to compromise will. Decree.

Bristol County.

Howland, Sylvia Ann, estate of. Henry H. Crapo, petitioner. Petition for appointment as trustee. Attorney-General waived right to be heard.

Matthes, Cornelia P., estate of. Charles R. Hunt, administrator. Petition for instructions. Decree.

Matthes, Cornelia P., estate of. Charles R. Hunt, administrator. Petition for instructions. Pending.

Matthes, Cornelia P., estate of. Charles R. Hunt, administrator. Petition for instructions. Pending.

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. Decree.

Coburn, Abbie A., estate of. William A. Donald *et al.*, trustees. Petition for allowance of fourth and fifth and final accounts. Attorney-General waived right to be heard.

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.

Hallihan, Dennis F., estate of. Stephen J. Birmingham, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

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. Decree.
- Healy, Jeremiah J., estate of. Dennis Healy, executor. Petition for instructions. Pending.
- Needham, Alice, estate of. Salem Monthly Meeting of Friends, petitioner. Petition for instructions. Pending.
- Otis, Margaret Sigourney, estate of. Philip Dexter *et al.*, executors. Petition for instructions. Pending.
- Robbins, Mary B., estate of. Charles E. Sawyer, trustee. Petition for instructions. Pending.
- Ropes, Eliza O., estate of. Charles W. Richardson *et al.*, executors. Petition for appointment of trustee and for instructions. Decree. Appeal. Rescript.
- Ropes, Eliza O., estate of. Charles W. Richardson *et al.*, executors. Petition for instructions. Decree.
- Ropes, Eliza O., estate of. Civic League of Salem, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.
- Ropes, Eliza O., estate of. Edward S. Morse *et als.*, petitioners. Petition for appointment of trustees. Attorney-General waived right to be heard.
- Ropes, Mary P., estate of. Charles W. Richardson *et al.*, administrators. Petition for instructions. Decree.
- Ropes, Mary P., estate of. Charles W. Richardson *et al.*, administrators. Petition for instructions. Decree.
- Ropes, Mary P., estate of. Charles W. Richardson *et al.*, executors. Petition for appointment of trustee and for instructions. Decree. Appeal. Rescript.
- Ropes, Mary P., estate of. Civic League of Salem, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.
- Ropes, Mary P., estate of. Edward S. Morse *et als.*, petitioners. Petition for appointment of trustees. Attorney-General waived right to be heard.
- Smith, John, estate of. J. Duke Smith, trustee. Petition for instructions. Pending.

Franklin County.

- Stratton, Abigail, estate of. Frank H. Montague *et al.*, trustees. Petition for allowance of tenth account. Pending.
- Tilton, Chauncy B., estate of. Petition for appointment of trustee. Assented to the appointment of Arthur G. Clapp.

Williams, Ebenezer H., estate of. Irving H. Childs, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

Hampden County.

Allen, Ethan, estate of. Springfield Safe Deposit and Trust Company, trustee, petitioner. Petition for allowance of third account. Pending.

Whiting, H. Amelia, *v.* The Women's Union Temperance Organization. Petition for injunction to prevent defendant corporation from exceeding its powers under charter. Decree.

Hampshire County.

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

Moore, Philomela C., estate of. Herbert Sabin *et al.*, petitioners. Petition for instructions. Pending.

Russell Church in Hadley. Francis S. Reynolds, trustee. Petition for instructions. Pending.

Middlesex County.

Bennett, Eleanor, estate of. Joseph Jaquith *et als.*, petitioners. Petition for appointment of trustees. Pending.

Choate, Lydia G., estate of. Ellen M. Dow *et als.*, trustees. Petition for allowance of first, second and third accounts. Attorney-General waived right to be heard.

Copeland, Sarah E., estate of. Alba A. Giles, executor. Petition for instructions. Pending.

Copeland, Sarah E., estate of. Alba A. Giles, executor. Petition for allowance of second account. Pending.

Hammond, George P., estate of. Elizabeth F. Johnson, executrix, petitioner. Petition for instructions. Pending.

Holbrook, Adin, estate of. Alonzo Stearns *et al.*, executors. Petition for appointment of trustee without surety on bonds. Attorney-General waived right to be heard.

Litchfield, William, estate of. Henry W. Bragg, administrator. Petition for instructions. Pending.

Martin, Webster Warner, estate of. Wesley T. Lee *et al.*, trustees. Petition for allowance of sixth account. Account allowed.

- Shepard, Obed C., estate of. Charles H. Sherman, executor. Petition for leave to adjust by compromise controversy in regard to allowance of will. Reserved for the full court.
- Tabor, Frances F., estate of. Charles S. Norris, executor. Petition for instructions. Pending.
- Thompson, Emulus, estate of. Melvin G. Rogers, administrator. Petition for instructions. Pending.
- Ward, Winthrop, estate of. Francis H. Brown *et als.*, petitioners. Petition for appointment of trustees. Pending.
- White, Daniel, estate of. Winslow Warren *et al.*, trustees. Petition for allowance of sixteenth, seventeenth and eighteenth accounts. Pending.
- Whitney, Caroline A. R., estate of. Henry R. Hayes, administrator. Petition for allowance of third account. Pending.

Norfolk County.

- Adams, Levi, estate of. Goerge W. Bullard *et al.*, trustees of the Second Congregational Church of Medway, petitioners. Petition for instructions. Decree.
- Mann, Jonathan, estate of. John F. Brown *et al.*, executors. Petition for instructions. Pending.
- Sanderson, Julia A., estate of. Marshall L. Perrin, executor. Petition for instructions. Pending.
- Sanderson, Julia A., estate of. Marshall L. Perrin, executor. Petition for authority to purchase an annuity for H. H. Brown. Pending.

Plymouth County.

- Pitcher, James S. H., estate of. Oliver W. Cobb, trustee. Petition for distribution of trust estate. Pending.

Suffolk County.

- Appleton, William, estate of. J. Morris Meredith *et al.*, trustees. Petition for instructions. Decree.
- Ashton, Elisha V., estate of. Charles P. Curtis *et al.*, trustees. Petition for allowance of fifth to eleventh accounts, inclusive. Pending.
- Ashton, Elisha V., estate of. Charles P. Curtis *et al.*, trustees. Petition for instructions. Decree.
- Atkins, Henry Holly. William Warren Vaughn *et al.*, trustees. Petition for allowance of seventh to tenth accounts, inclusive. Pending.

- Bird, John H., estate of. George A. Thayer *et al.*, trustees. Petition for allowance of thirty-third, thirty-fourth and thirty-fifth accounts. Accounts allowed.
- Bird, John H., estate of. George A. Thayer *et al.*, trustees. Petition for allowance of thirty-sixth account. Attorney-General waived right to be heard.
- Boston Dispensary, petitioner. Petition for leave to sell real estate. Pending.
- Bradstreet, Charlotte A., estate of. Moses Williams *et al.*, petitioners. Petition for appointment as trustees. Pending.
- Brigham, Peter Bent, estate of. Edmund D. Codman *et al.*, trustees. Petition for allowance of first to fourth accounts, inclusive. Attorney-General waived right to be heard.
- Brown, Josiah W., estate of. Sewall F. Abbott *et al.*, trustees. Petitions for instructions. Pending.
- Cazenove, Sarah Elizabeth, estate of. George H. Richards, trustee. Petition for instructions. Pending.
- Church Street Methodist Episcopal Church, Trustees of, petitioner. Two petitions for leave to mortgage real estate. Attorney-General waived right to be heard on both petitions.
- Clapp, Mary H., estate of. Richard C. Humphreys, trustee. Petition for allowance of first and final account. Attorney-General waived right to be heard.
- Clapp, Mary H., estate of. Silas E. Parsons, petitioner. Petition for appointment of trustee. Assented to the appointment of Silas E. Parsons.
- Clay, R. Richard, estate of. Thomas J. Kenny, trustee. Petition for allowance of third and final account. Attorney-General waived right to be heard.
- Clay, R. Richard, estate of. Thomas J. Kenny, trustee. Petition for leave to terminate trust by paying certain legacies. Attorney-General waived right to be heard.
- Devens, Sarah A. W., estate of. Laurence Minot *et al.*, trustees. Petition for allowance of thirty-fourth account. Attorney-General waived right to be heard.
- Drury, Michael, estate of. Charles E. Cotting, trustee. Petition for allowance of first to seventh and final accounts, inclusive. Pending.
- Forbes, Sarah S., estate of. James S. Russell, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

- Gardner, Ellen K., estate of. Herbert I. Boyer, trustee. Petition for allowance of first account. Attorney-General waived right to be heard.
- Geyer, Mary French, estate of. Charles H. Cary, trustee. Petition for allowance of second account. Attorney-General waived right to be heard.
- Geyer, Mary French, estate of. George H. Cary, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.
- Gurney, Elizabeth F., estate of. Warren Avenue Baptist Church *v.* Attorney-General. Petition for instructions. Pending.
- Haven, George, estate of. Herbert Parker *et al.*, trustees. Petition for instructions. Pending.
- Lawrence, Abbott, estate of. John Lawrence *et al.*, trustees. Petition for allowance of twenty-first account. Attorney-General waived right to be heard.
- Locke, Elbridge W., estate of. Otis Merriam *et al.*, trustees. Petition for allowance of seventh and eighth accounts. Accounts allowed.
- 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.
- Nute, Lewis W., estate of. Charles H. Moulton *et als.*, trustees. Petition for allowance of eighteenth, nineteenth, twentieth and twenty-first accounts. Accounts allowed.
- Patterson, Adoniram Judson, estate of. Joseph Houghton *et al.*, executors. Petition for instructions. Decree.
- Pine, James A., estate of. Frank W. Grinnell, trustee. Petition for instructions. Pending.
- Potter, Sarah E., estate of. New Bedford Free Public Library, petitioner. Petition for instructions. Pending.
- Rufus S. Frost General Hospital *v.* Attorney-General. Petition for leave to sell certain real estate. Attorney-General waived right to be heard.
- Rust, Nancy E., estate of. Henry A. Wyman *et al.*, trustees. Petition for instructions. Pending.
- Saint Paul's Church, Wardens and Vestry of, *v.* Attorney-General. Petition for authority to borrow money. Attorney-General waived right to be heard.
- Snow, Sophia J., estate of. Gorham Rogers, trustee. Petition for allowance of sixth account. Attorney-General waived right to be heard.

- Thompson, Thomas, estate of. John F. Moors, petitioner. Petition for appointment of trustee. Pending.
- Thorndike, George L., estate of. Albert E. Clary *et al.*, trustees. Petition for allowance of first account. Account allowed.
- Thorndike, George L., estate of. Albert E. Clary *et als.*, executors. Petition for allowance of first to fifth and final accounts. Accounts allowed.
- Thorndike, George L., estate of. William A. Morrison, surviving trustee. Petition for allowance of second account. Account allowed.
- Tyler Street Day Nursery Company *v.* Attorney-General. Petition for instructions. Pending.
- Walshe, Genevieve B., estate of. Neil McNeil *et al.*, trustees. Petition for allowance of first and final account. Attorney-General waived right to be heard.
- Warren, Caroline, estate of. Rackemann, Felix, *et al. v.* Harriet E. Coffin *et al.* Petition for instructions. Decree.
- Weber, Frederick E., estate of. Arthur L. Howard *et al.*, petitioners. Petition for appointment of trustees. Attorney-General waived right to be heard.
- Wellesley Boys' Club, R. K. Sawyer *et als.*, trustees of, petitioners. Petition for instructions. Pending.
- Whitney, Sarah W., estate of. Charles A. Stone, trustee. Petition for leave to sell real estate. Pending.
- Wild, Catherine H., estate of. Charles P. Bowditch, trustee. Petition for allowance of nineteenth and final account. Attorney-General waived right to be heard.
- Willard Hospital, The, *v.* The Frances E. Willard Settlement *et als.* Petition for instructions. Pending.

Worcester County.

- Bemis, George, estate of. Myron A. Young *et al.*, petitioners. Petition for appointment of trustees. Attorney-General waived right to be heard.
- Brooks, Sarah, estate of. Thomas H. Russell, petitioner. Petition for appointment of trustee. Thomas H. Russell appointed trustee.
- Fletcher, Ezra W., estate of. Edward Whitin *et al.*, trustees. Petition for leave to transfer trust fund. Attorney-General waived right to be heard.
- Foster, Richard W., estate of. Catherine E. Foster *et al.*, executors. Petition for instructions. Disposed of.

- Grout, Eliza P., estate of. Robert L. Carter *et als.*, trustees.
Petition for allowance of sixth account. Pending.
- 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. 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. Accounts allowed.

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. Settled.
Blais, Eugenia V., *v.* Commonwealth. Settled.
Blais, Michael, *v.* Commonwealth. Settled.
Debbins, Robert W., *et al. v.* Commonwealth. Settled.
Kerr, William B., *v.* Commonwealth. Settled.
Northrup, Stephen C., *v.* Commonwealth. Settled.
Patterson, Mary J., *v.* Commonwealth. Settled.
Phelan, Patrick, *v.* Commonwealth. Settled.
Robinson, Sumner, *et al. v.* Commonwealth. Pending.

Suffolk County.

Hurley, John J., *v.* Commonwealth. Settled.
Welch, Mary E., *et als. v.* Commonwealth. Settled.

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.

Middlesex County.

Ward, George A., *et als v.* Commonwealth. Pending.

Norfolk County.

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.

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. Settled.

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.

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.* Dismissed.

Sullivan, Kate, *v. Commonwealth.* Dismissed.

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

4. BOARD OF HARBOR AND LAND COMMISSIONERS.

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

Suffolk County.

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

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

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

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

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

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

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

Homans, Helen A., *v. Commonwealth.* Settled.

Hooper, James R., *v. Commonwealth.* Pending.

Hooper, Robert C., *et al. v. Commonwealth.* Pending.

Hutchins, Edward W., *v. Commonwealth.* Settled.

Inches, Louise P., *v. Commonwealth.* Pending.

Jewell, Edward, *v. Commonwealth.* Pending.

Niles, Sarah F., *et al. v. Commonwealth.* Pending.

Parker, George W., *et al. v. Commonwealth.* Pending.

Pierce, Katherine C., *v. Commonwealth.* Pending.

Pierce, Wallace L., *v. Commonwealth.* Settled.

Prince, Fannie L., *v. Commonwealth*. Pending.
Prince, Lillian C., *v. Commonwealth*. Pending.
Sears, Mary C., *v. Commonwealth*. Pending.
Sears, Richard D., *v. Commonwealth*. Pending.
Shaw, Francis, *v. Commonwealth*. Pending.
Sleeper, Maria W., *v. Commonwealth*. Settled.
Stanton, Esther H., *v. Commonwealth*. Settled.
Tarbell, Arthur P., *et al. v. Commonwealth*. Pending.
Taylor, Georgianna O., *v. Commonwealth*. Pending.
Taylor, Mary M., *v. Commonwealth*. Pending.
Whitney, Christiana S., *et al. v. Commonwealth*. Pending.
Williams, John D., trustee, *v. Commonwealth*. Pending.

6. ARMORY COMMISSIONERS.

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

Suffolk County.

Brooks, Ellen A., *et al. v. Commonwealth et al.* Settled.
Lyons, Ellen E., *v. Commonwealth et al.* Settled.
Mahoney, Agnes, *v. Commonwealth*. Settled.

7. GREYLOCK RESERVATION COMMISSION.

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

Berkshire County.

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

8. STATE BOARD OF INSANITY.

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

Suffolk County.

Beatty, John F., *v. Commonwealth*. Pending.
Callahan, Frank J., *et al. v. Commonwealth*. Pending.
Callahan, George A., *et al. v. Commonwealth*. Pending.
Flint, James H., *et al., trustees, v. Commonwealth*. Pending.
Fourth National Bank of Boston *v. Commonwealth*. Settled.

Holbrook, Wellington, *et al. v. Commonwealth.* Pending.
 Kiley, Daniel J., *v. Commonwealth.* Pending.
 Shea, Julia A., *et als., trustees, v. Commonwealth.* Pending.

9. TRUSTEES OF THE WRENTHAM STATE SCHOOL.

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

Norfolk County.

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

10. 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. Settled.
 International Automobile and Vehicle Tire Company *v. Commonwealth.* Petition to recover 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. Settled.
 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. Decree.
- 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. Byrne 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.
- Kinmond, John D., *v.* Commonwealth. Action of tort to recover for injuries caused by defect in State highway in Salisbury. Pending.
- Lake, Alexander G., *v.* Commonwealth. Action of tort to recover for injuries caused by defect in State highway in Natick. 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. Dismissed.
- 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.

11. STATE BOARDS OF CHARITY AND INSANITY.

Actions of contract pending in the Superior Court to recover charges for the support of persons in State hospitals.

Suffolk County.

- Chapin, Treasurer, *v.* Charles A. Mullin. Pending.
- Stevens, Treasurer, *v.* Joseph C. Colligan. Pending.
- Stevens, Treasurer, *v.* Granville S. Dow. Pending.
- Stevens, Treasurer, *v.* Lowell. Pending.
- Stevens, Treasurer, *v.* Lowell. Settled.
- Stevens, Treasurer, *v.* New Bedford. Pending.
- Stevens, Treasurer, *v.* Quincy. Pending.
- Stevens, Treasurer, *v.* Emma C. Russell, guardian. Pending.
- Stevens, Treasurer, *v.* John Shea, guardian. Settled.
- Stevens, Treasurer, *v.* George M. Sterns, administrator. Settled.
- Stevens, Treasurer, *v.* Stoughton. Pending.

MISCELLANEOUS CASES.

- A. C. Lawrence Leather Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- AlmEEK Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Allouez Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Axe & Tool Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Can Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Chicle Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Dyewood Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Radiator Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- America Soda Fountain Company, Attorney-General *ex rel.* *v.* Dumping material into tide water. Pending.
- American Soda Fountain Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- American Steel and Wire Company of New Jersey *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- American Steel and Wire Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- American Sugar Refining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- American Woolen Company *v.* Commonwealth. Petition to recover excise tax for the years 1909 and 1910 paid by 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. Disposed of.
- Ames Shovel and Tool Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Amesbury & Salisbury Gas Company, Commonwealth *v.* Action to recover penalty on account of sulphuretted hydrogen in gas. Disposed of.
- Amoskeag Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by 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.
- Androscoggin Mills, The, *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Arizona Commercial Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Armstrong Cork Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Ashland Emery and Corundum Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Atlas Tack Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Baltic Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending in the United States Supreme Court on writ of error.
- Baltic Mining Company *v.* Commonwealth. Petition to recover

- excise tax for the year 1911 paid by foreign corporation. Pending.
- Barry, Edward P., *v.* Albert P. Langtry *et al.* Petition for writ of mandamus to compel the Secretary of the Commonwealth to correct an alleged mistake in counting of ballots. Dismissed.
- Bates Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Belding Bros. & Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Bingham Mines Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Bohemia Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Boston *v.* Commonwealth. Sewer assessment on Rutherford Avenue, Charlestown. Pending.
- Boston & Maine Railroad *v.* Deerfield *et al.* Alteration of Cheapside Bridge in Deerfield, crossing a State highway. Attorney-General waived right to be heard.
- Boston & Northern Street Railway Company. Claim for amount expended in relaying water pipes in Washington Street, Lynn, destroyed by electric currents. Pending.
- Breakwater Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Brennan, James M., *v.* Charles E. Woodbury, Superintendent. Action of tort for personal injuries. Pending.
- Brookside Mills *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Bryne, Andrew W., *et als. v.* Commonwealth *et al.* Petition to recover money in hands of Commonwealth. Pending.
- 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. Disposed of.

- Canada, Atlantic & Plant Steamship Company Ltd. *v.* Commonwealth. Petition to recover excise taxes for the years 1905, 1906, 1907, 1908 and 1909 paid by foreign corporation. Pending.
- Centennial Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Champion Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Champion Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911. Paid by foreign corporation. Pending.
- Chapin, Arthur B., Bank Commissioner, *v.* Southbridge Savings Bank. Petition for injunction. Disposed of.
- Charles H. Schieren Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Chase, Stephen A., *et al.* *v.* Adam H. Dickey *et al.* Petition to compel conveyance of real estate. Pending.
- Cheney Brothers *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Coblents, Salenda E., executrix of the will of Arthur A. Averille, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- 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.* 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. Disposed of.
- Conant, Nellie M., *v.* Hosea M. Quimby. Action of tort. Pending. Disposed of.
- Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for year 1909 paid by foreign corporation. Pending.

- Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Continental Gin Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Copper Range Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Copper Range Consolidated Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Crockett, Sara L., estate of H. L. Harding *et al.*, executors. Petition of Treasurer and Receiver-General to collect tax on said estate. Pending.
- Cullen, Maurice F., executor of the will of Thomas Cullen, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- Currier, John E., administrator of the estate of Caroline E. Currier, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Davis Sewing Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Dean, John J., *et al.*, executors of the will of Thomas H. Buckley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Dewey, Henry S., *v.* State Officers. Actions to replevy copies of notes of proceedings in the case of Dewey *v.* Good Government Association. Pending.
- Dolan, Arthur W., Register of Probate and Insolvency for the County of Suffolk, petitioner. Petition for authority to pay to the Treasurer and Receiver-General money deposited with said register to secure payment of fees. Pending.
- Donahue, Frank J., *v.* Commonwealth. Petition for writ of mandamus to compel the Secretary of the Commonwealth to correct ballots on which the petitioner's name had been misspelled. Dismissed.

- East Butte Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Eddy, Mary Baker G., estate of. Henry M. Baker, executor, petitioner. Petition for probate of a foreign will. Decree. Appeal by Treasurer and by Attorney-General. Decree affirmed.
- 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.
- Edwards Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Elm River Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Empire Accident Corporation, Attorney-General *ex rel.* *v.* Petition for injunction and appointment of a receiver. Channing H. Cox appointed receiver.
- 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.
- Farr Alpaca Company *v.* Commonwealth. Petition to recover franchise tax for the year 1911 paid by domestic corporation. Pending.
- Field, John Q. A., executor of the will of Caroline Wood, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- 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.
- Framingham, town of, petitioner. Petition to register title to land in Framingham. Attorney-General waived right to be heard.

- Frankfort Marine and Plate Glass Company *v.* Commonwealth. Petition to recover deposit with Treasury. Decree.
- Frontenag Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Galvin, Stephen P., administrator of the estate of Calvin R. Baker, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Gardner Gas, Fuel and Light Company, Commonwealth *v.* To recover penalty on account of sulphuretted hydrogen in gas. Disposed of.
- Gardner Gas, Fuel and Light Company, Commonwealth *v.* Action to recover penalty on account of sulphuretted hydrogen in gas. Pending.
- Georgia Home Insurance Company *v.* Commonwealth. Action to compel Treasurer and Receiver-General to return bond deposited with him by said company. Pending.
- Globe-Wernicke Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Gordon-Nash Library, petitioner. Petition to register title to land in Somerville. Attorney-General waived right to be heard.
- Grant Nail and Supply Company, The, *v.* Commonwealth. Petition to recover franchise tax for the year 1911 paid by domestic corporation. Pending.
- Grant, Robert, Judge of Probate, *v.* William W. Risk *et al.* Contract on bond as public administrator. Pending.
- Gratiot Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Great Atlantic & Pacific Tea Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Great Western Cereal Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Greenfield Savings Bank *v.* Commonwealth. Petition to recover tax for 1910.
- Griffin Wheel Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- H. J. Heinz Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Haddock *v.* Provident Securities and Banking Company. Petition for application of fund held in court. Attorney-General waived right to be heard.
- Harrington, Charles C., executor of the will of Elizabeth A. Harrington, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Haverhill, city of, *v.* Ansel J. Cheney. Appeal from ruling of factory inspector. Appeal dismissed.
- 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-Riedman Company, Attorney-General *ex rel. v.* Bill in equity to enjoin defendant from discharging waste into Assabet River. Pending.
- Houghton Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Howe, Theodore C., *et als.*, petitioners. Petition to register title to land in Charlestown. Attorney-General waived right to be heard.
- Howes Brothers Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Hurley, Edwin L., executor of the will of Elizabeth F. Hurley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final 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.
- International Trust Company *v.* Commonwealth *et al.* Petition to recover bonds deposited with the Treasurer and Receiver-General. Final decree.
- Isle Royale Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Italian Catholic Cemetery Association, Attorney-General *ex rel. v.* Petition for use of the Attorney-General's name in a

proceeding in the nature of *quo warranto* to ascertain and determine whether the respondent had forfeited its charter. Use of name denied.

Jackson Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Jenney, E. C., executor of the will of Maria P. Stark, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

John P. Squire Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Keys, Wade, executor of the will of Annie E. Robinson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Settled.

Keystone Watch Case Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Lake Milling, Smelting and Refining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Lamont-Corliss Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Lanston Monotype Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

LaSalle Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Laurium Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Leland, Percy F., petitioner. Petition to register title to land in Natick. Pending.

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. Decree.

- Locomobile Company of America, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Low, Ivers M., Attorney-General, *ex rel. v.* Petition for use of the Attorney-General's name in an information in equity to restrain the respondent from interfering with the use of a public highway in Weymouth. Use of name refused.
- Lyman, Charles E., *v.* Commissioners on Fisheries and Game. Petition for annulment of an order of said commissioners. Pending before full court.
- Macfarlane, Ada. Petition to register title to land in Winthrop. Decree.
- Mahar, Joseph P., executor of the will of Thomas J. Rehill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Manchester, Abraham, executor of the will of Abraham E. Manchester, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Manitou Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Maritime Insurance Company *v.* Commonwealth *et al.* Bill to recover bonds deposited with the Treasurer and Receiver-General. Decree.
- Massachusetts Baptist Missionary Society, petitioner. Petition to register title to land in Boston. Attorney-General waived right to be heard.
- Massachusetts Consolidated Mining Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Mayflower Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- McCann, Charles J., *et al. v.* Charles Warren *et als.*, Civil Service Commissioners. Petition for writ of mandamus to compel certification of the petitioners' names by the Civil Service Commissioners. Decree. Appeal by petitioners.
- McGuirk, Ann, executrix of the will of Terrence Farley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- McInnis, Catherine F. Geary, executrix of the will of Michael Connor, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

- McIntire, Charles H., trustee under the will of Maria T. Clark, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Metropolitan Life Insurance Company *v.* Commonwealth. Petition to recover excise taxes for the years 1909 and 1910 paid by foreign corporation. Pending.
- Metropolitan Life Insurance Company *v.* Frank H. Hardison, Insurance Commissioner. Petition for review, under St. 1907, c. 576, § 75. Rescript.
- Michigan Smelting Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Middleborough, town of, Commonwealth *v.* Action to recover penalty on account of sulphuretted hydrogen in gas. 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.
- Munroe, Susan L., administratrix of the estate of Lawton I. Ware, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- 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.
- N. K. Fairbank Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Nashua Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- National Calfskin Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 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 for the year 1910 paid by foreign corporation. Pending.
- New England Home for Little Wanderers, petitioner. Petition to be allowed use of Attorney-General's name in an information to prevent a breach of trust in the administration of trust funds. Use of name granted.
- New England Maple Syrup Company *v.* Henry P. Walcott *et als.* Bill in equity for an injunction. Pending.
- North Packing and Provision Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- O'Connell, Joseph P., *v.* Commonwealth *et al.* Bill to recover money in hands of Commonwealth belonging to Austin Engineering and Construction Company. Pending.
- O'Donohue, Lillie B., executrix of the will of Joseph J. O'Donohue, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Ohls, Frederick W., *et al.*, State Board of Charity *v.* Action to recover on bond. Pending.
- Old Colony Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Óliver Typewriter Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Order of Owls, Attorney-General *ex rel.* *v.* Petition for injunction. Dismissed without prejudice.
- Osceola Consolidated Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Osman, Charles F., *v.* Commonwealth *et al.* Bill in equity to reach and apply funds in the hands of respondents. Pending.
- Oxford Linen Mills *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Parker, Galen A., executor of the will of Martha R. Temple, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Pending.
- Pepperell Manufacturing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

- Pocahontas Fuel Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Porter, Rose M., *v.* Frank H. Hardison. Action of tort. Pending.
- Powers, Wilbur H. Petition to register title to land in Winthrop. Decree.
- Pratt, Fred B., *et al.*, executors of the will of Eliza J. Pratt, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- Providence Ice Company *v.* Commonwealth. Petition to recover excise tax for the years 1910 and 1911 paid by foreign corporation. Pending.
- 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. Rescript.
- 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. Rescript.
- Rice & Hutchins, Inc., *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Rice & Hutchins, Incorporated, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Richardson Silk Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Riedl, Joseph, administrator of the estate of Michael Riedl, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- Ring, Joseph A., *et al.*, administrators of the estate of Ellen M. Bresnahan, Attorney-General *ex rel.* *v.* Petition to recover inheritance tax. Final decree.
- Ritchie, Christina, *v.* Treasurer and Receiver-General. Action of contract under R. L., c. 128, § 96. Pending.
- Rockland Trust Company, petitioner. Petition to register title to land in Scituate. Attorney-General waived right to be heard.

- Russell-Miller Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- S. S. White Dental Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Seager Engine Works *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Sears, David, *et al.*, petitioners. Petition to register title to land on Chapel and Colchester streets, Brookline. Attorney-General waived right to be heard.
- Shannon Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Shapleigh, Samuel B., executor of the will of Ellen L. Shapleigh, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Shepard & Morse Lumber Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Sill, Alfred B., executor of the will of Alonzo C. Emmons, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.
- St. Mary's Mineral Land Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Stafford Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Stone, Ann Elizabeth, Attorney-General *v.* Information for collection of inheritance tax. Pending.
- Stone, Frank Victor, Attorney-General *v.* Information for collection of inheritance tax. Pending.
- Stone, Ralph Edgerton, Attorney-General *v.* Information for collection of inheritance tax. Reserved for full court. Rescript.
- Stone, Stephen Stoddard, Attorney-General *v.* Information for collection of inheritance tax. Pending.
- Stoughton Mills, Incorporated, Attorney-General *ex rel. v.* Bill in equity to enjoin defendant from discharging waste into Neponset River. Pending.

- Swift & Co. *v.* Commonwealth. Petition to recover excise tax for the years 1910 and 1911 paid by foreign corporation. Pending.
- Tamarack Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Tarbell, Arthur P., *v.* Boston Athletic Association *et al.* Bill in equity to enjoin defendant from building a boathouse on Charles River basin. Pending.
- Thomas, Mary and Nicholas, Attorney-General *ex rel. v.* Petition for use of Attorney-General's name in an information in equity to enjoin the respondents from interfering with the use of a public way in Sharon. Use of name granted.
- 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. Disposed of.
- Trimountain Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Turley, Thomas J., *et al.*, administrators of the estate of Mary Benson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- Union Copper Land and Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Union Square Methodist Episcopal Church, petitioner. Petition to register title to land in Charlestown. Pending.
- United States Fidelity and Guaranty Company *v.* Commonwealth. Bill in equity to collect money paid creditors of Shanahan, Casparis Company. Dismissed.
- United States Radiator Corporation *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- United States Worsted Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.
- Victoria Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- Vining, Floretta, executrix 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.
- Walpole Rubber Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. 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. Decree.
- Warren Brothers Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Webster, Jackson, administrator of the estate of Annette L. Webster, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final 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. Quimby, superintendent. Action of tort. Pending.
- Welsbach Street Lighting Company of America *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Westborough Insane Hospital, Trustees of, *v.* Daniel A. Dorsey *et al.* Petition to recover for breach of contract. Disposed of.
- Westinghouse, Church, Kerr & Co. *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Whitaker, Elbridge J., executor of the will of Oliver Everett, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.
- White Pine Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

- Winona Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- Winslow Brothers & Smith Company, Attorney-General *ex rel. v.* Bill in equity to restrain defendant from discharging waste into Neponset River. Pending.
- Yale & Towne Manufacturing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.
- York Manufacturing Company *v.* Commonwealth. Petition to recover excise tax assessed on foreign corporation. Pending.
- York Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

COLLECTIONS.

Collections have been made by this department as follows:—

Corporation taxes for the year 1910, overdue and referred by the treasurer of the Commonwealth to the Attorney- General for collection,	\$136,446 64
Interest,	1,302 78
Costs,	1,936 01
Miscellaneous,	208,518 39
Total,	\$348,203 82

The following table shows a detailed statement of the Corporation Taxes:—

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
A. Baab & Company, Inc.,	\$35 20	\$0 25	\$35 45
A. C. & M. L. Felkin Company,	58 50	25	58 75
A. E. Gloyd Shoe Company,	44 00	34	44 34
A. H. Demond Company,	88 00	62	88 62
A. H. Ordway Company,	10 56	04	10 60
A. Homer Skinner Lumber Com- pany,	598 40	3 89	602 29
A. I. Asher Pants Company,	100 32	30	100 62
A. Lowenstein & Sons, Inc.,	149 60	8 23	157 83
A. P. Nardini Company,	88 00	58	88 58
A. Varnerin Company, Inc.,	67 58	25	67 83
A. W. Chesterton Company,	1,005 80	4 00	1,009 80
Abbott-Detroit-Boston Company,	114 40	68	115 08
Adams Square Company,	92 40	53	92 93
Adco, Inc.,	8 80	08	8 88
Addison Building Company,	35 20	—	35 20
Alden Brothers Company,	64 94	44	65 38
Aldis Owen Hall's System of Busi- ness Enterprises, Inc.,	10 77	08	10 85
Alfred H. Aldrich Company,	9 96	10	10 06
Alley & Emery, Inc.,	660 00	17 82	677 82
Almy Uniform Company,	145 20	4 35	149 55
Alpha Investment Company,	20 00	10	20 10
American Builders Finish Com- pany,	23 23	—	23 23

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
American Cloak Company, . . .	\$136 99	\$0 89	\$137 88
American Clothing Company, . .	176 00	53	176 53
American Color and Chemical Company,	7 55	—	7 55
American Cultivator Publishing Company,	44 00	1 70	45 70
American Electric Sign Company, .	11 03	11	11 14
American Fireworks Company, . .	50 68	2 68	53 36
American Grocery Company, . . .	724 24	1 45	725 69
American Knitting Company, . . .	107 36	35	107 71
American Narrow Fabric Com- pany,	137 28	34	137 62
American Paper Stock Company, . .	88 00	2 64	90 64
American Respirator Company, . .	11 61	69	12 30
American Stable Company,	35 20	20	35 40
American Tannery Engineering Company,	12 67	43	13 10
Anderson's, Inc.,	116 16	46	116 62
Aristo Company,	213 84	1 92	215 76
Arthur C. Harvey Company,	1,108 80	2 77	1,111 57
Atlantic Rubber Company,	53 68	36	54 04
Atlantic Telegraph Company of Massachusetts,	70 40	15	70 55
Atlas Glue and Gelatine Company, .	93 47	28	93 75
Atlas Manufacturing Company, . . .	24 57	—	24 57
Atwood-Gould Company,	825 44	4 64	830 08
Atwood Preserving Company,	26 92	67	27 59
Austin Ford & Son Company,	179 23	90	180 13
Austin Furniture Company,	176 88	1 34	178 22
Auto Renting Company,	108 41	8 02	116 43
Automatic Gas Lighting Equip- ment Company,	17 45	08	17 53
Automobile League of New Eng- land, Inc.,	95 04	—	95 04
B. F. Smith Construction Com- pany,	270 00	90	270 90
Baer Clothing Company,	61 60	41	62 01
Bartlett Box and Lumber Com- pany,	239 36	94	240 30
Barton-Child Company,	72 16	49	72 65
Baseball Magazine Company,	47 74	32	48 06
Bay State Cotton Corporation, . . .	14,833 77	64 28	14,898 05
Bay State Home Company,	31 15	31	31 46
Bay State Realty Company,	21 12	73	21 85
Beacon Investment and Supply Company,	88 00	2 90	90 90
Beatty Construction Company, . . .	73 92	22	74 14
Belisle Printing and Publishing Company,	69 08	42	69 50
Belmont Pharmacy,	30 80	07	30 87
Belmont Spring Water Company, . .	186 77	1 31	188 08

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Benj. N. Moore & Sons Company,	\$1,775 84	\$11 84	\$1,787 68
Benson Furniture Company,	10 88	09	10 97
Berkshire Mineral Company,	42 24	29	42 53
Beverly Chemical and Supply Company,	9 60	04	9 64
Bianco Brothers Company,	60 72	29	61 01
Blake Pump and Condenser Com- pany,	79 20	70	79 90
Bloodline Corporation,	93 49	1 33	94 82
Bon-Ton Millinery Company,	57 20	-	57 20
Boston & Haverhill Dispatch Company,	26 40	-	26 40
Boston Arena Company,	559 18	14 53	573 71
Boston Book Company,	1,320 00	7 70	1,327 70
Boston Brokerage Company,	21 12	14	21 26
Boston Camera Exchange, Inc.,	35 20	1 05	36 25
Boston Cold Storage Company,	719 40	20 14	739 54
Boston Cycle and Sundry Com- pany,	798 16	5 45	803 61
Boston Electric Garage Company,	116 16	62	116 78
Boston Furnace Company,	40 48	27	40 75
Boston Gas Engine Company,	52 80	1 32	54 12
Boston Self-Locking Block Com- pany,	47 52	20	47 72
Bow Ridge Development Com- pany,	16 19	16	16 35
Bridge Street Drug Company,	35 20	70	35 90
Brighton Coal Company,	141 15	31	141 46
Brighton Dressed Meat Company,	44 66	-	44 66
British Tea Table, Inc.,	43 29	1 77	45 06
Broadway Pharmacy, Inc.,	35 20	24	35 44
Brockton Die Company,	79 51	1 59	81 10
Brockton Ideal Shoe Company,	424 95	2 83	427 78
Brockton Lumber and Construc- tion Company,	39 28	74	40 02
Brookline Press,	10 56	-	10 56
Brown Garage and Carriage Com- pany,	88 00	35	88 35
Brown-Talbot Machinery Com- pany,	102 78	69	103 47
Brown Wales Company,	1,094 72	2 74	1,097 46
Builders' Iron and Steel Company,	237 60	2 97	240 57
Bull Dog Clip Manufacturing Company,	59 66	1 40	61 06
Bullard Company,	73 65	73	74 38
Bunkio Matsuki Corp.,	8 97	-	8 97
Burleigh & Martin, Incorp.,	57 02	1 57	58 59
Burleigh Rock Drill Company,	8 62	04	8 66
Burn's River Ice Corp.,	92 40	25	92 65
Butler Beef Company,	528 00	2 11	530 11
Butman & Cressey Company,	269 28	6 28	275 56

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
C. A. Cook Company,	\$405 29	\$0 81	\$406 10
C. B. Williamson,	44 00	22	44 22
C. D. Wright Company,	176 00	3 52	179 52
C. F. Leteney Company,	105 60	78	106 38
C. H. Annable Lumber Company,	267 52	1 78	269 30
C. Sargent Bird, Inc.,	61 60	29	61 89
C. W. Luce & Co., Inc.,	516 52	11 36	527 88
C. W. Wilcox & Son Company, .	70 40	-	70 40
Cacocum Fruit and Products Company,	24 00	07	24 07
Cahill Manufacturing Company, .	13 37	05	13 42
Carl Seaberg Company,	26 40	08	26 48
Carroll Construction Company, .	111 93	2 80	114 73
Carter Press of Baltimore Corpn.,	12 32	-	12 32
Central Dry Goods Company, . . .	123 20	82	124 02
Central Garage, Incorporated, . .	29 56	25	29 81
Central Inter-State Express Com- pany,	8 80	13	8 93
Chandler Machine Company, . . .	178 69	1 16	179 85
Charles E. Perry Company,	252 08	1 08	253 16
Charles H. Morey Company,	8 40	54	8 94
Charles Holmes Leather Working Machinery Company,	64 41	-	64 41
Charles J. Jacobs Company,	26 40	-	26 40
Charles S. Gove Company,	114 40	76	115 16
Chase & Baker Company,	166 88	95	167 83
Chattel Loan Company,	1,272 97	8 69	1,281 66
Cheney & Thomson Company, . . .	102 08	1 65	103 73
Choate Drug and Chemical Com- pany,	110 00	83	110 83
Circular Loom Products Com- pany,	308 17	1 39	309 56
Citizens' Loan Association,	120 15	2 72	122 87
Clapp & Abercrombie Company, . .	22 88	-	22 88
Clapp-Eastham Company,	17 60	-	17 60
Coates Clipper Manufacturing Company,	158 40	3 26	161 66
Cobb & White Company,	37 31	1 07	38 38
Cohannet Silver Company,	650 32	17 24	667 56
Collins Hardware Company,	1,848 00	12 94	1,860 94
Colonial Bed Company,	65 12	1 95	67 07
Colonial Clothing Company,	151 06	76	151 82
Colonial Cranberry Company, . . .	23 05	12	23 17
Columbia Comb Company,	177 76	50	178 26
Columbia Electric Engineering Company,	23 35	23	23 58
Common Sense Gum Company,	143 47	4 28	147 75
Conant & Donelson Company, . . .	267 87	6 96	274 83
Conant Whiting & Co., Incorpo- rated,	6 35	-	6 35
Concord Drug Company of Lowell,	61 60	1 23	62 83

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Congress Bowling Alleys, Inc.,	\$7 39	-	\$7 39
Continental Wood Screw Com- pany,	1,050 94	\$2 10	1,053 04
Converse Rubber Shoe Company, Coulter Coal and Lumber Com- pany,	1,250 04	4 37	1,254 41
Coveney Building Company,	168 08	1 26	169 34
Craftsman Press, Inc.,	39 07	18	39 25
Crane Puller Company,	7 56	18	7 74
Crocker Drug Company,	85 64	43	86 07
Crowley & Gold Company,	26 40	15	26 55
Crown Novelty Company,	176 00	2 71	178 71
Crown Packing Company,	290 40	8 71	299 11
Cummings Machine Works,	79 20	53	79 73
Curtis & Cameron, Incorporated, D. Caro & Co., Inc.,	158 40	1 08	159 48
D. F. O'Connell Company,	79 20	41	79 61
Dadmun Company,	24 64	12	24 76
Daley & Wanzer Allerton Express Company,	107 80	75	108 55
Daley's Nantasket Express Com- pany,	105 60	3 15	108 75
Dalton-Ingersoll Manufacturing Company,	97 68	50	98 18
Davies Rose & Co., Limited,	72 45	38	72 83
Derrin Ice Cream Company,	640 64	4 38	645 02
Desmond-Hayden Shoe Company, Diadem Manufacturing Company, Dill Cattle Company,	72 33	50	72 83
Dorchester Ice Company,	40 92	27	41 19
Dr. Rudolph Mertin, Inc.,	66 88	1 79	68 67
Driscoll & Co., Inc.,	99 44	42	99 86
Dukelow & Walker Company,	100 00	53	100 53
Durant Company,	505 91	3 37	509 28
Dustbane Manufacturing Com- pany,	103 48	2 38	105 86
Dyke Mill,	45 76	34	46 10
E. A. Smith Company, Inc.,	42 24	42	42 66
E. G. Tutein & Co., Inc.,	176 00	1 45	177 45
E. H. Friedrich Company,	79 18	52	79 70
E. H. Saxton Company,	33 08	14	33 22
E. H. Smith Company,	7 04	07	7 11
E. L. LeBaron Foundry Com- pany,	167 55	4 14	171 69
E. L. Smith Company,	576 40	5 77	582 17
E. R. Brown Beer Pump Com- pany,	237 60	1 04	238 64
E. T. Slattery Company,	158 40	1 27	159 67
E. Van Noorden Company,	58 71	40	59 11
East Douglas Clothing Company, East Coal Company,	105 60	42	106 02
	56 10	3 20	59 30
	2,024 00	13 83	2,037 83
	393 55	92	394 47
	26 40	17	26 57
	200 64	1 34	201 98

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Eastern Counter Company,	\$43 04	\$0 29	\$43 33
Eastern Electric Company of New Bedford,	70 40	38	70 78
Eastern Furniture Company,	35 90	—	35 90
Eastern Handle Company,	49 63	2 08	51 71
Eastern Oil and Rendering Com- pany,	20 50	—	20 50
Eastern Paper Stock Company,	10 50	05	10 61
Eastern Rag and Metal Company, Eastern Sanitary-Products Com- pany,	6 86	—	6 86
Easthampton Co-operative As- sociation,	48 40	97	49 37
Eaton Candy Company,	31 02	—	31 02
Economy Drug Company,	21 12	27	21 39
Edward A. Tucker, Inc.,	42 24	29	42 53
Edwards & Finkelstein Company, Eldridge Ice Cream Company,	6 33	07	6 40
Electric Maintenance Company,	55 96	1 65	57 61
Elk Flint Bottle Company,	68 64	33	68 97
Elk River Milling Company,	15 66	—	15 66
Elliott Specialty Company,	88 44	2 92	91 36
Emanuel Wasserman Company,	46 56	—	46 56
English & Flett, Inc.,	13 20	13	13 33
Enterprise Comb Company,	105 60	56	106 16
Enterprise Company of Pittsfield, Eureka Valve Company,	238 86	68	239 54
Everett Foundry Company,	52 80	—	52 80
F. B. Taylor & Son, Inc.,	70 40	50	70 90
F. H. Lane Company,	35 20	—	35 20
F. H. Bill Company of Boston,	44 00	26	44 26
F. S. McDermott Company,	352 00	70	352 70
Fall River Granite Company,	281 60	1 40	283 00
Fall River, Warren & Taunton Ex- press Company,	755 04	1 88	756 92
Fay Welding and Manufacturing Company,	88 00	1 00	89 00
Feldman & Co., Inc.	16 57	34	16 91
Felton Turner Heating Company, Ferris Wheel Amusement Com- pany, Inc.,	5 28	04	5 32
Ferguson Coal Company,	17 60	—	17 60
Ferris Wheel Amusement Com- pany, Inc.,	18 48	10	18 58
Fink Cigar Company,	165 88	88	166 76
Fitchburg Real Estate and Loan Company,	318 56	2 54	321 10
Foley's Clothing Store, Inc.,	17 60	05	17 65
Forbes Manufacturing Company, Francis Dike, Inc.,	44 00	—	44 00
Frank A. Andrews Company,	132 79	4 11	136 90
Frank P. Brown Company,	96 80	35	97 15
Franklin Clothing Company,	137 24	3 37	140 61
	105 60	5 28	110 88
	152 31	4 27	156 58
	33 79	21	34 00
	105 60	71	106 31

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Franklin Press, Inc.,	\$17 60	\$0 37	\$17 97
Fred A. Day Corporation, . . .	105 60	69	106 29
Fred E. Squire Company, . . .	153 03	46	153 49
Fred S. & A. D. Gore Corporation,	88 00	4 54	92 54
Frederick C. Warren Construction, Company,	10 56	04	10 60
Frederik Peterson Company, . . .	6 54	06	6 60
Freeman Clothing Company, . . .	21 12	-	21 12
Freeman-Cotting Coat Company,	82 72	82	83 54
Frye & Crawford Drug Company,	35 20	18	35 38
G. H. Chessman Company,	88 00	22	88 22
G. W. Lord Company,	160 51	40	160 91
G. W. Peterson Company,	8 80	18	8 98
Gardner Automobile Company, . .	11 88	-	11 88
Gardner Gas, Fuel and Light Com- pany,	50 16	31	50 47
Garnett Leather Company,	94 60	61	95 21
Geddis Remedy Company,	18 14	11	18 25
George A. Turner Company,	35 20	20	35 40
George C. Mellville Company, . .	176 00	3 52	179 52
George D. Jewett Bag Company,	13 72	-	13 72
George E. Feast Company,	110 15	3 30	113 45
George E. Smith Company,	52 80	20	53 00
George F. Vester Company,	44 00	30	44 30
George G. Snow Company,	1,936 00	38 72	1,974 72
George H. Sallaway Company, . .	162 20	1 27	163 47
George P. Bingham Company, . . .	88 00	2 64	90 64
Globe Credit Company,	75 68	-	75 68
Globe Gas Light Company,	132 00	85	132 85
Globe Mattress Manufacturing Company,	105 60	58	106 18
Golden Grain Farming Company,	126 20	90	127 10
Goldman Brothers Company,	61 60	40	62 00
Goodale Comb Company,	102 08	44	102 52
Goodwin Company,	20 38	15	20 53
Graham Company,	66 00	50	66 50
Granfield's Pharmacy, Inc., . . .	105 60	70	106 30
Greek American Fruit and Candy Company,	17 60	1 02	18 62
Greendale Gas Engine Company,	40 30	20	40 50
Grocers Supply Company, Limited,	48 57	31	48 88
Guarantee Plate Works,	21 12	-	21 12
H. A. Johnson Company,	3,064 98	20 42	3,085 40
H. A. Rich Company,	188 10	1 22	189 32
H. C. & C. D. Castle, Incorporated,	139 04	67	139 71
H. C. Girard Company,	140 80	70	141 50
H. E. Lindbladh Company,	22 88	12	23 00
H. F. Curtis Company,	44 00	31	44 31
H. M. Kinports Company,	140 80	4 20	145 00
H. W. Vinson Company,	211 20	3 63	214 83
Hackett Brothers Company,	83 84	21	84 05

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Hampden Creamery Company,	\$132 49	\$0 86	\$133 35
Hampden Shoe Company,	264 00	1 71	265 71
Harrington Press Company,	14 92	11	15 03
Harrison Drug Company,	44 35	31	44 66
Harry Eldredge Goodhue Com- pany,	126 72	59	127 31
Hartshorn Company,	17 16	09	17 25
Harvard Baking Powder Company, Haverhill Construction Company, Healey Sewer Machine and Con- struction Company,	53 41	—	53 41
	128 77	84	129 61
	77 90	52	78 42
Healy Furnishing Company,	14 08	17	14 25
Henry F. Farrow Company,	101 90	66	102 56
Henry H. Tuttle Company,	462 00	2 93	464 93
Hertig Furnace Company,	52 80	35	53 15
Highland Drug Company,	42 24	13	42 37
Highland Paint and Wall Paper Company,	105 60	37	105 97
Hillcrest Farm, Incorporated,	17 31	—	17 31
Hilton & Sons Express, Inc.,	88 88	2 38	91 26
Hingham Seam Face Granite Company,	54 12	1 54	55 66
Hitchcock Supply Company,	655 81	1 75	657 56
Hoagland Curtis Drug Company,	1,232 00	9 85	1,241 85
Hodgson, Kennard & Co., Inc.,	615 38	5 89	621 27
Holyoke Base Ball Association,	88 00	2 06	90 06
Hooper Printing Company,	65 82	65	66 47
Houghton Heel and Leather Com- pany,	210 76	65	211 41
Housatonic Water Works Com- pany,	79 20	50	79 70
Hoyt Company,	396 00	2 64	398 64
Huberman Oil Company,	36 96	92	37 88
Human Life Publishing Company,	500 00	3 33	503 33
Huntt's Lunch Company,	492 80	1 72	494 52
Ideal Dental Laboratory Incorpo- rated,	25 34	17	25 51
Ima-Fibre Company,	10 56	22	10 78
International Bedding Company, Interstate Express Company of Fall River,	91 48	—	91 48
	9 50	—	9 50
Inter-State Lumber Company,	167 20	1 14	168 34
Interstate Oil Company,	40 12	30	40 42
Inter-Trust Security Company,	76 26	76	77 02
Investors Corporation Company,	84 12	1 00	85 12
Irving F. Moore Amusement Com- pany,	19 36	19	19 55
Isaac H. Dinner Company,	52 80	—	52 80
Italian Importing Company, In- corporated,	31 68	—	31 68
J. A. Cloutier Company,	84 48	—	84 48

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
J. C. Fraser & Sons Company,	\$110 72	\$0 28	\$111 00
J. G. Blount Company,	322 08	1 40	323 48
J. G. Bridge Company,	356 64	9 27	365 91
J. G. Walker & Son Corporation,	224 11	1 40	225 51
J. H. Chandler Company,	107 71	72	108 43
J. H. Folkins Company,	318 56	1 91	320 47
J. Lerner Company, Inc.,	52 80	2 76	55 56
J. Nardi Company,	63 88	1 84	65 72
J. T. Tighe Company,	387 20	2 58	389 78
J. W. Greenhalgh Company,	23 86	12	23 98
J. W. Luther Company,	246 40	1 50	247 90
J. W. Jordan Company,	61 07	-	61 07
James B. Wood & Son Company,	237 60	-	237 60
James Barrett Manufacturing Company,	202 40	67	203 07
Jenks-Williams Paving Company,	14 08	-	14 08
Jeremiah Clark Machinery Com- pany,	176 29	97	177 26
Jewish Publishing Company of New England,	44 00	2 06	46 06
John C. DeLaney Moulding Com- pany,	24 64	17	24 81
John C. Frohn Company,	44 00	2 72	46 72
John Cashman & Sons Com- pany,	264 00	1 71	265 71
John Cavanagh & Son Building Moving Company,	198 00	2 66	200 66
John F. Ryan Company,	616 00	21 42	637 42
John Foster Company,	908 51	6 35	914 86
John J. Cluin Company,	48 40	28	48 68
John T. Scully Foundation and Transportation Company,	184 80	78	185 58
Jordan & Bradley, Inc.,	12 32	36	12 68
Jordan Drug Company,	13 20	10	13 30
Joseph Andrews Lumber Com- pany,	24 64	53	25 17
Joseph M. Bradley Company,	30 80	30	31 10
K. A. Kelly Company,	44 54	47	45 01
K. G. Laham & Company,	16 89	-	16 89
Kaleva Store Company,	57 72	35	58 07
Keilty Company,	202 03	1 47	203 50
Keniston Engineering Company,	88 00	57	88 57
Kennedy Ideal Carbureter Com- pany,	21 12	06	21 18
Kenney Brothers Company,	87 12	22	87 34
King Mining Company,	85 00	1 42	86 42
Kinney Heating and Supply Com- pany,	36 25	-	36 25
Kissell Kar Kompany,	66 31	66	66 97
Kleno Manufacturing Company,	17 60	10	17 70
Knox Automobile Company,	6,271 67	46 00	6,317 67

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Kress Brothers Carriage Com- pany,	\$61 60	\$0 39	\$61 99
L. & L. Bakery Company,	17 77	—	17 77
Labelle Gas Regulator Company, Lamere & Robinson Company, . .	7 95	—	7 95
Lang and Jacobs Company,	61 88	03	61 91
Laundry Specialty Company, . . .	96 80	65	97 45
Lawrence B. Smith Company, . . .	17 60	—	17 60
Lawrence Market Company,	228 80	92	229 72
Lawrence Produce Company, . . .	79 20	18	79 38
Leavitt's Scotch Polish Com- pany,	144 53	87	145 40
Leominster Fine Tool and Mach- ine Works, Incorporated,	23 14	19	23 33
Leominster Novelty Company, . . .	26 40	20	26 60
Leona Mining Company,	95 04	24	95 28
Leslie Manufacturing Company, . .	68 81	3 99	72 80
Lever Cream Separator Company, Lewis F. Small, Incorporated, . . .	569 65	25 06	594 71
Linscott Motor Company,	40 20	—	40 20
London Harness Company,	17 60	40	18 00
Lovell & Covel Company,	230 56	1 53	232 09
Lovells, Incorporated,	660 00	7 59	667 59
Lynch Heel Company,	349 53	1 22	350 75
Lynn Hebrew Mutual Loan As- sociation,	70 40	35	70 75
McPherson Brothers Company, . . .	44 00	32	44 32
Macalaster, Wiggin Company, . . .	12 67	06	12 73
MacLean Produce Company,	31 15	28	31 43
Magee Furnace Company,	82 72	25	82 97
Magnet Photo Materials Com- pany,	35 20	—	35 20
Maine State Creamery Company, Majestic Company,	3,910 20	26 72	3,936 92
Malden Grain Company,	19 48	—	19 48
Manhattan Collar Company,	26 40	—	26 40
Manhattan Company,	140 80	70	141 50
Manufacturers Shoe Trimming Company,	153 12	1 00	154 12
Manufacturing Equipment and Engineering Company,	101 90	30	102 20
Marathon Egyptian Cigarette Company,	6 33	—	6 33
Marshall-Hackel Company,	352 00	77	352 77
Marston Shoe Company,	58 08	1 70	59 78
Martel Motor Car Company,	213 40	2 45	215 85
Massachusetts Aktzia, Incorpo- rated,	14 36	14	14 50
Massachusetts & Rhode Island Despatch Express Company,	203 96	6 12	210 08
	13 55	—	13 55
	63 36	1 47	64 83
	29 60	20	29 80
	15 84	10	15 94

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Massachusetts Caloric Bath Com- pany,	\$39 60	\$0 55	\$40 15
Massasoit Company,	313 28	2 19	315 47
Matheson Vail Company,	42 24	2 11	44 35
Mellish & Byfield Manufacturing Company,	72 16	58	72 74
Melvin Bancroft Company,	61 60	25	61 85
Metropolitan Air Goods Com- pany,	82 72	20	82 92
Metropolitan Lithograph and Publishing Company,	313 28	10 43	323 71
Miller-Richards Manufacturing Company,	350 24	7 00	357 24
Milliken & Robie, Incorporated, Minard's Liniment Manufacturing Company,	26 40	66	27 06
94 37	98	95 35	
Miscoe Spring Water Company,	35 20	22	35 42
Mitchell Press,	10 91	63	11 54
Morse-Gemmell Company,	35 55	25	35 80
Motor Specialties Company,	46 00	1 38	47 38
Muir's Laundry, Incorporated,	61 60	1 30	62 90
Mulliken Oil Company,	52 80	2 34	55 14
Murch & Loomis Company,	110 00	73	110 73
Murphy Coal & Wood Company, National Matzo Company of Boston,	299 20	76	299 96
63 36	42	63 78	
National Self-Warning Fire Alarm Company,	34 81	1 60	36 41
Neponset River Coal Company,	120 52	-	120 52
New Can Company,	237 60	6 41	244 01
New England Cereal Company,	30 00	12	30 12
New England Cigar Box Com- pany,	34 71	-	34 71
New England Cloak and Suit Company,	153 12	1 02	154 14
New England Discount Company, New England Motor Vehicle Company,	259 38	2 51	261 89
63 36	63	63 99	
New England Office Furniture Company,	70 40	1 83	72 23
New England Reed Company,	452 35	3 02	455 37
New England Shoe Manufac- turing Company,	75 32	-	75 32
New England Society Incorpo- rated,	22 17	-	22 17
New England Trading Company, Newton Graphic Publishing Com- pany,	61 60	55	62 15
32 56	11	32 67	
New Stock Opera Company,	26 40	95	27 35
North Main Market Company,	133 05	42	133 47
North Shore Leather Company,	17 60	84	18 44

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Noyes & Dewar Company, . . .	\$61 60	\$1 31	\$62 91
Oak Island Grove Company, . .	40 00	14	40 14
Oakley Steel Foundry Company, Office Specialties De Luxe, In- corporated,	271 62	3 26	274 88
Old Colony Box Company, . . .	85 36	68	86 04
Old South Lunch, Incorporated, .	2,231 52	45 60	2,277 12
Oleic Company, Incorporated, . .	52 80	35	53 15
Overland Motor Company of Boston,	9 15	—	9 15
Oxidite Manufacturing Company, P. Creedon Company,	188 46	1 24	189 70
P. J. Ferguson, Incorporated, . .	27 52	19	27 71
P. R. Glass Company,	225 28	4 50	229 78
P. Reilly & Son Leather Com- pany,	26 40	41	26 81
Page & Symmes Company,	94 51	2 85	97 36
Palatable Distilled Water Com- pany,	176 00	1 76	177 76
Paleface Shooting Grounds Cor- poration,	123 20	2 63	125 83
Parisian Jewelry Company,	5 28	34	5 62
Parker & Page Company,	10 27	14	10 41
Parker J. Webber Company,	22 42	—	22 42
Parker Transmission and Appli- ance Company,	1,241 29	8 07	1,249 36
Parker-Turco Company,	84 48	—	84 48
Pastime Theatre Company of Lawrence, Inc.,	18 18	08	18 26
Pattinson Manufacturing Com- pany,	48 64	32	48 96
Peabody Supply Company,	126 72	2 53	129 25
Pean Medical Company,	36 96	23	37 19
Peoples Drug Store Company, . . .	70 40	47	70 87
People's Furniture Company,	29 77	12	29 89
Perkins & Co., Inc.	26 40	18	26 58
Peter F. Connolly Company,	105 60	85	106 45
Photo Supply Company,	344 96	10 31	355 27
Pierce & Barnes Company,	17 60	10	17 70
Plymouth Manufacturing Com- pany,	24 64	61	25 25
Point Breeze Company,	17 60	14	17 74
Polish Co-operative Market, In- corporated,	44 00	30	44 30
Polonia Baking Company,	57 72	—	57 72
Post Office Pharmacy, Incor- porated,	23 93	47	24 40
Pratt-Reid Shoe Company,	6 33	30	6 63
Premier Leather Company,	52 80	25	53 05
Prexite Comb Company,	2,200 00	11 00	2,211 00
Prudential Supply Company,	77 44	77	78 21
	209 44	1 68	211 12
	123 55	1 11	124 66

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Purity Confectionery Company,	\$58 08	\$0 66	\$58 74
Quincy New System Wet Wash Company,	9 50	02	9 52
Quinsigamond Lake Steamboat Company,	105 60	2 53	108 13
R. C. Goudey Company,	118 27	52	118 79
R. H. Messer Company,	85 80	57	86 37
R. L. Cleveland Company,	173 18	1 17	174 35
R. L. Morgan Company,	1,870 88	28 75	1,899 63
R. M. Bucknam & Co., Incorpo- rated,	23 14	21	23 35
Randall-Faichney Company,	931 53	5 89	937 42
Ray-Lawson Granite Company,	14 16	24	14 40
Regal Comb and Novelty Com- pany, Incorporated,	114 40	33	114 73
Reliance Motor Bus Company,	96 80	65	97 45
Remington Manufacturing Com- pany,	7 92	—	7 92
Remington Tool and Machine Company,	36 74	24	36 98
Revere & Winthrop Co-operative Ice Company,	19 71	—	19 71
Rhode Island Machinery Com- pany,	15 48	08	15 56
Robert R. McNutt, Inc.,	224 40	6 72	231 12
Robert S. Jones Company,	21 82	—	21 82
Rosengard Furniture Company,	121 44	30	121 74
Rowe Contracting Company,	295 68	74	296 42
Roxbury Shoe Thread Company,	176 00	1 17	177 17
Royal Shoe Company,	118 97	70	119 67
Ruff Bros. Company,	67 58	1 58	69 16
Russ, Eveleth & Ingalls Com- pany,	1,121 98	43 59	1,165 57
S. A. Ryan & Co., Incorporated,	61 60	22	61 82
S. D. Viets Company,	620 20	9 02	629 22
S. L. Gabriel Company,	29 92	—	29 92
S. M. Howes Company,	1,589 28	10 86	1,600 14
Salem Barrel Company,	52 80	38	53 18
Salem Box Company,	54 20	—	54 20
Samano American Company,	10 00	—	10 00
Samson Draught Spring Com- pany,	78 14	52	78 66
Samuel Ward Company,	1,663 20	6 09	1,669 29
Saskatchewan Investment Com- pany,	45 45	30	45 75
Satuit Cranberry Company,	35 30	39	35 69
Savory Express Company,	67 58	96	68 54
Sayles & Jenks Manufacturing Company,	974 68	2 60	977 28
Scandinavian Co-operative Gro- cery Union,	64 32	19	64 51

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Schipper Bros. Coal Mining Com- pany (Inc.),	\$34 00	\$0 26	\$34 26
Sectional Rubber Tire Company,	61 88	1 44	63 32
Seth W. Fuller Company,	123 28	80	124 08
Shadduck & Normandin Company,	95 04	64	95 68
Shapleigh Coffee Company,	340 89	1 13	342 02
Shawmut Waxed Paper Com- pany,	49 28	34	49 62
Sheedy Amusement Company,	22 50	27	22 77
Sheedy Theatre Company,	25 00	—	25 00
Sheldon Brothers Company,	22 00	14	22 14
Shepard Clark Company,	890 85	6 09	896 94
Sherry Shoe Company,	54 56	16	54 72
Shultz-Goodwin Company,	714 56	4 44	719 00
Silas Pierce & Co., Limited,	2,195 98	14 64	2,210 62
Small Maynard & Co., Incor- porated,	528 00	3 33	531 33
Smith & McNault Company,	80 96	54	81 50
Smith & Wallace Company,	897 42	—	897 42
Society for Americana, Inc.,	54 91	3 02	57 93
Somerset Coal Company,	89 76	60	90 36
Somerville Sun Publishing Com- pany,	10 56	—	10 56
Soule Art Publishing Company,	161 92	40	162 32
Southgate Machinery Company,	174 66	1 28	175 94
Southgate Press, The, — T. W. Ripley Company,	682 88	4 60	687 48
Spatula Publishing Company,	38 72	20	38 92
Springfield Loan Association,	10 73	07	10 80
St. Clairs' (Inc.),	387 20	7 78	394 98
Stadden's Art Shop, Incorpo- rated,	203 63	2 00	205 63
Standard Credit Company,	79 62	16	79 78
Standard Leather Company of Brockton,	48 57	—	48 57
Standard Lens Company,	15 91	60	16 51
Standard Publishing Company,	83 42	25	83 67
Standard Stoneware Company,	22 70	16	22 86
Stetson Coal Company of Bos- ton,	832 48	2 50	834 98
Storer & Gelotte Company,	67 21	—	67 21
Suffolk Supply Company,	23 23	69	23 92
Sylvia Steamboat Company,	88 00	22	88 22
Symonds & Poor Carbonator Com- pany,	589 60	26 91	616 51
T. H. O'Donnell & Co., Inc.,	184 80	7 39	192 19
Tarr Marine Paint Company,	144 84	1 90	146 74
Taunton Evening News,	158 40	1 10	159 50
Taxi Motor Cab Company of Boston,	422 40	16 88	439 28
Taylor & Barker Company,	45 32	91	46 23

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
Telepost Company of Massachusetts,	\$176 00	\$0 76	\$176 76
Thayer Woolen Company,	278 08	56	278 64
Therapeutic Publishing Company,	21 12	17	21 29
Thissell Company,	35 20	24	35 44
Thomas D. Gard Company, Incorporated,	74 41	75	75 16
Thomas H. Logan Company,	880 00	2 20	882 20
Thomas J. Shea Company,	24 64	16	24 80
Thomas O'Callahan Company,	44 00	60	44 60
Thompson Construction Company,	30 97	18	31 15
Tichnor Brothers, Incorporated,	242 88	3 48	246 36
Times Newspaper Company,	161 04	3 33	164 37
Trombly Jewelry Company,	226 82	1 54	228 36
Truscott Boat Manufacturing Company of Massachusetts,	44 00	35	44 35
Tudor Press, Inc.,	200 46	8 82	209 28
Turva Co-operative Store Company,	41 07	82	41 89
Umbagog Camp Company,	6 33	-	6 33
Union Furniture Company,	161 92	1 07	162 99
Union Loan Association,	107 71	10 80	118 51
Union Optical Company,	33 17	33	33 50
Union Parlor Furniture Company,	35 20	-	35 20
Union Seal Company,	42 94	13	43 07
Union Shoe Company,	77 61	23	77 84
Union Tool Company,	20 87	-	20 87
Unique Amusement Company,	8 34	07	8 41
Unique Theatre Company of Boston,	123 20	1 04	124 24
United Building Company,	5 80	05	5 85
United Cloak and Suit House Company,	19 36	-	19 36
United Hospitals Drug Company,	32 20	21	32 41
United Sewing Machinery Company,	63 36	78	64 14
Utica Treering Machine Company,	13 27	04	13 31
V. H. Moody Shoe Company,	221 40	55	221 95
Vigosan Medicine Company,	39 79	1 31	41 10
Vinton Manufacturing Company,	44 95	1 84	46 79
Vulcan Manufacturing Company,	88 00	2 20	90 20
W. A. Norton Company,	35 20	-	35 20
W. E. Chipman Company,	17 68	09	17 77
W. E. Richards Company,	440 00	-	440 00
W. F. Godber Company,	183 46	1 83	185 29
W. G. Hall Fur Company,	158 40	3 74	162 14
W. H. I. Hayes Company,	140 80	94	141 74
W. H. Magrath Cigar Company,	16 49	48	16 97
W. K. Farrington Press,	89 76	54	90 30
W. L. Waples Company,	61 24	3 55	64 79

	Collected on Account of Corporation Tax for 1910.	Interest.	Totals.
W. N. Hamel Clothing Company,	\$130 06	—	\$130 06
W. P. Goode Brush Company,	71 28	\$2 13	73 41
W. T. Shackley & Son Company,	193 60	1 35	194 95
W. W. Spaulding Company, In- corporated,	242 00	1 35	243 35
Wade Machine Company,	89 76	—	89 76
Wadleigh Company,	119 32	80	120 12
Walker Bros. Dyeing and Bleach- ing Company,	46 81	28	47 09
Walker Drug Company,	21 12	—	21 12
Walworth Construction and Sup- ply Company,	124 52	31	124 83
Warner Box Company,	35 72	24	35 96
Warren Automobile Company,	79 20	24	79 44
Warren, Brookfield & Spencer Street Railway Company,	188 32	47	188 79
Waverly Liquor Company,	52 80	35	53 15
Wellington-Pierce Company,	388 66	1 23	389 89
Wheeler & Shaw, Inc.,	537 09	16 17	553 26
White Eagle Bottling Company,	24 64	—	24 64
White Smith Music Publishing Company,	1,003 32	2 33	1,005 65
Whitman Pharmacal Company,	24 39	70	25 09
Whittier Woodenware Company,	475 20	2 62	477 82
William Allen Sons Company,	288 64	5 48	294 12
William H. Franklin Brass Foundry Company,	33 00	21	33 21
William L. Browne Electric Com- pany,	107 71	03	107 74
William Morris, Inc.,	88 00	4 08	92 08
Wire Bound Packing Case Com- pany of Massachusetts,	67 63	1 35	68 98
Winter Hill Motor Company,	44 00	29	44 29
Woburn Degreasing Company,	151 36	45	151 81
Woman's Shop, Incorporated,	264 00	1 24	265 24
Wood, Clarke Press, Inc.,	12 81	13	12 94
Woodberry Press,	70 40	42	70 82
Woodward & Cochey, Incorpo- rated,	108 59	34	108 93
Wordell Plumbing Company,	70 40	—	70 40
Workers Co-operative Company,	12 58	—	12 58
Woronoco Heating and Plumbing Company,	88 00	2 03	90 03
Worthington Transportation Com- pany,	25 76	17	25 93
Young & Follett Company,	35 20	2 04	37 24
	\$136,446 64	\$1,302 78	\$137,749 42

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, 1911, 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.
1911. Jan. 2	New York,	John Ducey,	Abuse of female child,	Suffolk,	Lawful and in proper form.
Jan. 5	Pennsylvania,	George E. Weiler,	Larceny and defrauding,	Suffolk,	Lawful and in proper form.
Jan. 7	Illinois,	William H. O'Neil, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 9	New York,	James A. Lornigille,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 9	Maine,	Edwin C. Douglass,	Forgery,	Suffolk,	Lawful and in proper form.
Jan. 10	New York,	Joseph Fisher and Frank Stein,	Breaking and entering,	Suffolk,	Lawful and in proper form.
Jan. 10	New York,	Hang Rettenberg,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 12	New York,	David Blankman,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 20	New York,	Frank Maley,	Larceny,	Hampshire,	Lawful and in proper form.
Jan. 24	Georgia,	William L. Moore,	Forgery and polygamy,	Suffolk,	Lawful and in proper form.
Jan. 28	Pennsylvania,	Thomas Thompson,	Abduction for an immoral purpose,	Suffolk,	Lawful and in proper form.
Feb. 2	New York,	George C. Druin,	Forgery,	Suffolk,	Lawful and in proper form.

Feb. 6	New Hampshire,	Charles M. Beardslee,	Concealing mortgaged property,	Suffolk,	Lawful and in proper form.
Feb. 8	New York,	Stanislaw Krasowski,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 9	New York,	Edwin C. Wurttemberg,	Breaking and entering,	Suffolk,	Lawful and in proper form.
Feb. 10	New York,	Frank A. Hanscom,	Forgery,	Berkshire,	Lawful and in proper form.
Feb. 11	New York,	Favioli Vincenzo,	Carnal abuse, etc.,	Middlesex,	Lawful and in proper form.
Feb. 16	New York,	Louis Rosenberg,	Larceny,	Suffolk,	Lawful and in proper form.
March 1	Brazil,	Robert E. Davies,	Larceny,	Suffolk,	Lawful and in proper form.
March 2	New Jersey,	Walter Joyce, <i>alias</i> ,	Breaking and entering,	Suffolk,	Lawful and in proper form.
March 4	New Jersey,	Giuseppe Manganielle,	Larceny,	Middlesex,	Lawful and in proper form.
March 13	New York,	Fred J. Long,	Forgery,	Suffolk,	Lawful and in proper form.
March 14	New York,	Robert S. Brown,	Forgery,	Suffolk,	Lawful and in proper form.
March 14	Connecticut,	Philip Hayes,	Escaped prisoner,	Suffolk,	Lawful and in proper form.
March 23	Illinois,	Emilo Martoni,	Rape,	Suffolk,	Lawful and in proper form.
March 30	Rhode Island,	George Wesson, <i>alias</i> ,	Larceny,	Hampshire,	Lawful and in proper form.
April 11	New Jersey,	Bessie Greenberg, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
April 20	Illinois,	Henry Miller, <i>alias</i> ,	Attempt to commit larceny,	Norfolk,	Lawful and in proper form.
April 20	Canada,	Louis F. Gates,	Forgery and larceny,	Suffolk,	Lawful and in proper form.
May 3	New York,	Max Smuckler,	Breaking and entering,	Suffolk,	Lawful and in proper form.
May 3	New York,	Benjamin Horowitz,	Robbery,	Suffolk,	Lawful and in proper form.
May 8	New York,	John Budtikos,	Breaking and entering and larceny,	Norfolk,	Lawful and in proper form.
May 13	Connecticut,	Joseph Blume, <i>alias</i> ,	Larceny,	Suffolk,	Lawful and in proper form.
May 16	New York,	James G. Redfern,	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.
1911. May 17	Connecticut,	Howard L. Miller,	Forgery,	Suffolk,	Lawful and in proper form.
May 26	Michigan,	Edward R. Lewis,	Abandoning and neglect of wife,	Suffolk,	Lawful and in proper form.
May 26	New York,	Edward J. Hunt,	Larceny,	Suffolk,	Lawful and in proper form.
May 31	Missouri,	Richard F. Smith,	Kidnapping,	Plymouth,	Lawful and in proper form.
June 10	New York,	Alexander Samrah,	Violation of liquor laws,	Norfolk,	Lawful and in proper form.
June 12	New York,	William H. Partridge,	Larceny,	Suffolk,	Lawful and in proper form.
June 13	New York,	James Brady,	Attempting to steal from the person,	Worcester,	Lawful and in proper form.
June 23	Russia,	Harris Rothstein,	Larceny,	Suffolk,	Lawful and in proper form.
June 23	Austria,	Joseph and Jacob Goldberg,	Breaking and entering,	Suffolk,	Lawful and in proper form.
July 5	Pennsylvania,	John R. Hall,	Unlawfully removing and concealing mortgaged property,	Suffolk,	Lawful and in proper form.
July 10	Vermont,	Kojeton Bortkevicz,	Abandonment,	Middlesex,	Lawful and in proper form.
July 10	New York,	Dominick Pazrtno,	Abuse of female child,	Suffolk,	Lawful and in proper form.
Aug. 8	New York,	Charles W. Tindell,	Larceny,	Suffolk,	Lawful and in proper form.
Aug. 1	New York,	Harry Smith, <i>alias</i> ,	Attempting to commit larceny,	Suffolk,	Lawful and in proper form.
Aug. 1	New York,	James Ryan,	Larceny from the person,	Suffolk,	Lawful and in proper form.
Aug. 17	New Hampshire,	Leon C. Barry,	Neglecting to provide for support of wife,	Plymouth,	Lawful and in proper form.
Sept. 12	Pennsylvania,	Arthur Stevens, <i>alias</i> ,	Fraudulently procuring entertainment at an inn, and larceny,	Suffolk,	Lawful and in proper form.
Sept. 26	Michigan,	Charles Adams,	Robbery,	Worcester,	Lawful and in proper form.

Oct. 4	New York,						Larceny,	Suffolk,	Lawful and in proper form.
Oct. 11	New York,		Burt H. Gallagher,				Larceny,	Suffolk,	Lawful and in proper form.
Oct. 24	New York,		Julius G. Wittig,				Abandoning wife and minor children.	Hampden,	Lawful and in proper form.
Nov. 1	New York,		Domenico Di Ramio,				Larceny,	Norfolk,	Lawful and in proper form.
Nov. 3	New Hampshire,		Harold A. Tillson,				Neglecting to provide for support of wife and minor children.	Plymouth,	Lawful and in proper form.
Nov. 9	New York,		Joseph Foralito,				Sodomy,	Middlesex,	Lawful and in proper form.
Nov. 10	New York,		Timothy Shay,				Larceny from the person,	Bristol,	Lawful and in proper form.
Nov. 10	New York,		Thomas P. Coyne, <i>alias</i> ,				Breaking and entering,	Bristol,	Lawful and in proper form.
Nov. 24	New York,		Frank L. Chase,				Larceny,	Suffolk,	Lawful and in proper form.
Dec. 11	Pennsylvania,		Leon Ezzello,				Larceny,	Suffolk,	Lawful and in proper form.
Dec. 13	New York,		Frank Wilson,				Larceny from the person,	Suffolk,	Lawful and in proper form.
Dec. 18	New York,		Benj. H. Cram,				Conspiracy to steal,	Suffolk,	Lawful and in proper form.
Dec. 18	New York,		Wong Chen,				Larceny,	Suffolk,	Lawful and in proper form.
Dec. 19	New York,		Allen Harris,				Larceny,	Hampshire,	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, 1911, for examination and report thereon:—

Date of Reference.	State making the Requisition.	Name of Fugitive.	Crime charged.	Report.
1911. Feb. 23	New Hampshire, . . .	Guetano Tomaselli, . . .	Aggravated assault, . . .	Lawful and in proper form.
Feb. 28	Colorado, . . .	Primo Venturo, . . .	Grand larceny, . . .	Lawful and in proper form.
March 18	Illinois, . . .	Bate Michael, . . .	Rape, . . .	Lawful and in proper form.
March 21	New York, . . .	Samuel Kessler, . . .	Grand larceny, . . .	Lawful and in proper form.
March 28	Michigan, . . .	James Barnum, . . .	Larceny, . . .	Lawful and in proper form.
March 31	New Jersey, . . .	William Harrison, . . .	Larceny from the person, . . .	Lawful and in proper form.
April 17	New York, . . .	Paul L. J. Montcalus, . . .	Grand larceny, . . .	Lawful and in proper form.
April 26	Illinois, . . .	Frederic M. Webb, . . .	Larceny, . . .	Lawful and in proper form.
April 27	North Carolina, . . .	Bennie Crudup, . . .	Assault, . . .	Lawful and in proper form.
April 28	New York, . . .	Frederick G. Chandler, . . .	Forgery, . . .	Lawful and in proper form.
May 4	New Jersey, . . .	William Potter, . . .	Atrocious assault and battery, . . .	Lawful and in proper form.
May 16	Connecticut, . . .	Peter Kelley, . . .	Stealing, . . .	Lawful and in proper form.
June 27	New York, . . .	Raymond Williams, . . .	Burglary, . . .	Lawful and in proper form.
June 27	New York, . . .	Murray A. Dekin, . . .	Burglary, . . .	Lawful and in proper form.

July 12	California,					Grand larceny,		Lawful and in proper form.
Aug. 23	New York,					Grand larceny,		Lawful and in proper form.
Aug. 26	California,					Grand larceny,		Lawful and in proper form.
Aug. 30	Connecticut,					Conspiracy,		Lawful and in proper form.
Aug. 30	Connecticut,					Conspiracy,		Lawful and in proper form.
Sept. 6	Colorado,					Obtaining money under false pretences,		Lawful and in proper form.
Sept. 12	Maryland,					Forgery,		Lawful and in proper form.
Sept. 15	Illinois,					Burglary,		Lawful and in proper form.
Sept. 22	New York,					Grand larceny,		Lawful and in proper form.
Oct. 7	New Hampshire,					Breaking and entering, and larceny,		Lawful and in proper form.
Oct. 10	Maine,					Cheating by false pretences,		Lawful and in proper form.
Oct. 19	New York,					Abandonment of minor child,		Lawful and in proper form.
Dec. 4	New Hampshire,					Breaking and entering, and 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.

