Commonwealth of Massachusetts

ATTORNEY-GENERAL'S REPORT

1914

Public Document No. 12

The Commonwealth of Massachusetts.

REPORT

OF THE

ATTORNEY-GENERAL

FOR THE

YEAR ENDING JANUARY 20, 1915.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
32 DERNE STREET.
1915.

The Commonwealth of Massachusetts

Department of the Attorney-General,
Boston, Jan. 20, 1915.

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,

THOMAS J. BOYNTON,
Attorney-General.

The Commonwealth of Massachusetts

DEPARTMENT OF THE ATTORNEY-GENERAL,
State House.

Attorney-General.

THOMAS J. BOYNTON.

Assistants.

THOMAS P. RILEY.
ROGER SHERMAN HOAR.
LEON R. EYGES.
ARTHUR E. SEAGRAVE.
JOHN W. CORCORAN.
JAMES J. BACIGALUPO.

Chief Clerk.

LOUIS H. FREESE.

Statement of Appropriation and Expenditures.

Appropriation for 1914,		$50,000 00
	Expenditures.	
For law library,		$1,108 30
For salaries of assistants,		18,722 58
For clerks,		5,304 44
For office stenographers,		3,203 07
For telephone operator,		528 00
For expenses in ice investigation,		1,322 45
For expenses in the abolition of grade crossings:—		
Salary of engineer,	$190 38	
Other expenses incidental thereto,	208 15	
		398 53
For office expenses,		7,510 94
For court expenses,		5,601 22
Total expenditures,		$43,699 63
Costs collected,		2,470 62
Net expenditures,		$41,228 91

The Commonwealth of Massachusetts

Department of the Attorney-General,
Boston, Jan. 20, 1915.

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 6,356, are tabulated below: —

Corporate franchise tax cases,	795
Extradition and interstate rendition,	122
Grade crossings, petitions for abolition of,	98
Indictments for murder,	40
Inventories and appraisals,	168
Land Court petitions,	68
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,	23
Land-damage cases arising from the taking of land by the Massachusetts Highway Commission,	22
Land-damage cases arising from the taking of land by the Directors of the Port of Boston,	2
Land-damage cases arising from the taking of land by the Metropolitan Water and Sewerage Board,	7
Land-damage cases arising from the taking of land by the State Board of Insanity,	6
Land-damage cases arising from the taking of land by the Mt. Everett Reservation Commission,	1
Land-damage cases arising from the taking of land by the Armory Commissioners,	2
Miscellaneous cases arising from the work of the above-named commissions,	29
Miscellaneous cases,	519
Petitions for instructions under inheritance tax laws,	49
Public charitable trusts,	107
Settlement cases for support of persons in State Hospitals,	28
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,	4,266

Capital Cases.

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

Theresa Bernard, indicted in Suffolk County, November, 1913, for the murder of John R. Bernard, on Oct. 6, 1913. She was arraigned Nov. 13, 1913, and pleaded not guilty. Richard S. Teeling, Esq., was assigned by the court as counsel for the defendant. On April 14, 1914, the defendant was committed to the Massachusetts School for the Feeble-minded. The case was in charge of District Attorney Joseph C. Pelletier.

John F. Branagan, indicted in Middlesex County, June, 1913, for the murder of Bridget Hall, at Natick, on May 24, 1913. He was arraigned June 19, 1913, and pleaded not guilty. Edward L. McManus, Esq., was assigned by the court as counsel for the defendant. On Sept. 9, 1913, the indictment was nol prossed and the defendant placed on probation. The case was in charge of District Attorney William J. Corcoran.

John Bufulini, indicted in Essex County, July, 1913, for the murder of Emilio Marchocci, at Swampscott, on July 14, 1913. He was arraigned July 16, 1913, and pleaded not guilty. James H. Sisk, Esq., and William H. Sisk, Esq., were assigned by the court as counsel. On Feb. 24, 1914, 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 a term not exceeding fifteen years nor less than ten years. The case was in charge of District Attorney Henry C. Attwill.

Anna Catania, indicted in Suffolk County, October, 1913, for the murder of Agrippino Capra, at Boston, on Oct. 3, 1913. She was arraigned Oct. 15, 1913, and pleaded not guilty. Maurice Caro was assigned by the court as counsel

for the defendant. In June, 1914, the defendant was tried by a jury before Chase, J. The result was a verdict of not guilty. The case was in charge of District Attorney Joseph C. Pelletier.

Dómenico D'Allessandro, indicted in Suffolk County, September, 1913, for the murder of Antonio Burgio, at Boston, on July 28, 1913. He was arraigned Sept. 9, 1913, and pleaded not guilty. Thomas J. Grady, Esq., was assigned by the court as counsel for the defendant. In January, 1914, the defendant was tried by a jury before Aiken, C.J. During the progress of the trial 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 seventeen years nor less than fifteen years. The case was in charge of District Attorney Joseph C. Pelletier.

Supriano da Silva, indicted in Plymouth County, October, 1913, for the murder of Joquin Esteves, at Plymouth, on Aug. 1, 1913. He was arraigned Feb. 6, 1914, 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 six years nor less than five years. John P. Vahey, Esq., was assigned by the court as counsel for the defendant. The case was in charge of District Attorney Albert F. Barker.

William A. Dorr, indicted in Essex County, April, 1912, for the murder of George E. Marsh, at Lynn, on April 11, 1912. He was arraigned July 12, 1912, and pleaded not guilty. C. Neal Barney, Esq., appeared as counsel for the defendant. In February, 1913, the defendant was tried by a jury before Quinn, J. The result was a verdict of guilty of murder in the first degree. The defendant's exceptions were overruled by the Supreme Judicial Court. The defendant was thereupon sentenced to death by electrocution during the week beginning Sunday, March 22, 1914, which sentence was executed March 24, 1914. The case was in charge of District Attorney Henry C. Attwill.

Sam Kalestian, indicted in Middlesex County, September, 1913, for the murder of Andrew Saul, at Watertown, on July 12, 1913. John H. Casey, Esq., was assigned by the court as counsel for the defendant. The defendant was arraigned Jan. 13, 1914, 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 William J. Corcoran.

William Kaminski, indicted in Middlesex County, November, 1913, for the murder of John Scannell, at Cambridge, on Sept. 29, 1913. John H. Hurley, Esq., and John F. McDonald, Esq., were assigned by the court as counsel for the defendant. He was arraigned Nov. 17, 1913, and pleaded guilty to murder in the second degree. This plea was accepted by the Commowealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney William J. Corcoran.

Samuel Powers, indicted in Hampden County, December, 1913, for the murder of Minnie Powers, at Springfield, on May 4, 1913. He was arraigned Dec. 22, 1913, and pleaded not guilty. Edward A. McClintock, Esq., was assigned by the court as counsel for the defendant. Later the defendant retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Christopher T. Callahan.

James R. Sutherland, indicted in Plymouth County, June, 1913, for the murder of Winifred Sutherland, at Whitman, on April 28, 1913. He was arraigned June 4, 1913, and pleaded not guilty. William F. Kane, Esq., and James T. Kirby, Esq., were assigned by the court as counsel for the defendant. On Feb. 13, 1914, the defendant retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Common-

wealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Albert F. Barker.

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

Nishan M. Aprahanian and Manoog Garabedian, indicted in Middlesex County, March, 1914, for the murder of Ismayel Izmerly Oglilo, at Watertown, on Feb. 16, 1914. They were severally arraigned March 13, 1914, and pleaded guilty to manslaughter. This plea was accepted by the Commonwealth, and the defendants were sentenced to the Massachusetts Reformatory for the term of five years and one month. Edward L. McManus, Esq., and Christopher J. Muldoon, Jr., Esq., were assigned by the court as counsel for the defendants. The case was in charge of District Attorney William J. Corcoran.

Alonzo Bell, indicted in Bristol County, November, 1914, for the murder of Jesse Watts. He was arraigned Dec. 2, 1914, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Joseph T. Kenney.

Joseph W. Blais, indicted in Middlesex County, June, 1914, for the murder of Celanire Blais, at Lowell, on June 27, 1914. He was arraigned Sept. 29, 1914, and pleaded not guilty. William A. Hogan, Esq., was assigned by the court as counsel for the defendant. On Sept. 29, 1914, the defendant was adjudged insane, and was committed to the Bridgewater State Hospital. The case was in charge of District Attorney William J. Corcoran.

Thomas Bombard, indicted in Worcester County, August, 1914, for the murder of Erhardt Reithel, at Auburn, on July 9, 1914. He was arraigned Aug. 31, 1914, and pleaded not guilty. John H. Meagher, Esq., and Charles F. Camp-

bell, Esq., were assigned by the court as counsel for the defendant. In October, 1914, the defendant was tried by a jury before Sanderson, J. The result was a verdict of guilty of murder in the second degree. The defendant was thereupon sentenced to State Prison for life. The case was in charge of District Attorney James A. Stiles.

John A. Collins, indicted in Suffolk County, May, 1914, for the murder of Agnes E. Collins, at Boston, on April 13, 1914. He was arraigned Aug. 26, 1914, 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 eleven years nor less than eight years. William R. Scharton, Esq., was assigned by the court as counsel for the defendant. The case was in charge of District Attorney Joseph C. Pelletier.

Daniel J. Cooper, indicted in Worcester County, January, 1914, for the murder of Alfred G. Bradish, at Upton, on Oct. 4, 1913. He was arraigned Feb. 5, 1914, and pleaded not guilty. John E. Swift, Esq., William A. Murray, Esq., and Austin E. Livingstone, Esq., were assigned by the court as counsel for the defendant. In May, 1914, the defendant was tried by a jury before Dubuque, J. The result was a verdict of guilty of murder in the first degree. The defendant's exceptions were overruled by the Supreme Judicial Court, and he was sentenced to death by electrocution. On Dec. 15, 1914, said sentence was commuted to life imprisonment. The case was in charge of District Attorney James A. Stiles.

Gaetano DeVaio and Virginia Barbato, indicted in Essex County, July, 1914, for the murder of Gaetano Barbato, at Beverly, on July 4, 1914. They were severally arraigned Oct. 6, 1914, and pleaded not guilty. Michael L. Sullivan, Esq., William H. McSweeney, Esq., and John J. Higgins, Esq., were assigned by the court as counsel for the defendants. In November, 1914, the defendants were tried by a jury before Sanderson, J. The result was a verdict of

not guilty. The case was in charge of District Attorney Henry C. Attwill.

Marcellino Faria, indicted in Bristol County, June, 1914, for the murder of Alice G. Faria. He was arraigned June 9, 1914, and pleaded not guilty. On Dec. 3, 1914, the defendant retracted his former plea, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Joseph T. Kenney.

Peter Goncalves, indicted in Plymouth County, October, 1914, for the murder of Vincent Goncalves, at Halifax, on Aug. 16, 1914. He was arraigned Oct. 16, 1914, and pleaded not guilty. John P. Vahey, Esq., and William T. Way, Esq., were assigned by the court as counsel for the defendant. On Oct. 30, 1914, 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 years nor less than eight years. The case was in charge of District Attorney Albert F. Barker.

George W. LeFave, indicted in Essex County, April, 1914, for the murder of Walter P. Hills, at Peabody, on April 3, 1914. He was arraigned May 14, 1914, and pleaded not guilty. S. Howard Donnell, Esq., was assigned by the court as counsel for the defendant. On Nov. 16, 1914, 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 Henry C. Attwill.

Francesco P. Luizza, Guiseppe Luizza and Baldassarre Luizza, indicted in Middlesex County, September, 1914, for the murder of Pietro Titone, at Framingham, on July 22, 1914. They were severally arraigned Sept. 29, 1914. Fran-

cesco P. Luizza and Guiseppe Luizza pleaded guilty to manslaughter, and Baldassarre Luizza pleaded not guilty. These pleas were accepted by the Commonwealth. Francesco P. Luizza was sentenced to State Prison for a term not exceeding fifteen years nor less than ten years; Guiseppe Luizza was sentenced to the House of Correction for the term of six months; and the indictment against Baldassarre Luizza was nol prossed. Edward C. Creed, Esq., and Thomas J. Grady, Esq., were assigned by the court as counsel for the defendants. The case was in charge of District Attorney William J. Corcoran.

Charles Matrony, indicted in Bristol County, February, 1914, for the murder of Annie Walsh. He was arraigned Feb. 13, 1914, and pleaded guilty to murder in the second degree. This plea was accepted by the Commonwealth, and the defendant was sentenced to State Prison for life. The case was in charge of District Attorney Joseph T. Kenney.

Lawrence Robinson, indicted in Suffolk County, June, 1914, for the murder of Thomas J. Norton, at Boston, on June 19, 1914. He was arraigned June 26, 1914, and pleaded not guilty. John H. Blanchard, Esq., and H. C. Blanchard, Esq., were assigned by the court as counsel for the defendant. On July 20, 1914, trial by a jury before Keating, J., was commenced. During the progress of the trial the defendant committed suicide, and the case was taken from the jury. The case was in charge of District Attorney Joseph C. Pelletier.

Charles F. Starrett, indicted in Middlesex County, June, 1914, for the murder of Elizabeth Starrett, at Everett, on March 29, 1914. He was arraigned June 22, 1914, and pleaded not guilty. John J. Higgins, Esq., was assigned by the court as counsel for the defendant. On June 26, 1914, the defendant was adjudged insane, and was committed to the Worcester State Hospital. The case was in charge of District Attorney William J. Corcoran.

William B. Sweeney, indicted in Middlesex County, June, 1914, for the murder of Minnie Sweeney, at Dracut, on March 19, 1914. He was arraigned June 12, 1914, and pleaded not guilty. William A. Hogan, Esq., was assigned by the court as counsel for the defendant. On June 24, 1914, the defendant was adjudged insane, and was committed to the Worcester State Hospital. The case was in charge of District Attorney William J. Corcoran.

Bedros Takdarian, Garabed Barbarian and John Avdanian, indicted in Essex County, April, 1914, for the murder of John K. Shamlian, at Lawrence, on Feb. 9, 1914. They were severally arraigned Oct. 14, 1914, and pleaded not guilty. William F. Moyes, Esq., Michael S. O'Brien, Esq., and Harry R. Lawrence, Esq., were assigned by the court as counsel for the defendants. On Nov. 16, 1914, the defendants severally retracted their former pleas and pleaded guilty to murder in the second degree. These pleas were accepted by the Commonwealth, and the defendants were sentenced to State Prison for life. The case was in charge of District Attorney Henry C. Attwill.

James J. Thorpe, indicted in Hampden County, May, 1914, for the murder of Mary Thorpe, at Holyoke, on April 9, 1914. The defendant was adjudged insane, and was committed to the Bridgewater State Hospital for observation. The case was in charge of District Attorney James O'Shea.

Pasquale Torchio, indicted in Plymouth County, February, 1914, for the murder of Vincenzo Russo, at Brockton, on Jan. 31, 1914. He was arraigned Feb. 6, 1914, and pleaded not guilty. John F. McDonald, Esq., and Walter I. Lane, Esq., were assigned by the court as counsel for the defendant. On June 12, 1914, 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 eight years nor less than five years. The case was in charge of District Attorney Albert F. Barker.

Biaso Valestrino, indicted in Suffolk County, September, 1914, for the murder of Margurito Valestrino, at Boston, on Aug. 6, 1914. He was arraigned Dec. 12, 1914, 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. John C. Crowley, Esq., was assigned by the court as counsel for the defendant. The case was in charge of District Attorney Joseph C. Pelletier.

The following indictments for murder are now pending: —

Cleophas Blanchard, indicted in Bristol County, November, 1914, for the murder of Malvina Blanchard. The defendant has not yet been arraigned. The case is in charge of District Attorney Joseph T. Kenney.

Albert H. Brodeur, indicted in Hampden County, December, 1913, for the murder of Matilda Case, at Springfield, on Sept. 20, 1913. He was arraigned March 18, 1914, 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 Clarence P. Niles.

Giovanni Cinicolo and Maria Sonzino, indicted in Suffolk County, October, 1914, for the murder of Antonio Sonzino, at Boston, on Sept. 17, 1914. They were severally arraigned Oct. 19, 1914, and pleaded not guilty. Thomas J. Grady, Esq., and F. M. Zottoli, Esq., were assigned by the court as counsel for the defendants. No further action has been taken in this case. The case is in charge of District Attorney Joseph C. Pelletier.

Alphonso Collura, indicted in Middlesex County November, 1914, for the murder of Salvatore Pulsseli, at Groton, on Oct. 4, 1914. The defendant has not yet been arraigned. The case is in charge of District Attorney William J. Corcoran.

Ghvout Moodian, indicted in Middlesex County, November, 1914, for the murder of Zilfo Alie, at Tyngsborough, on Oct. 22, 1914. He was arraigned Nov. 18, 1914, and pleaded not guilty. W. D. Regan, 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 William J. Corcoran.

John Poulacas, indicted in Hampden County, December, 1914, for the murder of Mary Pappaspiropoulis, at Holyoke, on Dec. 11, 1914. He was arraigned Dec. 29, 1914, and pleaded not guilty. James O'Shea, Esq., and Laurence J. Montgomery, Esq., were assigned by the court as counsel for the defendant. No further action has been taken in this case. The case is in charge of District Attorney Clarence P. Niles.

Anton Retkovitz, indicted in Bristol County, June, 1914, for the murder of Domka Peremebida. He was arraigned June 12, 1914, and pleaded not guilty. Frank M. Silvia, Esq., and Harold E. Clarkin, Esq., were assigned by the court as counsel for the defendant. In November, 1914, the defendant was tried by a jury before Dubuque, J. The result was a verdict of guilty of murder in the first degree. The time for filing exceptions by the defendant has been extended to March 1, 1915. The case is in charge of District Attorney Joseph T. Kenney.

William Roy, indicted in Hampden County, September, 1914, for the murder of an infant male child, at Springfield, on Jan. 15, 1914. He was arraigned Sept. 24, 1914, and pleaded not guilty. John T. Moriarty, 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 Clarence P. Niles.

Finton Thompson, indicted in Bristol County, June, 1913, for the murder of Maria Colbaert. No further action has been taken in this case. The case is in charge of District Attorney Joseph T. Kenney.

Ralph V. Villiers, indicted in Bristol County, June, 1913, for the murder of Charles S. Mawhinney. The defendant has been committed to the Bridgewater State Hospital pending determination of his sanity. The case is in charge of District Attorney Joseph T. Kenney.

Grade Crossings.

Construction has been in progress since the last report at Clinton, Lynn and Westfield, and eight visits of inspection have been made by the engineer representing this department. Twenty-five hearings before commissioners and auditors have been attended by him.

Statements of expenditures, numbering 35, amounting to $1,240,446.85, have been examined. Objection to items, amounting to $197,095.32, has been made, $68,762.91 of which has been withdrawn or disallowed, and decisions as to $81,174.64 are pending. Of objections made in previous years items amounting to $140,299.59 have been disallowed or withdrawn.

The following statement shows in detail the expenditures which have been examined from Jan. 1, 1909, to date, the amounts objected to and their disposal. During that period 273 statements, amounting to $11,835,998.96, have been examined. Objections to items, amounting to $703,086.59, have been made, $328,989.67 of which has been disallowed or withdrawn, and decisions as to $144,532.94 are pending.

Summary of the Statements of Expenditures in Connection with the Elimination of Grade Crossings from January 1, 1909, to January 1, 1915, which have been examined, accompanying the Report of the Engineer of the Public Service Commission to the Attorney-General for the Year 1914.

Year.	Number of Statements.	Total of Statements.	Objections made to Items amounting to —	1909.		1910.		1911.		1912.		1913.		1914.	
				Disallowed or withdrawn.	Pending Jan. 1, 1910.	Disallowed or withdrawn.	Pending Jan. 1, 1911.	Disallowed or withdrawn.	Pending Jan. 1, 1912.	Disallowed or withdrawn.	Pending Jan. 1, 1913.	Disallowed or withdrawn.	Pending Jan. 1, 1914.	Disallowed or withdrawn.	Pending Jan. 1, 1915.
1909,	50	$2,324,575 12	$56,713 06	$21,208 09	$35,504 97	$16,407 70	$2,339 62	$731 39	$292 81	–	$292 81	–	$292 81	$34 89	–
1910,	56	2,193,112 50	86,906 61	–	–	49,038 25	12,477 21	2,528 37	4,412 52	$309 75	4,043 17	–	4,043 17	3,935 44	–
1911,	48	2,182,670 51	168,682 89	–	–	–	–	10,798 84	157,362 69	5,629 68	88,267 18	–	88,267 18	88,267 18	–
1912,	43	2,454,485 25	86,230 78	–	–	–	–	–	–	5,105 43	73,972 53	$3,650 12	65,053 22	29,961 34	$34,966 34
1913,	41	1,440,708 73	107,457 93	–	–	–	–	–	–	–	–	4,519 55	59,953 38	18,100 74	28,391 96
1914,	35	1,240,446 85	197,095 32	–	–	–	–	–	–	–	–	–	–	68,762 91	81,174 64
	273	$11,835,998 96	$703,086 59	$21,208 09	$35,504 97	$65,445 95	$14,816 83	$14,058 60	$162,068 02	$11,044 86	$166,575 69	$8,169 67	$217,609 76	$209,062 50	$144,532 94

Service on Commissions.

My immediate predecessor in office, Hon. James M. Swift, took occasion to protest in the last annual report of this department against the practice of appointing the Attorney-General to commissions charged with the investigation of matters not connected with the work of this department. I desire to renew that protest. The duties of this office are confined to legal matters. The work is sufficient to occupy the entire time of the Attorney-General, and it interferes to a great degree with the work of the department to have such additional burdens placed upon him.

During my term of office I have been required to serve as a member of three commissions. I renew the suggestion of my predecessor that "all these commissions have the right to call upon the Attorney-General and his department for assistance in any matters involving legal considerations in connection with their deliberations, and I further respectfully suggest that the Attorney-General should not be required to serve as a member of such commissions to the detriment of the legal work of his department."

Public Warehouses.

A number of complaints have come to this department against certain unlicensed public warehouses, claiming that the complainants have no redress against the proprietors, as they have omitted to give bond as required by chapter 69 of the Revised Laws. This chapter, although it authorizes doing business with a license, does not expressly prohibit doing business without a license, nor does it provide the means of preventing unauthorized business nor penalties for the transaction thereof. Accordingly, I recommend the passage of the accompanying bill in order that chapter 69 may be given full force and effect.

Haverhill Gas Case.

The Haverhill gas case, which had been long pending, and in which numerous hearings had been had and a great volume of testimony taken during the administration of my predecessor, has been closed. In view of the familiarity of

my predecessor with the case I retained his services therein. After several further hearings the gas company withdrew its petition wherein the company sought to enjoin the Board of Gas and Electric Light Commissioners from enforcing its order, and the order of the Board, reducing the price of gas in Haverhill to 80 cents per thousand feet, became thereupon effective.

Land Court Cases.

This department has handled 68 Land Court cases, in which the public rights in beaches, great ponds and rivers were involved.

It was the custom to enter the appearance of the Attorney-General in such cases, thus frequently holding up deserving cases until the Attorney-General could be got to assent to the form of decree. Under my administration a system has been devised whereby decrees are entered automatically preserving the public rights, upon the mere filing of the Attorney-General's answer, without further trouble to this department or to the parties.

I now recommend that the public rights be protected by statute. The bill which I propose is declaratory in form, so as to guard against the courts construing it as an implied legislative interpretation to the effect that in all past cases these public rights have been lost.

The statute creating the Land Court provides in effect that whenever the rights of any one are cut off, without his neglect, by registration of title in another, the injured party may sue and recover damages from an assurance fund made up of small payments by those who register title to their land. The Land Court was created in 1898, and yet so careful have been its judges and examiners that only one suit has yet been tried against the assurance fund. It fell to my lot to defend that suit, and the care of the Land Court was vindicated by a verdict for the defendant.

Federal Liens.

Congress recently enacted a law to the effect that in any State which would provide for the registration of Federal tax liens, such liens should not be effective unless filed in the registry of deeds. With the income tax now in effect, any

purchaser of a parcel of land may find it encumbered by a Federal lien. To have to look this matter up in the Federal court is an unnecessary burden on our citizens. The passage of the accompanying act, modeled after our mechanic's lien statute, will furnish a simple relief from this burden.

National Mercantile Company, Limited.

This company, having its home office in Vancouver, B. C., was at the opening of the present administration doing a quasi lottery business, having two offices in this Commonwealth and operating in violation of the banking law. This company was doing a fraudulent business, taking the money of the poor on the promise of enabling them to buy and own homes, and was advertising all over the United States that it was chartered under the "old blue laws" of the State of Massachusetts, "whose rigid supervision and strict jurisdiction over all companies within its boundaries is well known all over the entire world."

I caused criminal proceedings to be instituted against the agents of this company, one of whom left the State with charges pending against him; the other was convicted and sentence suspended that he might turn State's evidence. By decree of the Supreme Judicial Court on Oct. 9, 1914, the company was enjoined from the further prosecution of its business in Massachusetts. I have co-operated with the authorities in other States and given the matter such publicity as I could, as a result of which the Canadian government has denied the company the use of the mails, and its business is now closed.

Notwithstanding our success in prosecuting this company it is my opinion that the Massachusetts law is at present inadequate to cope with such a company if it chose to put up a real fight. Accordingly, I recommend that the Legislature pass the accompanying bill.

Tax Cases.

At the beginning of the present administration there were pending against the Commonwealth 297 suits by foreign corporations to recover excise taxes alleged to have been

illegally assessed, involving $168,962. The preceding administration had just won two test cases in the United States Supreme Court, but these cases did not cover the entire ground. Accordingly, nine more test cases were presented at the March sitting of the Supreme Judicial Court. The decision was handed down Oct. 7, 1914. This decision establishes, so far as a decision of the Supreme Judicial Court of the Commonwealth can establish, the right of the Commonwealth to tax any foreign corporation that engages in any local business whatever within its borders. Counsel for the corporations that were parties to this litigation have, however, taken out writs of error in the United States Supreme Court, and accordingly I have not pressed other cases in the hands of the same counsel. All other remaining cases have been settled on the basis of the decision of the Supreme Judicial Court.

A suit by the Bellows Falls Power Company, which was brought under the previous administration, has been argued before the Supreme Judicial Court and is still pending.

Anderson Bridge Case.

Among the pending cases at the beginning of this administration was the suit of the Brighton Abattoir and one of its tenants to recover alleged damages for cutting them off from the sea by the building of the Anderson bridge on the Charles River without a draw. None of their real estate was taken, and they are claiming in damages to the land, which is still intact, a sum several times its assessed value. I have expended much time and money in resisting their claim. The case has been on trial before a special commission of three, appointed by the court, numerous hearings have been had, and the trial is now nearly completed.

Pollution of Neponset River.

Progress has been made with the suit that has been for several years pending against Winslow Bros. & Smith Company on account of the alleged pollution of the waters of Hawes Brook and Neponset River by the waste from their plant. After several hearings an agreement has been reached

whereby the company has undertaken to construct the filter recommended by the engineer of the State Board of Health, which it is believed will obviate the entire difficulty so far as this plant is concerned, construction to begin not later than April 15, 1915.

Publication of the Opinions of the Attorney-General.

I recommend that an appropriation of $2,500 be made for the purpose of continuing the publication of the opinions of the Attorney-General, there being now a sufficient number to fill a volume of ordinary size.

Revision of Statutes.

I also recommend that measures be taken at this session of the Legislature to provide for the revision, codification and arrangement of the statutes. I am aware that the time that has elapsed since the last revision is not so great as has usually been allowed to elapse between revisions of the statutes; but if the work of revision is undertaken now it will be several years before it will be finished. There is need of revision now and the need will become greater with each succeeding year. The last general revision, known as the Revised Laws of Massachusetts, went into effect on the first day of January, 1902. The resolve providing for that revision was approved April 28, 1896. Thus it will be seen that nearly six years elapsed between the date of the adoption of the resolve providing for the revision and the date on which the Revised Laws went into effect. During the period between Jan. 1, 1902, and January 1 of the present year the volume of legislation has been far greater than it has been during any equal period of time in the history of the Commonwealth. During this period there have been many radical changes in the statutes, both by the amending process and also by original enactment. It is believed that every one of the 225 chapters of the Revised Laws has been affected to some extent by subsequent legislation, and by far the greater number have been changed in numerous and important particulars. Statutes amendatory of the Revised Laws have themselves been again and again amended, so

that it is only by the exercise of great care and the loss of much time that the exact condition of the statutes may be ascertained.

Department of the Attorney-General.

The number of official opinions I have given during the year is 252.

The total number of matters requiring the attention of the department was 6,356. The number of hearings attended was 75. The number of cases tried in the Probate Court was 23. The number of cases tried in the Superior Court with jury was 3. The number of cases tried in the Superior Court without jury was 5. One case was tried before the United States District Court. During the year 18 cases have been argued before the Supreme Judicial Court of the Commonwealth, 1 before the Circuit Court of Appeals of the United States, and 1 before the Supreme Court of the United States.

In closing my official connection with this department I desire to express my profound appreciation of the loyalty, fidelity and efficiency of my assistant attorneys-general, Thomas P. Riley, Esq., Roger Sherman Hoar, Esq., Leon R. Eyges, Esq., Arthur E. Seagrave, Esq., John W. Corcoran, Esq. and James J. Bacigalupo, Esq., all of whom have served the Commonwealth with great ability and devotion; and I wish further to express my appreciation of the fidelity and efficiency with which all of the employees of the department have discharged their duties during my incumbency of the office.

Annexed to this report are such of the opinions rendered during the current year as it is thought should be published, and drafts of bills the enactment of which is herein recommended.

Respectfully submitted,

THOMAS J. BOYNTON,
Attorney-General.

PROPOSED LEGISLATION.

AN ACT RELATIVE TO PUBLIC WAREHOUSEMEN.

Be it enacted, etc., as follows:

SECTION 1. No person shall keep and maintain a public warehouse for the storage of goods, wares and merchandise, unless he is licensed and has given bond under the provisions of section one of chapter sixty-nine of the Revised Laws.

SECTION 2. The penalty for violation of the preceding section shall be not less than ten nor more than two hundred dollars for each day during which such violation continues, or any other sum, not greater than the maximum penalty, which the court may deem just and equitable. Such penalty may be recovered by an information in equity in the name of the attorney-general, brought in the supreme judicial court in the county of Suffolk. Upon such information, the court may issue an injunction restraining the further maintenance of the warehouse named therein, until such time as the proprietor shall give a bond and secure a license.

AN ACT DECLARATORY OF LEGAL INCIDENTS IN REGISTERED LAND.

Be it enacted, etc., as follows:

SECTION 1. The term "burdens and incidents which attach by law to unregistered land", as used in section sixty-nine of chapter one hundred and twenty-eight of the Revised Laws, includes, and the term "encumbrances except those noted in the certificate", as used in section thirty-eight of said chapter, does not include: public rights below mean high water mark in land bordering on tide water, public rights in headlands, public rights in any river or stream or in the bed thereof, public rights in any great pond or in the use thereof as a great pond or of access thereto, building restrictions established by public authorities, and all other public rights and incidents inland which need not appear of record in the registry of deeds, whether such rights and incidents are vested in the public at large or in some portion thereof, or in the Commonwealth or some constituted authority.

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

AN ACT TO AUTHORIZE THE FILING OF NOTICES OF FEDERAL TAX LIENS WITH REGISTRARS OF DEEDS AND ASSISTANT RECORDERS OF THE LAND COURT.

Be it enacted, etc., as follows:

SECTION 1. The notice of a federal tax lien on real estate under the provisions of section three thousand one hundred and eighty-six of the Revised Statutes of the United States, as amended by an act approved the fourth day of March in the year nineteen hundred and thirteen, may be filed with the register of deeds for the county or district wherein the land subject to such lien is situated.

SECTION 2. Such notice shall be recorded and duly indexed, or, if intended to affect registered land, shall, in lieu of recording, be filed and registered in the office of the assistant recorder for the registry district in which the land is situated.

SECTION 3. The fee for the filing and recording or registering of a notice under this chapter shall be fifty cents.

SECTION 4. This act shall take effect upon its passage.

AN ACT TO REGULATE THE BUSINESS OF SELLING SO-CALLED UNSECURED INSTALLMENT CONTRACTS.

Be it enacted, etc., as follows:

SECTION 1. Except corporations fulfilling the requirements of this chapter, or the agents of such corporations, no person shall transact within the commonwealth, and no domestic corporation unless it fulfills the requirements of this chapter, shall transact anywhere, the business of selling so-called unsecured installment contracts, hereinafter referred to as "such business."

SECTION 2. Wherever they occur in this act, the following words shall be construed as follows: —

"Selling" shall mean issuing, negotiating, selling, receiving an order in reply to which a contract is sent, or delivering a contract in reply to an order.

"Contract" shall mean a bond, note, certificate, contract, obligation, pass-book, or any other chose in action evidenced by writing.

"Installment contract" shall mean a contract for which the contract payment or purchase price is to be paid, or payable, in installments, or on which only a partial payment of the contract payment or purchase price, or of the face, par or capital value is made at the time of selling.

"Unsecured installment contract" shall mean an installment contract, under which the promise given to the person who pays or is to pay the purchase price or installments, is not, at the time of the performance of the first act comprised within the foregoing definition of "selling," secured by property, real or personal, of a fair cash value of more than the face, par or capital value of the contract.

"No person shall transact" shall mean that no person shall transact, or hold himself out as transacting or as entitled, licensed or authorized to transact.

"Person" shall mean person, firm, association, exchange or corporation.

"Holds out" shall mean holds out or permits the holding out of.

"The corporation" shall mean any specific corporation seeking to transact such business.

"The commissioner" shall mean the bank commissioner, appointed under the provisions of section one of chapter two hundred and four of the acts of the year nineteen hundred and six.

Section 3. No corporation shall transact such business unless it shall have at least one hundred thousand dollars of capital stock fully paid in. Such capital shall be for the equal benefit and protection of all its investors and shall be deposited in trust with the treasurer and receiver-general of the commonwealth, or with the duly authorized officer of some other state of the United States. Such deposit shall consist of cash or of state or municipal securities or of securities approved by the commissioner, and worth at least one hundred thousand dollars. If the deposit is made with the officer of some other state of the United States, the corporation shall not transact such business, unless it shall have filed with the commissioner a statement from such officer under his official seal, showing that he, as such officer, holds said deposit in trust for the equal benefit and protection of all the investors in said corporation, describing the items of securities so held, and showing that such officer is satisfied that said securities are worth one hundred thousand dollars, but such official statement shall not preclude the commissioner from examining and investigating the securities so held and from ascertaining himself the value of said securities. The value as determined by the commissioner shall be final.

Section 4. A corporation making such deposit with the treasurer and receiver-general shall be entitled to the income thereof, and may from time to time, with the consent of the commissioner, change, in whole or in part, the deposited securities for cash, or for other securities of equal value, authorized by this chapter or approved by the commissioner. The treasurer and receiver-general may return to the corporation any such deposit, if the commissioner shall state in writing that the corporation has ceased to do business in this state, and is under no obligation to any contract-holder or other person in this state or elsewhere for whose benefit such deposit was made. A corporation that has made such deposit, or the commissioner, or any creditor, may bring in the supreme judicial Court for Suffolk county a petition in equity to enforce, administer or terminate the trust created by such deposit. If such petition is brought by any person other than the commissioner, the commissioner shall be named as a party respondent.

Section 5. No corporation shall transact such business, unless it shall have received from the commissioner a license, issued as follows: When the deposit has been made or the official statement has been filed, as required by section three, if the commissioner after an examination of the assets and liabilities of the corporation, is satisfied that it is in a sound financial condition, and if the corporation is otherwise duly qualified under the laws of this state to transact its business herein, he shall issue to the corporation a license to transact such business within this state. Every such license shall expire on the thirty-first day of December succeeding the date of its issuance, unless renewed by the commissioner. The corporation shall pay to the commissioner a fee of five dollars for the original issuance of each license and two dollars for each renewal. All fees paid to the commissioner under the provisions of this chapter shall be accounted for by him in the same manner as other fees collected by him.

Section 6. Whenever the commissioner may deem it to be prudent for the protection of investors in this state, he may visit personally or by a competent examiner or examiners whom he shall appoint, any corporation transacting such business, and thoroughly inspect and examine its affairs, and ascertain its financial condition and whether it has complied with the provisions of law. The proper charges incurred in the examination of the corporation, including the expenses of the commissioner and the expenses and compensation of his assistants employed therein, shall be paid by the corporation. For the purposes aforesaid, the commissioner or the person or persons making the examination shall have free access to all the books and papers of the corporation which relate to its business, and to the books and papers kept by any of its agents; and may administer oaths to, and examine as witnesses, the directors, officers and agents of said corporation, and any other person, relative to its affairs, transactions and condition.

Section 7. Each corporation transacting such business shall annually, on or before the fifteenth day of January, file in the office of the commissioner a report which shall exhibit its financial condition on the thirty-first day of December of the previous year, and its business of that year, and shall at any other time, upon the written request of the commissioner, file a supplemental report of its financial condition and business done. For cause, the commissioner may extend the time for filing the annual report, but not to a date later than the fifteenth day of February. Such reports shall be in such forms as may be established from time to time by the commissioner, and shall be sworn to by the president and secretary of the corporation, or, in their absence, by two of its principal officers, empowered to act in their stead. For filing each annual report the corporation shall pay to the commissioner a fee of five dollars. A corporation which neglects to file its annual report with the commissioner within the time required, shall forfeit one hundred dollars for each day during which such neglect continues.

Section 8. If the commissioner is of opinion upon examination or otherwise that a person who is transacting such business is in an unsound financial condition, or if he finds that such person has failed to comply with the law, or that the officers or agents of such person have refused to submit to examination or to perform any legal obligation relative thereto, he shall suspend the license, if any, granted to such person, its officers or agents, and shall cause notice of the lack of authority of such person to transact business to be published in a newspaper of general circulation in the commonwealth; and no new business shall thereafter be done by such person in the commonwealth, or anywhere in the case of a domestic corporation, while such default or disability continues, nor until the authority of such person to do business is restored by the commissioner, or by the court as hereinafter provided. The commissioner shall forthwith notify such person of such suspension or lack of authority and shall specify in the notice the cause thereof and the particulars of any alleged violation of law. The supreme judicial court for Suffolk County, upon petition in equity by such person brought within thirty days after receipt of said notice, shall hear and determine the question as to whether such person lacks authority to transact such business or whether cause for suspension exists, and shall make any appropriate order or decree therein. The statutes and rules relative to petitions in equity shall govern such proceedings.

Section 9. The supreme judicial court for Suffolk County shall have jurisdiction, in equity, on petition of the commissioner or of any interested person, to enjoin the unauthorized transaction of such business, to enforce any of the provisions of this chapter, or to appoint a receiver or receivers to take possession of the property and effects of any unlicensed, suspended or financially unsound person, who is or has been transacting such business, and to settle his affairs, subject to the order of the court. If such petition is brought by any person other than the commissioner, the commissioner shall be named as a party respondent.

Section 10. Whoever sells or attempts to sell an unsecured installment contract, unless issued by a corporation duly licensed under this chapter, shall be guilty of a misdemeanor and liable to a fine of not less than one hundred nor more than one thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment.

Section 11. Whoever transacts the business of reselling unsecured installment contracts, unless issued by a corporation duly licensed under this chapter, shall be guilty of a misdemeanor and liable to a fine of not less than one hundred nor more than one thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment.

Section 12. Whoever does any business act in aid of the transaction of such business, and whoever holds out himself as an agent, agency,

officer, or employee in the transaction of such business, or holds out his address as an office or place of business in aid of the transaction of such business, except on behalf of a corporation duly licensed under this chapter, shall be guilty of a misdemeanor, and liable to a fine of not less than one hundred nor more than one thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment.

Section 13. No unsecured installment contract shall be sold in the commonwealth, or sold anywhere by a domestic corporation, unless it shall provide that, after one-fourth of the total amount of installments therein required has been paid, and in any event after installments for two full years have been paid thereon, in case of default in the payment of any subsequent installment, the contract shall not be forfeited, but a paid-up contract shall be given to the holder of the contract, of not less than the full amount paid thereon less any amount paid by the person selling the contract on account thereof, said paid-up contract to mature at the same date as the original contract; and no such contract shall provide for the payment of profits in the form of dividends or otherwise, except from earnings, nor for the payment of any part of the payments made by the holder of any such contract in force, to the holder of any other such contract.

Section 14. No unsecured installment contract shall be sold in the commonwealth, or sold anywhere by a domestic corporation, until a copy of the form thereof shall have been filed at least thirty days with the commissioner; nor if the commissioner within said thirty days notifies the person issuing or filing said copy that in his opinion said form does not comply with the requirements of the laws of the commonwealth.

Section 15. The sale of any unsecured installment contract which does not conform to the requirements of the two preceding sections, or which is issued by a person not duly licensed under this chapter, shall be voidable by the purchaser and the purchaser shall be entitled to recover from the person selling the same in an action of contract all installments paid thereon, with legal interest from the date of each payment.

Section 16. Any corporation making a report which is false in any material part, shall be guilty of a misdemeanor and be liable to a fine of not less than five hundred nor more than five thousand dollars.

Section 17. Whoever wilfully or negligently subscribes or makes oath to a report which is false in any material part, shall be liable to a fine of not less than five hundred nor more than five thousand dollars; and whoever wilfully makes oath to a report which is false in any material part, shall in addition be guilty of perjury.

Section 18. Any person violating any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than five hundred dollars.

SECTION 19. Nothing contained in this chapter shall be construed as prohibiting sales by agents of corporations duly licensed or as prohibiting the resale of contracts once lawfully sold, except contracts resold in violation of the provisions of section eleven.

SECTION 20. The provisions of this chapter shall not apply to contracts issued by a person who is subject to the provisions of the general banking laws or the general insurance laws of this state; nor to contracts issued by a person for the purpose of raising money for his principal business, if his principal business is other than the issuance or selling of unsecured installment contracts.

SECTION 21. Nothing contained in this chapter shall be construed as legalizing a lottery.

SECTION 22. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SECTION 23. This act shall take effect upon its passage.

OPINIONS.

Surgery — Unauthorized Operations, when permitted.

A surgical operation which is immediately necessary for the preservation of life or health may be performed without the consent of the patient if it is impracticable to secure such consent or the consent of any one authorized to speak for him.

JAN. 26, 1914.

H. LOUIS STICK, M.D., *Superintendent, Worcester State Asylum.*

DEAR SIR: — In response to your inquiry in regard to a surgical operation upon an inmate of your hospital, I have to say that there is, as you are doubtless well aware, a well settled rule of law that in all cases in which a patient is in full possession of his faculties and able to consult about his condition, his consent is a necessary prerequisite to a surgical operation by his physician. In cases where an emergency arises calling for immediate action for the preservation of life or health of the patient, and it is impracticable to obtain his consent or the consent of any one authorized to speak for him, it is the duty of the physician to perform such operation as good surgery demands without such consent. The only case that will justify surgical operation without consent is "necessity for immediate action for the preservation of life or health." It does not seem to me that the case you state falls within this class, and, in my opinion, you should not operate without the consent of a legally appointed guardian.

Yours respectfully,

THOMAS J. BOYNTON, *Attorney-General.*

District Police — Transfer to Board of Labor and Industries — May be retransferred.

St. 1913, c. 610, § 1, providing for appointment by the Governor in case of vacancies in the two inspection departments of the District Police, did not repeal St. 1913, c. 424, § 1, permitting inspectors of factories and public buildings of the District Police who were transferred to the State Board of Labor and Industries from being transferred to the building department of the District Police to fill vacancies, upon their request.

JAN. 28, 1914.

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

DEAR SIR: — You ask my opinion as to whether the provisions of section 1 of chapter 610 of the Acts of 1913 repealed that part of section 1 of chapter 424 of the Acts of 1913 which relates to the transfer of certain inspectors from the service of the State Board of Labor and Industries to the building department of the District Police.

That part of section 1 of chapter 424 of the Acts of 1913 to which you refer reads as follows: —

> The inspectors of factories and public buildings of the district police who were transferred to the state board of labor and industries, established by chapter seven hundred and twenty-six of the acts of the year nineteen hundred and twelve, shall, upon their request in writing to the governor, be transferred to the building department of the district police to fill any vacancies in that department which may occur after the first day of June in the year nineteen hundred and thirteen.

This act was approved April 2, 1913, and took effect upon its passage. That part of said section 1 of chapter 610 of the Acts of 1913 relating to appointments to the two inspection departments of the District Police reads as follows: —

> All future vacancies in either of the two departments established by this act shall be filled by the governor, subject to existing laws governing the appointment of the chief, deputy chiefs and members of the detective and inspection departments of the district police, by appointment to the department in which the vacancy occurs.

The last-mentioned act was approved May 8, 1913, and also took effect upon its passage. The fact that the Legislature had in mind the provisions of chapter 424 when chapter 610 was enacted was evidenced by the fact that appointments to be made under the provisions of chapter 610 are to be made "subject to existing laws governing the appointment of the chief, deputy chiefs and members of the detective and inspection departments of the district police."

These words clearly indicate that the Legislature did not intend to change chapter 424 in so far as it affected the rights of those inspectors who might desire, upon their written request to the Governor, to be transferred to the building inspection department of the District Police.

In case a vacancy occurs in the building department of the District Police, as suggested in your letter, the Governor may make an appointment in accordance with the provisions of chapter 610 of the Acts of 1913, but subject, however, to the right of any one who has been an inspector of factories and public buildings of the District Police, and who has been transferred to the State Board of Labor and Industries, upon his request in writing to the Governor, to be appointed to fill such vacancy.

It is my opinion that section 1 of chapter 610 of the Acts of 1913 did not repeal that part of section 1 of chapter 424 of the Acts of 1913 hereinbefore quoted.

Yours respectfully,

THOMAS J. BOYNTON, *Attorney-General.*

Employment of Minors — Employment of Women — Stenographers and Bookkeepers.

Minors who are employed as bookkeepers, stenographers, clerks or clerical assistants are within the provisions of St. 1913, c. 831, an act regulating the labor of minors.

The law relative to the employment of women as stenographers, bookkeepers and in similar clerical positions was not changed by St. 1913, c. 758.

JAN. 28, 1914.

ROBERT N. TURNER, Esq., *Commissioner of Labor.*

DEAR SIR: — Referring to your inquiry addressed to this office under date of Oct. 8, 1913, I understand your first question to be: Are minors who are employed as bookkeepers, stenographers, clerks or clerical assistants within the provisions of chapter 831 of the Acts of 1913?

The words of limitation and prohibition in the various sections of chapter 831 are, "no minor . . . shall be employed or permitted to work," and the construction of the statute depends upon the scope of the words "employed or permitted to work."

The word "employed" has been defined as "the act of doing a thing and being under contract or orders to do it." *United States* v. *Morris*, 14 Peters, 464, 475. The word may be further defined as, "involved in action of body or mind; kept in service."

The word "work" may fairly be said to be a generic term that includes every kind of human employment.

The manifest purpose of this statute is to carefully limit the hours of employment of minors and to protect them from

the dangers, physical and moral, of certain occupations named therein. It is my opinion that minors who are within the ages specified in the various sections of this chapter, and are employed as bookkeepers, stenographers, clerks or clerical assistants, are within the provisions of this statute.

Your second question, as I understand it, is: Did the enactment of chapter 758 of the Acts of 1913 make any change in the law in regard to the hours of employment of women who are employed as stenographers, bookkeepers or in other similar clerical positions?

As suggested in your letter of inquiry, the controlling and descriptive words in the later statute, "employed in laboring," are the same that were used in the earlier one, so that in this important particular there is no change. It is my opinion that the law as to the employment of women who are above the age of twenty-one years as stenographers, bookkeepers and in other similar clerical positions was not changed by the enactment of chapter 758 of the Acts of 1913.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Governor — Commutation of Life Sentence.

The Governor has constitutional authority, with the advice of the Council, to commute sentences of life imprisonment to imprisonment for a term of years.

JAN. 28, 1914.

His Excellency DAVID I. WALSH, *Governor of the Commonwealth.*

SIR: — You request my opinion upon the following question: "Have I, under the laws of this Commonwealth, the power or right to carry out a recommendation of the Parole Board, the Advisory Board of Pardons, which Board after investigation recommends as follows: that the Governor now commute a sentence from imprisonment for life to imprisonment for the term of twenty years."

The pardoning power is conferred upon the executive power by the Constitution of the Commonwealth. Article VIII, section I, chapter II of part the second of the Constitution provides that —

> The power of pardoning offences, except such as persons may be convicted of before the senate by an impeachment of the house, shall be in the governor, by and with the advice of council.

The words "the power of pardoning offences" are comprehensive. They include not only that absolute release from the penalty which is referred to commonly as a pardon, but those lesser exercises of clemency which are described as conditional pardon, commutation of sentence and respite of sentence. The only authority for the executive department of the government to mitigate or release from sentence for crime is this language of the Constitution. The Governor is clothed with authority to act in that respect only "by and with the advice of council." The unmistakable meaning of these words is that he can act only in conformity to the advice of the Council. He may decline to take action although the Council advise him to do so. Responsibility for granting a pardon rests upon the Governor, and he cannot be compelled to take such action by the Council. The granting of a full or a partial pardon is the result of concurrent action by both the Governor and Council. Neither alone can take effective action. Both must agree before the Constitution is satisfied. The same principle applies whether the act be a complete or a modified pardon. A commutation of sentence, which is the substitution of a lighter for a more severe punishment, is an exercise of the pardoning power, and must be in accordance with the Constitution. It is an act of the Governor which becomes effective only when concurred in by the Council. See *Opinion of the Justices,* 14 Mass. 472; *Opinion of the Justices,* 210 Mass. 610. "The commutation of a sentence is a pardon upon condition that the convict voluntarily submits to a lighter punishment." *Opinion of the Justices,* 190 Mass. 616, 621.

It is my opinion, therefore, that the Governor may, with the advice of the Council, commute the sentence of a prisoner from life imprisonment to a term sentence, the commutation to become effective if petitioned for by the prisoner or accepted by him.

Yours respectfully,

THOMAS J. BOYNTON, *Attorney-General.*

Engineers — Firemen — Special License — Employment — Vacations.

Under St. 1911, c. 562, § 8, a special license issued to an engineer or fireman before the passage of the act becomes null and void whenever the holder ceases to be employed on the plant specified in said license.

Under St. 1911, c. 562, § 8, the words "ceases to be employed" mean a complete severance from one's employment, and not absences on account of a vacation, illness or leave of absence.

JAN. 28, 1914.

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

DEAR SIR: — You request my opinion upon certain questions based upon section 8 of chapter 562 of the Acts of 1911, which provides as follows: —

This act shall take effect on the first day of January in the year nineteen hundred and twelve, and a license in force on the first day of January in the year nineteen hundred and twelve shall continue in force until it is suspended or revoked for the incompetence or untrustworthiness of the licensee, *except that a special license shall not continue in force after the holder thereof ceases to be employed on the plant specified in the license.* A license in force on the first day of January in the year nineteen hundred and twelve may be exchanged for a license of the same class under this act at any time thereafter, on application to the boiler inspection department of the district police, upon forms to be furnished by said department. The applicant shall make oath to the statements contained in the said application, and the members of the boiler inspection department of the district police are hereby authorized to administer the oath.

Your questions are —

First. — A man was granted a special license in 1910, before the enactment of section 2 of chapter 562, Acts of 1911, which amended section 81 of chapter 102 of the Revised Laws by striking out the entire section and inserting a new section in place thereof, part of which reads as shown in italics above. The question now arises whether such licensee, having been licensed prior to the enactment of section 2, chapter 562, Acts of 1911, comes within the provisions of this clause; that is to say, whether such license continues in force if he should cease to be employed on the plant specified thereon, the license having been granted prior to such amendment.

Second. — Under the provisions of the statutes, prior to Jan. 1, 1912, it was necessary that an engineer's or fireman's license should be renewed every three years; but, under the provisions of the statute above quoted, a license in force on the first day of January, 1912, continued in force, and, therefore, does not have to be renewed. By

the same provisions a licensee could exchange such license for a new license if he so desired. In the event of your deciding the first inquiry in the affirmative, would the fact of such man having exchanged such license bring him fully within the provisions of the statute above quoted?

Third. — If such licensee does come within the provisions of the statute above quoted, so far as relates to the license continuing in force only so long as he shall continue to be employed on the plant specified in the license, would the fact of his having been granted a leave of absence, extending for a period of six months or more for the purpose of visiting in Europe, be considered as his having ceased to be employed on the plant specified in the license, although his name was retained on the roll of employees and he was again employed on the plant specified immediately upon his return to this country?

Referring now to your first question, when the Legislature enacted section 8 above quoted, and provided that "a license in force on the first day of January in the year nineteen hundred and twelve shall continue in force until it is suspended or revoked for the incompetence or untrustworthiness of the licensee," it very clearly and evidently intended to, and did, make an exception in regard to special licenses by following the language last above quoted with these words: "*except that a special license shall not continue in force after the holder thereof ceases to be employed on the plant specified in the license.*"

It is my opinion that a special license issued before the enactment of chapter 562 of the Acts of 1911 becomes null and void whenever the holder of it ceases to be employed on the plant specified therein.

The answer to your second question is included in the answer to your first, and I assume that as the answer to your first question is negative, no further answer is required to the second.

Taking up your third question, I have to say that the words "ceases to be employed," as used in the statute above quoted, with reference to the holder of a special license, mean a complete severance from his employment. An employee who is absent from the plant where he is employed, on a vacation, on account of illness or on leave of absence, even for a period of six months, his name being retained on the roll of employees, has not, in my opinion, ceased to be employed in the sense intended by the statute, and his license, therefore, remains in force.

Yours respectfully,

THOMAS J. BOYNTON, *Attorney-General.*

Agricultural Societies.

Under R. L., c. 124, § 1, providing that certain agricultural societies may receive bounties from the Commonwealth if not within twelve miles from the grounds of another such society, the distances should be computed on the way of travel from one point to another.

JAN. 29, 1914.

State Board of Agriculture.

GENTLEMEN: — Under date of January 28, you have written me as follows: —

Referring to section 1 of chapter 124 of the Revised Laws, as amended by chapter 133 of the Acts of the year 1909, the State Board of Agriculture hereby requests your opinion as to whether, in line 6 and again in line 25 of said section, the distance of twelve miles should be interpreted to mean in a straight line or by the shortest highway between the two points in question.

The statute in question provides that —

Every incorporated agricultural society which was entitled to bounty from this commonwealth before the twenty-fifth day of May in the year eighteen hundred and sixty-six, and every other such society whose exhibition grounds and buildings are not within twelve miles of those of a society which was then entitled to bounty

may under certain conditions receive a bounty from the Commonwealth.

The obvious purpose of establishing the twelve-mile limit was to prevent the growth of too many of such societies in the same locality, with the consequent division of effort. No good public purpose would be served by construing this limit as a bee-line limit. What possible objection could there be to the existence of two societies ten miles apart in a bee-line through impassable mountains, although one hundred miles apart by road! The statute evidently contemplates twelve miles of farmer's travel, the case being analogous to that of a statute or court rule providing that depositions may be taken of witnesses living more than a certain number of miles from court, which statutes and rules obviously contemplate the distance that the witness would have to travel. See *Jennings* v. *Menaugh*, 118 Fed. 612, and cases cited.

Our Supreme Judicial Court has held that, in the case of a statute which prohibits the granting of a liquor license for

"any building or place on the same street within four hundred feet of any building occupied in whole or in part as a public school," "the four hundred feet between them are to be determined by measuring the nearest point of each house to the other." *Commonwealth* v. *Jones*, 142 Mass. 573, 576.

This decision may, however, be differentiated. The four hundred feet restriction is either purely arbitrary, or at most is based on a general consideration of the concomitants of proximity, including sight, smell, noise, the general effect on a neighborhood, as well as mere accessibility. But no consideration except that of accessibility can well be the reason for a long limit, such as the twelve-mile distance in the statute in question.

It is my opinion, therefore, that the twelve-mile distance in chapter 133 of the Acts of 1909 is to be computed on the way of travel from one point to the other.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Justice of the Peace — Notary Public.

An act providing that "all members of the Massachusetts bar are hereby made justices of the peace and notaries public" would be unconstitutional.

JAN. 31, 1914.

To the Committee on Legal Affairs.

GENTLEMEN: — You have requested my opinion as to whether House Bill No. 515, if enacted, would be constitutional. This bill is in the following terms: —

SECTION 1. All members of the Massachusetts bar are hereby made justices of the peace and notaries public, with all the privileges, powers and duties belonging to said offices.

SECTION 2. A certificate from the clerk of the supreme court, who shall keep a record of such members, shall be proof that the person mentioned therein is such a member and a justice of the peace and notary public.

SECTION 3. This act shall take effect upon its passage.

"By the Constitution of the Commonwealth the office of justice of the peace is a judicial office." *Opinion of the Justices*, 107 Mass. 604.

Article IX of section I of chapter II of part the second of the Constitution provides, in part, that —

All judicial officers . . . shall be nominated and appointed by the governor, by and with the advice and consent of the council.

Article III of chapter III of part the second of the Constitution provides as follows: —

In order that the people may not suffer from the long continuance in place of any justice of the peace who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and, upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well-being of the commonwealth.

As to the appointment of notaries public, the fourth amendment to the Constitution provides that —

Notaries public shall be appointed by the governor in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the council, upon the address of both houses of the legislature.

In view of the provisions of the Constitution above quoted, I have to advise you that in my opinion this bill, if enacted, would be unconstitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Public Records — Illegitimate Children.

Under R. L., c. 29, § 1, par. 2, it is unlawful for a city or town clerk to use the term "illegitimate" in the record of a birth of a child unless the illegitimacy has been legally determined or admitted by the sworn statement of both the father and mother of the child.

FEB. 2, 1914.

HENRY E. WOODS, Esq., *Commissioner of Public Records.*

DEAR SIR: — You request my opinion in regard to the record of the birth of a child born to an unmarried woman.

The statute dealing with the subject of registration of births, paragraph 2 of section 1 of chapter 29 of the Revised Laws, is as follows: —

In the record of births, the date of the record, the date of birth, the place of birth, the name of the child, the sex and color of the child, the names and places of birth of the parents, including the maiden name of the mother, the occupation of the father, and the residence of the parents. In the record of the birth of an illegitimate child the name of, and other facts relating to, the father shall not be recorded except at the request in writing of both father and mother. The term "illegitimate" shall not be used in the record of a birth unless the illegitimacy has been legally determined, or has been admitted by the sworn statement of both the father and mother.

I note that the town clerk in his letter to you writes: "Now as a matter of fact this child is illegitimate and must be so recorded." I respectfully suggest that you call his attention to the fact that he is forbidden by the statute to use the term "illegitimate" in the record unless the illegitimacy has been legally determined or has been admitted by the sworn statement of both the father and mother. I advise that the town clerk expunge the erroneous record already made, making the expunging a matter of record, and that he then make a record of the birth of the child in accordance with the provisions of the statute.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Civil Service — Sealer of Weights and Measures.

R. L. c. 62, § 18, is not repealed by St. 1909, c. 382, in so far as that section requires annual appointment of sealers and deputy sealers of weights and measures in cities and towns of over ten thousand inhabitants; and although such sealers and their deputies are protected by civil service laws from being lowered in rank or compensation or removal from office, the term of their office is not extended.

FEB. 5, 1914.

THURE HANSON, Esq., *Commissioner of Weights and Measures.*

DEAR SIR: — You request my opinion upon the following questions, to wit: —

1. Does section 2 of chapter 382 of the Acts of the year 1909 have the effect of repealing section 18 of chapter 62 of the Revised Laws in so far as that section requires annual appointment of sealers and deputy sealers of weights and measures in cities and towns of over ten thousand inhabitants, who are included in the classified civil service by the provisions of said chapter 382 of the Acts of 1909?

2. Are sealers and deputy sealers in cities and towns of over ten thousand inhabitants protected by existing laws in reference to civil service, so that they shall be retained in office during good behavior, regardless of the change of municipal administration?

Chapter 382 of the Acts of 1909 is as follows: —

Section 1. The civil service commissioners may prepare rules, which shall take effect when approved by the governor and council in the manner provided by law, for including within the classified civil service all principal or assistant sealers of weights and measures holding office by appointment under any city or any town of over ten thousand inhabitants, whether such officers are heads of principal departments or not, and also for including within the said service the inspectors of weights and measures of the commonwealth.

Section 2. All acts and parts of acts inconsistent herewith are hereby repealed.

Section 18 of chapter 62 of the Revised Laws, to which you refer, provides as follows: —

The mayor and aldermen of cities and the selectmen of towns shall annually, in March or April, appoint one or more sealers of weights and measures, or one sealer and one or more deputy sealers to act under the direction of the sealer, and they may also appoint gaugers of liquid measures; and may at any time remove such sealers, deputy sealers and gaugers, and appoint others in their places.

Section 18 not being expressly repealed by chapter 382 of the Acts of 1909 in the particulars to which you refer, the question arises as to whether it has been repealed by other legislation, and as to whether it was repealed by that chapter by implication.

Looking to other legislation, we find that the Legislature of 1904, by chapter 314 of the acts of that year, enacted that —

Every person holding office or employment in the public service of the Commonwealth or in any county, city or town thereof, classified under the civil service rules of the Commonwealth, shall hold such office or employment and shall not be removed therefrom, lowered in rank or compensation, or suspended, or, without his consent, transferred from such office or employment to any other except for just cause and for reasons specifically given in writing.

After the passage of this act the cases of *Smith* v. *Mayor of Haverhill,* 187 Mass. 323, and of *Lahar* v. *Eldridge,* 190 Mass. 504, were passed upon by the Supreme Court, and it

was held that this statute did not extend the term of an officer appointed for a specified number of years, but related to the removal or the lowering in rank or compensation, or suspension or transfer of such an officer within the term for which he had been appointed. In the first-mentioned case the court said: —

> Any other construction would enlarge an appointment for a term of years into a life tenure, provided it was a classified office under the civil service rules.

This ruling left police officers, in many cities in the Commonwealth, to be appointed annually or for some other stated term. To remedy this condition of affairs as to police officers chapter 210 of the Acts of 1906 was enacted, providing in substance that police officers shall hold office during good behavior; but the operation of that act is limited to police officers. No similar legislation has been enacted in regard to sealers of weights and measures and their assistants or deputies or in regard to inspectors.

By section 1 of chapter 624 of the Acts of 1911 it is provided that —

> Every person now holding or hereafter appointed to an office classified under the civil service rules of the commonwealth, . . . whether appointed for a definite or stated term, or otherwise, who is removed therefrom, lowered in rank or compensation, or suspended, or, without his consent, transferred from such office or employment to any other, may . . . bring a petition in the police, district or municipal court, etc.

This statute clearly recognizes the fact that appointments in the classified civil service may be made for a definite or stated term.

Coming now to the question as to whether section 18 of chapter 62 of the Revised Laws was repealed by chapter 382 of the Acts of 1909 by implication, we find that chapter 382 makes no provision whatever as to the time when or the term for which appointments shall be made. It is clear that the provisions of section 18 of chapter 62 of the Revised Laws, to the effect that "the mayor and aldermen of cities and the selectmen of towns shall annually, in March or April, appoint one or more sealers of weights and measures," etc., are not inconsistent with the provisions of chapter 382 of the Acts of 1909, and therefore remain in force. I am of the opinion that

section 2 of chapter 382 of the Acts of 1909 does not have the effect of repealing section 18 of chapter 62 of the Revised Laws in so far as that section requires annual appointment of sealers and deputy sealers of weights and measures in cities and towns of over ten thousand inhabitants, who are included in the classified civil service by the provisions of said chapter 382 of the Acts of 1909.

In reply to your second question I have to say that in my opinion sealers of weights and measures and their deputies in cities of over ten thousand inhabitants are protected by existing civil service laws as to being lowered in rank or compensation or removed from office during the term for which they have been appointed, but, as I have already indicated, the term of their office is not, in my opinion, extended by reason of the provisions of chapter 382 of the Acts of the year 1909.

Yours respectfully,
THOMAS J. BOYNTON, *Attorney-General.*

Corporations — Contracts — Typewritten Signature — Tests of Samples.

A typewritten signature of a corporation by a duly authorized agent to a proposal for a contract is valid.

In case of doubt in the construction of a contract, reference may be had to the specifications as an aid in ascertaining the intention of the parties.

Where a contract for the sale of coal of a certain grade provides that samples "will be taken until the total quantity amounts to about 1,000 pounds and shall represent not more than 500 tons of coal," and the samples are thus taken on deliveries of any part of 500 tons, if the coal thus tested is below the standard, penalties may be exacted as the contract provides.

Where penalties are exacted under a contract for the sale of coal, of 1 per cent. in price for every 1 per cent. below the Thermal Unit analysis specified, the per cent. (including fractions) of price decrease as exactly equals the per cent. of deficiency, must be calculated.

FEB. 6, 1914.

E. V. SCRIBNER, M.D., *Superintendent, Worcester State Hospital.*

DEAR SIR: — You have requested my advice upon certain questions that have arisen in regard to a contract made and entered into on the twenty-eighth day of May, 1913, by the Commonwealth of Massachusetts, acting by the trustees of

your institution, party of the first part, and the People's Coal Company of Worcester, party of the second part, in regard to the purchase of a quantity of coal by the Commonwealth from the People's Coal Company, and for the sale and delivery of said coal to the Commonwealth by said company.

You ask first: "Is this proposal, having only typewritten signatures, legal?"

Generally speaking, the validity of a signature depends not upon the instrument but upon the intention with which it was made. If the intention of the signer is to make a contract or a proposal for a contract a typewritten signature may be valid and binding. In those cases in which the signature is made by an agent, and this is necessarily the case whenever a corporate signature is required. the question always arises as to the authority of the agent to make the signature. I assume that in this case the person signing the proposal was duly authorized to do so by the People's Coal Company. with the intent to make a valid signature to the proposal, and therefore that the signature is valid.

Your second question is: "Does the fact that the clause 'Data to establish a basis for payment,' as named on said proposal, was not incorporated in the contract, eliminate from consideration the figures therein named, or is said proposal a part and parcel of said contract?"

While we must look to the contract for a determination of the rights of the parties to it, still, in case of doubt as to its construction, reference may be had to the specifications as an aid in interpreting the contract and in ascertaining the intention of the parties. Applying this principle to the case in hand we find in the typewritten contract, under the head of "Price," on page 3, the following: —

(*a*) Should the British Thermal Units be less by more than two per cent. (2%) than those specified in the analysis, the price shall be decreased one per cent. (1%) for every one per cent. (1%) they fall below the said B. T. U. after allowing the said two per cent. (2%).

Here the analysis is distinctly referred to, yet there is no analysis shown in the contract, and the only analysis known to have been considered between the parties is the one set out in the specifications, to which we have to resort to ascertain what the analysis referred to is. Referring to the specifications, we find on page 3, under the head "Proximate Analysis," the following: —

The following is the approximate analysis of the coal it is proposed to furnish: —

Moisture,	.90
Volatile matter,	20.10
Fixed carbon,	73.14
Ash,	5.86
B. T. U.,	14,961
Sulphur,	1.25
Temperature at which ash fuses,	2700

This analysis, clearly referred to in the contract, and found in the specifications, undoubtedly affords the proximate standard of the coal to be furnished to your institution by the People's Coal Company, and indicates that 14,900 B. T. U. was adopted as the standard from which percentages were to be computed. I note your statement that the People's Coal Company contends that 14,600 B. T. U. is the figure from which the percentage should be figured. That this construction is untenable is clearly shown by the specifications, at page 1, under the heading "Causes for Rejection," and by the typewritten contract, the language used in the contract being identical with that used in the specifications, and is as follows: "Coals containing less than 14,600 B. T. U. shall be subject to rejection." This part of the contract evidently means that coal having 14,600 B. T. U. or more may not be rejected but must be accepted, while coal that runs below that standard may at the discretion of the trustees be rejected; in other words, the language last above quoted establishes for the purpose of this contract the line above which coal must be accepted, even though at a reduced price, and below which coal may be actually rejected, and does not and was not intended to fix the basis upon which the percentage for reduction in price is to be computed.

Your third question is: "Under the heading of 'Sampling' are these words: 'Such a sample will be taken until the total quantity amounts to about 1,000 pounds, and shall represent not more than 500 tons of coal.' If the sample amounts to the required number of pounds, may we not penalize, if necessary to exact penalties, on lesser quantities than 500 tons?"

The language of the contract bearing directly upon the point to which your question is addressed is, "Such a sample will be taken until the total quantity amounts to about 1,000 pounds, and shall represent not more than 500 tons of coal."

The only limitation upon the quantity to be tested is that it shall not represent more than 500 tons. I am of the opinion that if the sample amounts to the required number of pounds you may test any quantity of coal delivered up to 500 tons, and if the coal thus tested is found to be below the standard fixed by the contract, may exact such penalties as the contract provides.

I am also requested by H. Louis Stick, M.D., superintendent of the Worcester State Asylum, to advise as to which of the following bases the decreases of price should be computed upon: —

1. One per cent. of price decrease for every 1 per cent. or major fraction thereof of deficiency of B. T. U.
2. One per cent. for every full 1 per cent. of deficiency.
3. Exactly the same per cent., including fractions of price decrease, as there is deficiency.

It is my opinion that such reduction should be computed in accordance with the third suggestion; that is, the rate per cent. of decrease in price should be precisely the same, including fractions of 1 per cent., as the rate per cent. of deficiency in B. T. U., after allowing the 2 per cent. reduction provided for in that part of the contract above quoted.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Civil Service — Age Limit.

Under St. 1908, c. 375, § 1, a person above the age of fifty years is not eligible for appointment as inspector of factories and public buildings.

FEB. 9, 1914.

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

DEAR SIR: — You ask my opinion upon the following question: "Is a man, not a veteran, who is above the age of fifty years and not otherwise disqualified, eligible for appointment as an inspector of factories and public buildings as a member of the inspection department of the District Police if he was placed on the eligible list by the Civil Service Commission before he was above the age of fifty years?"

Section 1 of chapter 375 of the Acts of 1908 provides that —

> A person who is not above the age of fifty years, if otherwise qualified, shall be eligible for appointment as an inspector of factories and public buildings, as a member of the inspection department of the district police.

This statute is still in force and does not relate to the time a person passes a civil service examination nor to the time of going on the eligible list, but to the age of the person at the time of appointment.

I am of the opinion that this statute makes persons above the age of fifty years ineligible for appointment to the position of inspector of factories and public buildings, and that the rule is not affected by the date of the examination for appointment.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Bureau of Statistics — Cities and Towns — Debt Limit — Emergency Appropriations.

Under St. 1912, c. 75, § 1, it is the duty of the director of the Bureau of Statistics to determine whether certain appropriations of cities or towns are emergency appropriations within the provisions of St. 1913, c. 719, § 5, cl. 15.

FEB. 11, 1914.

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

DEAR SIR: — The town of Chelmsford having voted "that the town borrow the sum of $1,500 on a promissory note for that amount to be signed in its name and behalf by the town treasurer, payable in three installments of $500 each in one, two and three years from date thereof, with interest at a rate not exceeding 5 per cent. per annum, payable semiannually, such note to be countersigned by the selectmen, and the proceeds used to pay for the purchase of fire hose and equipment of same for the Chelmsford fire department, to be used by the town for fire purposes, and that the ownership will be and remain in the name of the town of Chelmsford, and that said money is to be expended for the town by a committee of three, consisting of the present chief of the Chelmsford Center fire department, one member of the Chelmsford Center water board, to be named by said board, and one

other to be named by said chief and said member of the water board," and the treasurer of that town having forwarded to you for certification a promissory note of the town drawn in conformity to this vote, you ask my opinion as to whether a loan of this character may properly be construed as coming within the authority of clause 15 of section 5 of chapter 719 of the Acts of 1913.

So far as it relates to your question, the provision of the section referred to is that —

> Cities and towns may incur debt, within the limit of indebtedness prescribed in this act, . . .
>
> For extreme emergency appropriations involving the health or safety of the people or their property.

I do not find that the word "emergency" has been given any definition in law that takes it out of its ordinary meaning. The word is defined by Webster as "any event or occasional combination of circumstances which calls for immediate action to remedy pressing necessity." The word is further defined as "a sudden or unexpected happening; an unforeseen occurrence or condition." (Century Dictionary.) These definitions are as useful as any I have found in the books. The words used in statutes are usually to be understood in their ordinary signification.

Your authority in the matter of certifying notes of municipalities appears to be set forth in section 1 of chapter 45, Acts of 1912, as follows: —

> That said director [referring to the director of the Bureau of Statistics shall not certify any note as provided for in this act if it shall appear that the provisions of law relating to municipal indebtedness in the making of said note have not been properly complied with.

Whether a case of extreme emergency exists in any case like that now under consideration is a question of fact for the director of the Bureau of Statistics to determine. It is a matter for investigation. The statutes have, in my opinion, placed upon your office the authority to decide, and the responsibility of deciding, the question.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Liberty of the Press — Drunkenness.

A law which forbids the publication of the name of a person arrested for drunkenness would be unconstitutional.

FEB. 11, 1914.

Committee on Legal Affairs.

GENTLEMEN: — You have asked my opinion whether House Bill No. 665 "would interfere with the right of the press to free publication."

Section 1, which contains the gist of the proposed legislation, is as follows: —

> No person shall print or publish, or cause or permit to be printed or published, the name of any person arrested, arraigned, or tried for or convicted of drunkenness, unless such person shall be arrested, arraigned or tried for or convicted of some other offense in connection with the offense of drunkenness.

The provision of our Constitution relative to freedom of the press is as follows: —

> The liberty of the press is essential to the security of freedom in a state; it ought not, therefore, to be restrained in this commonwealth. (Bill of Rights, Art. XVI.)

Our Supreme Judicial Court has said: —

> The obvious intent of this provision was to prevent the enactment of license laws, or other direct restraints upon publication, leaving individuals at liberty to print, without the previous permission of any officer of government, subject to responsibility for the matter printed. *Commonwealth* v. *Kneeland*, 20 Pick. 206, 219.

In other words, there can be no censorship of news, even by general laws. The intention of that article of the Bill of Rights was to preserve from interference by legislation or injunction in the future, the common-law rights of the press as they then existed. Cooley, Constitutional Limitations, 6th ed., pages 512, 513.

There is a fundamental principle of common law that the publication of legal proceedings is privileged.

> "Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of courts of justice

should be universally known. The general advantage to the country in having these proceedings made public, more than counterbalances the inconveniences to the private persons whose conduct may be the subject of such proceedings." . . .

The chief advantage to the country which we can discern, and that which we understand to be intended by the foregoing passage, is the security which publicity gives for the proper administration of justice. . . . It is desirable that the trial of causes should take place under the public eye, . . . because it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed. *Cowley* v. *Pulsifer*, 137 Mass. 392, 394.

This common-law right to publish legal proceedings is protected by the constitutional provision above quoted.

But under the police power, the Legislature may pass "statutes required to protect the public morals or general welfare of the people" without infringing on this right. 8 Cyc. 892.

However, it is difficult to see how the bill in question would fall within that class of statutes. It is therefore my opinion that the proposed legislation, if enacted, would be unconstitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Labor — Twenty-four Hours' Rest in Seven Days.

It is unlawful to permit the taking of inventories by employees during the twenty-four hour rest period required to be given to employees in seven consecutive days, under the provisions of St. 1913, c. 619.

FEB. 11, 1914.

ROBERT N. TURNER, Esq., *Commissioner of Labor.*

DEAR SIR: — If I understand your letter of Feb. 6, 1914, you desire an opinion from this office upon the following question: —

Are employers of labor in manufacturing establishments required by law to give to persons in their employ who work regularly six days in a week twenty-four consecutive hours of rest, or may employees who have worked regularly the six working days of the week be required to assist in taking an inventory on Sunday?

The law in regard to this question is contained in chapter 619 of the Acts of 1913, which provides as follows: —

Section 1. Every employer of labor, whether a person, partnership or corporation, engaged in carrying on any manufacturing or mercantile establishment in this commonwealth as hereinafter defined, shall allow every person, except those specified in section two, employed in such manufacturing or mercantile establishment at least twenty-four consecutive hours of rest in every seven consecutive days. No employer shall operate any such manufacturing or mercantile establishment on Sunday, unless he shall have complied with the provisions of section three; but this act shall not authorize any work on Sunday not now authorized by law.

Section 2. This act shall not apply to (*a*) janitors; (*b*) watchmen; (*c*) employees whose duties include no work on Sunday other than (1) setting sponges in bakeries; (2) caring for live animals; (3) maintaining fires; (4) caring for machinery; (5) employees engaged in the preparation, printing, publication, sale or delivery of newspapers; (6) any labor called for by an emergency that could not reasonably have been anticipated.

Your question is confined to manufacturing establishments. The term "manufacturing establishments" is defined by St. 1909, c. 514, § 17, to 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."

By section 5 of chapter 619 of the Acts of 1913 it is provided that —

In this act "manufacturing establishments" and "mercantile establishments" shall have the meaning defined in section seventeen of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, except that neither of said terms shall be held to include establishments used for the manufacture or distribution of gas, electricity, milk or water, hotels, restaurants, drug stores, livery stables, or garages.

I assume that in using the term "manufacturing establishments" you refer to such establishments as are within this definition and are not within the exceptions above mentioned.

The language of the statute is too clear to admit of a possible misunderstanding: "every employer of labor, . . . engaged in carrying on any manufacturing or mercantile estab-

lishment in this commonwealth as hereinafter defined, shall allow every person, except those specified in section two, employed in such manufacturing or mercantile establishment at least twenty-four consecutive hours of rest in every seven consecutive days." This is the language of the statute. I do not know how your question can be more clearly answered. The language is not ambiguous.

No one regards the work of taking an inventory as rest, nor can the taking of an inventory in the ordinary course of business be regarded as "labor called for by an emergency that could not reasonably have been anticipated," within the provisions of section 2 of chapter 619, above quoted.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Newspapers.

A law to prohibit contracts by publishers appointing local sole agents for the sale of periodicals would be unconstitutional.

FEB. 13, 1914.

Committee on Legal Affairs.

GENTLEMEN: — Your inquiry of February 12 received relative to the constitutionality of House Bill No. 229, entitled "An Act relative to the sale of newspapers and periodicals." The purpose of this act appears to be to prohibit contracts by publishers appointing local sole agents for the sale of periodicals.

The Constitution of Massachusetts enumerates among the natural, inalienable rights of men the right "of acquiring, possessing, and protecting property." Bill of Rights, Art. I.

The Constitution of the United States protects "life, liberty and property." U. S. Const. Amendments, Arts. V and XIV.

These provisions of State and Federal Constitutions protect freedom of contract. As our Supreme Judicial Court has expressed it, "the right to acquire, possess and protect property includes the right to make reasonable contracts." *Commonwealth* v. *Perry*, 155 Mass. 117, 121.

These rights, however, are subject to limitations, arising under the proper exercise of the police power. . . . The nature of the police power and its extent, as applied to conceivable cases, cannot easily be stated with exactness. It includes the right to legislate in the interest

of the public health, the public safety and the public morals. . . . If we are to include in the definition, as many judges have done, the right to legislate for the public welfare, this term should be defined with some strictness, so as not to include everything that might be enacted on grounds of mere expediency. *Commonwealth* v. *Strauss*, 191 Mass. 545, 550.

It is difficult to see how the proposed bill falls within the police power. The practice which it prohibits is not contrary to public policy as laid down in the past by the primary tribunal of public policy, to wit, the Legislature. The laws prohibiting contracts which bind a buyer to buy exclusively of the seller contain provisos expressly excepting contracts of the sort aimed at in the proposed bill. See the following quotations: —

> But the provisions of this section shall not prohibit the appointment of agents or sole agents for the sale of, nor the making of contracts for the exclusive sale of, goods, wares or merchandise. (R. L., c. 56, § 1.)
>
> *Provided*, that nothing in this act shall be construed to prohibit the appointment of agents or sole agents to sell or lease machinery, tools, implements or appliances. (St. 1907, c. 469, § 1.)

The Supreme Judicial Court, in holding one of these statutes constitutional, laid stress on the fact that the statute does not prohibit the appointment of sole agents, and that it allows contracts for the exclusive sale of goods. *Commonwealth* v. *Strauss*, *supra*, p. 551.

There is nothing in the nature of periodicals to distinguish them from other goods with respect to the practice aimed at in the proposed bill. A general law prohibiting the appointment of local sole agents would tend to hamper trade without producing any appreciable general benefit to the citizens of the Commonwealth.

It is my opinion that the proposed bill, if enacted, would be unconstitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Labor — Eight-hour Day — Contract Work.

On public work for the State, performed outside the Commonwealth, citizens of this State must be given the preference.
The eight-hour law has no extra-territorial effect.

Feb. 13, 1914.

Hon. P. H. Corr, *Chairman, Board of Panama-Pacific Managers for Massachusetts.*

Dear Sir: — Your Board requests my opinion upon the following questions, namely: —

1. Is there anything in the Massachusetts laws requiring us to employ citizens or residents of Massachusetts on contract work of this kind outside of the State?
2. Is there anything in the Massachusetts laws which requires that men employed on this kind of work shall not labor more than a certain number of hours a day?

Taking up your first question, I find that section 21 of chapter 514 of the Acts of 1909 is as follows: —

In the employment of mechanics and laborers in the construction of public works by the commonwealth, or by a county, city or town, or by persons contracting therewith, preference shall be given to citizens of the commonwealth, and, if they cannot be obtained in sufficient numbers, then to citizens of the United States; and every contract for such works shall contain a provision to this effect. Any contractor who knowingly and wilfully violates the provisions of this section shall be punished by a fine of not more than one hundred dollars for each offence.

This statute clearly requires that in the construction of public works by the Commonwealth preference by given (1) to citizens of this Commonwealth, and (2) to citizens of the United States. While it is probable that in the enactment of this statute the Legislature had in contemplation only public works within the Commonwealth, still, it seems to me that a building of the kind to be erected by your Board in San Francisco may also be considered a public work constructed by the Commonwealth, and I am of the opinion that a contract made by your Board for the construction of such building should contain the clause provided for in the section of the statute above quoted. It should not be understood, however, that such a provision in the contract will obligate

the contractor to transport men from Massachusetts to San Francisco, but that it will require the contractor, whenever a citizen of this Commonwealth desires to work at the same terms upon which other men are employed by the contractor in the kind of work applied for, to give such citizen the preference; that is, generally speaking, that other things being equal, a citizen of this Commonwealth must be given work in preference to anybody else, and failing to find a sufficient number of citizens of Massachusetts to do the work in hand, the contractor must give a like preference to citizens of the United States.

Taking up now your second question, I find that sections 1 and 2 of chapter 494 of the Acts of 1911, being the eight-hour law of this Commonwealth, provide as follows: —

Section 1. The service of all laborers, workmen and mechanics, now or hereafter employed by the commonwealth or by any county therein or by any city or town which has accepted the provisions of section twenty of chapter one hundred and six of the Revised Laws, or of section forty-two of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, or by any contractor or sub-contractor for or upon any public works of the commonwealth or of any county therein or of any such city or town, is hereby restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the commonwealth or of any county therein, or of any such city or town, or for any such contractor or sub-contractor or other person whose duty it shall be to employ, direct or control the service of such laborers, workmen or mechanics to require or permit any such laborer, workman or mechanic to work more than eight hours in any one calendar day, except in cases of extraordinary emergency. Danger to property, life, public safety or public health only shall be considered cases of extraordinary emergency within the meaning of this section. In cases where a Saturday half holiday is given the hours of labor upon the other working days of the week may be increased sufficiently to make a total of forty-eight hours for the week's work. Threat of loss of employment or to obstruct or prevent the obtaining of employment or to refrain from employing in the future shall each be considered to be "requiring" within the meaning of this section. Engineers shall be regarded as mechanics within the meaning of this act.

Section 2. Every contract, excluding contracts for the purchase of material or supplies, to which the commonwealth or any county therein or any city or town which has accepted the provisions of section twenty of chapter one hundred and six of the Revised Laws, is a party which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no laborer, workman or mechanic

working within this commonwealth, in the employ of the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by the contractor shall be requested or required to work more than eight hours in any one calendar day, and every such contract which does not contain this stipulation shall be null and void.

The laws of a State have no extra-territorial effect. The labor laws of California will govern as to the hours of labor that may be required of men in that State. The Legislature evidently considered this phase of the question in enacting sections 1 and 2 of chapter 494 of the Acts of 1911 above quoted. Section 2 expressly provides that "every contract, excluding contracts for the purchase of material or supplies, to which the commonwealth . . . is a party which may involve the employment of laborers, workmen or mechanics shall contain a stipulation that no laborer, workman or mechanic working within this commonwealth shall be required," etc., clearly limiting the provisions of this section to work done or to be done in this Commonwealth. If your Board contracts to have any work done in this Commonwealth, of course all the statutes above quoted will certainly apply to all such contracts.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Board of Registration in Pharmacy — Registered Pharmacists — Hospitals.

Under St. 1913, c. 705, the Board of Registration in Pharmacy should pass on each application for a permit to do drug business, and may not adopt a set of rules to govern generally.

Hospitals and dispensaries need not have registered pharmacists when in charge of competent physicians.

FEB. 14, 1914.

Mr. ALBERT J. BRUNELLE, *Secretary, Board of Registration in Pharmacy.*

DEAR SIR: — You request my opinion upon two questions: —

1. Whether, under chapter 705 of the Acts of 1913, the Board of Registration in Pharmacy has the right to adopt rules specifying what kind of persons, firms and corporations they may deem qualified to conduct a drug store; and if they do not deem a person, firm or cor-

poration qualified to conduct a drug store can the Board refuse the permit designated in said act?

2. Does chapter 76 of the Revised Laws make it necessary for hospitals and dispensaries to have registered pharmacists in charge of their drug dispensing departments?

Taking up your second question first, I have to say that in my opinion chapter 76 of the Revised Laws does not make it necessary for hospitals and dispensaries to have registered pharmacists in charge of their drug-dispensing departments. The purpose of the law was to place the dispensing of drugs and medicines in the hands of persons skilled in that kind of business, so that it might at all times be intelligently and safely done. In dispensaries and hospitals this part of the business is always in the hands of a competent physician and the need of a registered pharmacist does not exist.

Referring now to your first question, section 3 of chapter 705 of the Acts of 1913 reads as follows: —

> The board of registration in pharmacy shall, upon application, issue a permit to keep open a store for the transaction of the retail drug business to such persons, firms and corporations as the board may deem qualified to conduct such a store. The application for such a permit shall be made in such manner and in such form as the board shall determine. A permit issued as herein provided shall be exposed in a conspicuous place in the store for which the permit is issued and shall expire on the first day of January following the date of its issue. The fee for the permit shall be one dollar.

Section 4 of the same chapter provides that —

> No such permit shall be issued for a corporation to keep open a store for the transaction of the retail drug business, unless it shall appear to the satisfaction of the said board that the management of the drug business in such store is in the hands of a registered pharmacist.

The two sections above quoted place upon the Board of Registration in Pharmacy the duty of passing upon each application for a permit. The statute indicates that the Board may establish rules as to the form and manner in which application for a permit shall be made. As a practical matter it would be very difficult to establish rules which should determine whether an applicant should have a permit or not. It is my opinion that the statute requires the Board to act upon

each application, and does not authorize the Board to make a set of rules to stand in the place of its judgment.

You further ask: "Can the Board refuse the permit designated in said act?" To that I have to say that in my opinion it is the duty of the Board to refuse a permit to all persons, firms or corporations who in the judgment of the Board are not qualified to conduct such a store.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Insurance Commissioner — Insurance Companies — Investments.

The words "funded indebtedness," as used in St. 1907, c. 576, § 37, cl. 3, are not synonymous with "contingent liability," and investments by insurance companies in railroad mortgage bonds are lawful where the capital stock of such railroad corporation equals at least one-third of its funded indebtedness.

FEB. 16, 1914.

Hon. FRANK H. HARDISON, *Insurance Commissioner.*

DEAR SIR: — You request my opinion as to the right of domestic insurance companies to invest in the mortgage bonds of the Michigan Central Railroad Company under conditions which you state as follows: "The last published balance sheet of said railroad showed capital stock of $18,738,000 and funded debt, including debentures and equipment certificates, of $43,316,174. This latter figure, however, does not include $14,000,000 Detroit River Tunnel Company first mortgage bonds, which are guaranteed principal and interest by the Michigan Central Railroad, nor does this amount appear in the balance sheet of the Michigan Central Railroad." You further state that in practical effect these bonds of the Detroit River Tunnel Company are an obligation of the Michigan Central Railroad, since that is the only company that operates the tunnel, and all payments of interest and principal must come eventually from it. I am further informed by your office that the property of the Detroit River Tunnel Company has been leased to the Michigan Central Railroad Company for nine hundred and ninety-nine years. You do not state, however, and I do not know, whether the Detroit River Tunnel Company still keeps up its corporate existence or has surrendered its charter. I assume that this company is still in existence, that it pursues its rights under the lease and

collects and receives its rentals from the Michigan Central Railroad Company, and that it is a real corporate entity.

Clause 3 of section 37 of chapter 576 of the Acts of 1907, quoted in your letter, provides that domestic insurance companies may under certain circumstances invest —

> In the bonds or notes of any railroad or street railway corporation incorporated or located wholly or in part in Massachusetts, or in the mortgage bonds of any railroad corporation located wholly or in part in any state of the United States whose capital stock equals at least one third of its funded indebtedness, which has paid regularly for the five years next preceding the date of such investment all interest charges on said funded indebtedness, and which has paid for such period regularly dividends of at least four per cent per annum upon all its issues of capital stock, or in the mortgage bonds of any railroad, railway or terminal corporation which have been, both as to principal and interest, assumed or guaranteed by any such railroad or railway corporation.

This leads, first, to the inquiry, What is funded indebtedness? The word "funded" has been defined as, —

> Existing in the form of bonds bearing regular interest; constituting or forming part of the permanent debt of a government or corporation at a fixed rate of interest. (Century Dictionary.)

The term "funded debt," "even in common parlance, is never made use of to describe an ordinary debt growing out of a transaction with one individual and represented by a single instrument. It is essential to the idea of a funded debt, even under the broadest use of the term, that the debt should be divided into three parts or shares, represented by different instruments, so that such parts or shares may be readily transferable." *Ketchum* v. *City of Buffalo*, 14 N. Y. 356.

Taking these definitions of the word "funded" in connection with the word "indebtedness," it becomes evident that funded indebtedness is a very different thing from contingent liability. In the question you submit there appears to be nothing more than a contingent liability of the Michigan Central Railroad Company so far as the bonds of the Detroit River Tunnel Company are concerned; that is, the railroad company will have to pay if the tunnel company fails to meet its obligation. So far as we are informed, the Detroit River Tunnel Company is still in existence, and the rentals

reserved to it in the lease of its property are regularly paid, and may be supposed to be sufficient to provide for the payment of its liabilities. It is my opinion, upon the information at hand, that the bonds of the Detroit River Tunnel Company are not a part of the funded indebtedness of the Michigan Central Railroad Company, and that within the limitations fixed by our statutes insurance companies may invest in the mortgage bonds of the Michigan Central Railroad Company.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

State Board of Health — Local Boards of Health — Inspectors of Slaughtering.

A local board of health cannot lawfully nominate one of its own members as inspector of slaughtering, and the State Board of Health is within its rights in refusing to approve a nomination so made.

FEB. 17, 1914.

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

DEAR SIR: — You ask my opinion upon certain facts which in your communication to this department under date of Oct. 28, 1911, you stated as follows: —

In accordance with chapters 297 and 534 of the Acts of 1911, the board of health of a certain town has nominated as inspector of slaughtering one of its own members. In other words, two members of the local board of health have voted for the third to fill this office as inspector of slaughtering. In this position, the nominee has been a party to his own appointment to a position in which he will have to pass upon the character of his own work and upon the amount of the compensation which he is to derive from it.

The question at issue is, can such an appointment be considered legal by this Board?

The statute conferring authority upon your Board in regard to the approval of nominations of inspectors of slaughtering is to be found in section 2 of chapter 534 of the Acts of 1911, which provides as follows: —

For the purposes of this act inspectors shall be appointed, shall be compensated, and may be removed in accordance with the provisions of law relating to inspectors of animals. The first appointments under this act shall be made within thirty days after its passage.

By this statute the duties of the State Board of Health in respect to inspectors of slaughtering are the same that were imposed by law upon the chief of the Cattle Bureau of the State Board of Agriculture in respect to inspectors of animals.

The duties of the chief of the Cattle Bureau in this respect are set forth in chapter 143 of the Acts of 1911, section 1 of which reads as follows: —

> The mayor and aldermen in cities, except Boston, and the selectmen in towns shall annually, in March, nominate one or more inspectors of animals, and before the first day of April shall send to the chief of the cattle bureau of the state board of agriculture the name, address and occupation of each nominee. Such nominee shall not be appointed until approved by the chief of the cattle bureau of the state board of agriculture. The aforesaid officials of cities and towns may remove any inspector, and shall thereupon immediately nominate another in his place and send notice thereof as prescribed above.

The statute last quoted clearly provided that no nominee could be appointed an inspector of animals until approved by the chief of the Cattle Bureau, and under the provisions of the statute above quoted I am of the opinion that a nominee for the position of inspector of slaughtering cannot be appointed until he is approved by your Board. I am aware that since the enactment of the statute last above quoted the office of chief of the Cattle Bureau has been abolished and another office created to which the duties of the chief of the Cattle Bureau and the Board of Cattle Commissioners have been transferred, but this last-mentioned change in the statute cannot make any difference as to your authority. As the law now stands I am of the opinion that the question of approving or refusing to approve the appointment of an inspector of slaughtering is one that rests entirely within the sound discretion and judgment of your Board.

You state, however, that the claim is made that under the statute "the only duty which the State Board of Health has to perform in relation to the approval or disapproval of the appointment of local inspectors of slaughtering is to pass upon their qualifications to perform the duties of that office; that when the State Board of Health is satisfied that any nominee is by training and experience qualified to fulfil the duties of the office it has exhausted its power in the matter, and has no right to question the legality of the act of the local board of health in nominating one of its own members." I do not

think the duties of the State Board of Health in respect to this class of appointments are confined within such narrow limits; but if it is so, the element of self-interest in the appointee goes directly to the question of his qualification to properly discharge the duties of the position. In the case of *Gaw* v. *Ashley*, 195 Mass. 173, where the question was as to whether under a city ordinance the board of health of the city of New Bedford could lawfully and properly elect one of themselves to the office of quarantine physician, the Supreme Court said: —

> We are of opinion that they could not. The ordinance contemplates the existence of a relation between the physician and the board which requires that he shall not be a member of it. He is to make frequent reports to the board, and from time to time is to make recommendations. His charges to the sick are to be only such as the board approves. His personal interest in these charges is inconsistent with the proper performance of his duty, as a member of the board of health, to fix their amount, in the interest of the public and for the protection of his patients.

There is very ancient and high authority for the assertion that a man cannot serve two masters.

It is my opinion that the action of the State Board of Health in refusing to approve nominations for the office of inspector of slaughtering, on the ground that the nominees were members of the local board of health, was legally correct.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Bureau of Statistics — Certification of Town Notes.

Under St. 1913, c. 719, the director of the Bureau of Statistics may certify notes of a fire district where the district has complied with the spirit and purpose of the statute, even though statutory language was not followed in the vote providing for such notes.

FEB. 19, 1914.

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

DEAR SIR: — You request an opinion from this department upon the following question: Ought the director of the Bureau of Statistics to certify under the provisions of chapter 719 of the Acts of 1913 a promissory note of Greenfield Fire District No. 1, issued in accordance with an article in the

warrant for a meeting of the voters of said district, and in accordance with a vote of the meeting held under and by virtue of said warrant, but which does not expressly provide that the debt incurred "shall be made payable from the revenue of the financial year in which the same is to be incurred"?

You state that the article in the warrant and the vote taken thereon are as follows: —

Article 4. — To see if the district will vote to borrow any sum or sums of money appropriated under the foregoing articles.

Voted, That the district borrow the sum of five thousand dollars ($5,000), giving a note of the district in payment therefor, signed by the treasurer and countersigned by the prudential committee, and payable November 1, 1914, with interest not to exceed 4½ per cent per annum.

The statute, section 3 of chapter 719 of the Acts of 1913, provides for temporary loans in anticipation of the revenue of the financial year in which the debt is incurred and expressly made payable therefrom by such vote.

I gather from your letter that the note submitted for certification is drawn in accordance with the vote above set forth; that the debt represented by the note is incurred for the only purpose for which the fire district is authorized to incur debt; and that the only possible way in which it can be paid at maturity is from the revenue of the current year. You further state that "the note seems to all intents and purposes to be a note issued in anticipation of taxes."

The vote did not follow the precise language of the statute, and the real question is whether this departure from the exact language of the statute places upon the director of the Bureau of Statistics the duty of refusing to certify the note issued in pursuance of it.

In this instance, although the district did not follow the exact words of the statute, it did follow its spirit and purpose. A very ancient writer has said: —

It is not the words of the law but the internal sense of it that makes the law, and our law, like all others, consists of two parts, namely, of body and soul. The letter of the law is the body of the same, and the sense and reason of the law are the soul of the law. . . . And it often happens that when you know the letter you know not the sense, for sometimes the sense is more confined and contracted than the letter, and sometimes it is more large and extensive. (2 Plowden, 445.)

The intention of the Legislature was to compel the municipal corporations of the State to adopt the policy of paying as they go, and to restrain them from incurring any debt except for certain specified purposes.

Greenfield Fire District No. 1 has in this instance complied with the spirit and purpose of the statute. To refuse to certify the note in question would put the district to the trouble and expense of holding another meeting to pass a vote slightly different in words from the vote it has already passed but of exactly the same purpose and intention.

In such cases as this the rule applies that the spirit and reason of the law will prevail over its letter. It is my opinion that you may properly and lawfully certify the note in question.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Civil Service — Fire Department — Promotion.

Under St. 1913, c. 487, a call fireman is eligible to appointment as a member of the permanent force of firemen, under certain conditions, without being subject to civil service rules, but such call fireman cannot legally be promoted to the office of captain of such permanent force.

FEB. 19, 1914.

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

DEAR SIR: — You ask my opinion upon the following question: May a call fireman be appointed captain in a permanent force of firemen, under the provisions of chapter 487 of the Acts of 1913?

Section 1 of that act provides as follows: —

Cities and towns which have a call or part call fire department which now is or may hereafter be subject to the civil service rules may, on the recommendation of the board of engineers of the fire department or of the officer or board having charge of the fire department, appoint as members of the permanent force without civil service examination any persons who have served as call men or part call men for five or more successive years: *provided*, that such persons are certified by the city or town physician to be competent physically for the duty. If there is no city or town physician, then the said certification shall be made by a physician designated for the purpose by the board of engineers or other authority, as aforesaid.

Prior to the enactment of this statute promotion or transfer from the call to the permanent fire force of a city or town could be made only after an open competitive examination (Civil Service Rule No. 38, cl. 2), and the promotion, if granted, was to the lowest grade of the permanent force. By section 1 of chapter 487 of the Acts of 1913, above quoted, five or more successive years of service as a call fireman, together with the certificate of the city or town physician or of such other physician as may be designated for the purpose by the board of engineers or other authority, is substituted for the competitive examination provided in that part of Civil Service Rule No. 38 above referred to.

While the question is not entirely free from difficulty, it is my opinion that the Legislature did not intend to make a call fireman eligible to appointment as captain in the permanent force, but, subject to the conditions specified in the statute, to appointment as a member of the permanent firemen force; and I am also of the opinion that under the provisions of the statute referred to a call fireman cannot legally be promoted directly to the office of captain in the permanent fire-fighting force of a city or town.

It is perhaps needless to say that after a call fireman becomes a member of the permanent force he is eligible for promotion like any other member of that force, in accordance with the provisions of the Civil Service Rules.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Commissioners on Fisheries and Game — City and Town Clerks — Custody of Registration Books.

Books of hunters' certificates of registration should be retained by the respective city and town clerks, and the Commissioners on Fisheries and Game have no authority to demand their return.

FEB. 24, 1914.

Dr. GEORGE W. FIELD, *Chairman, Commissioners on Fisheries and Game.*

DEAR SIR: — You have requested my opinion upon the following question: Have the Commissioners on Fisheries and Game authority, under chapter 614 of the Acts of 1911, as amended by chapter 379 of the Acts of 1912, to demand the return to them of books of hunters' certificates of regis-

tration furnished by the commissioners to town and city clerks?

Section 9 of chapter 614 of the Acts of 1911 provides as follows: —

> Every city and town clerk shall report all such registration in books kept for that purpose, which books shall be open to public inspection during the usual office hours of such clerk, and subject to audit and inspection by the commissioners on fisheries and game, by the state auditor, or by their agents, at all times; and said clerk shall, on the first Monday of every month, pay to the board of commissioners on fisheries and game all money received by him for the said registrations, except the recording fees which he is entitled to retain, as provided in section six, together with a receipted bill for fees due and received in accordance with section six of this act, issued during the month preceding. All remittances shall be made by certified check, United States post office money order, express money order or lawful money of the United States. The board of commissioners on fisheries and game shall, in accordance with the provisions of section fifty-six of chapter six of the Revised Laws, pay to the treasurer and receiver general all money received by them for the said registrations issued during the previous month, and shall furnish him with a list of the number and kind of registrations recorded by each city and town clerk during the previous month.

This section makes provision that the books in question shall be subject "to public inspection during the usual hours of such clerk," and subject to audit and inspection by the Commissioners on Fisheries and Game, by the State Auditor or by their agents, at all times, but does not provide for the return of the books in question to your commission. The statute apparently intends that the books shall be retained by the respective town and city clerks, in whose offices they are to be open to audit by the proper authorities and to public inspection.

I am of the opinion that the Commissioners on Fisheries and Game have not authority to demand the return of books of hunters' certificates furnished by them to town and city clerks.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Civil Service — Planning Board of the City of Boston.

St. 1913, c. 494, creating planning boards in cities and providing for appointments to such boards by the mayors, subject to approval by the council, does not repeal St. 1909, c. 486, § 9, requiring action by the Civil Service Commission on Boston appointments.

Feb. 24, 1914.

Warren P. Dudley, Esq., *Secretary, Civil Service Commission.*

Dear Sir: — You ask my opinion upon the following question: "As the law now stands are appointments by the mayor of Boston to the planning board of that city to be confirmed by the city council or approved by the Civil Service Commission?" The question is whether chapter 494 of the Acts of 1913 repealed the provisions of sections 9 and 10 of chapter 486 of the Acts of 1909 in so far as they relate to appointments to a city planning board of the city of Boston.

Section 9 of chapter 486 of the Acts of 1909, being the charter of the city of Boston, is as follows: —

All heads of departments and members of municipal boards, including the board of street commissioners, as their present terms of office expire (but excluding the school committee and those officials by law appointed by the governor), shall be appointed by the mayor without confirmation by the city council. They shall be recognized experts in such work as may devolve upon the incumbents of said offices, or persons specially fitted by education, training or experience to perform the same, and (except the election commissioners, who shall remain subject to the provisions of existing laws) shall be appointed without regard to party affiliation or to residence at the time of appointment except as hereinafter provided.

Section 10 of the same chapter, after making provision for certain forms of certificates of appointment, provides that the certificate (meaning the certificate of appointment above referred to) —

shall be filed with the city clerk, who shall thereupon forward a certified copy to the civil service commission. 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 ap-

pointee, 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.

This section further provides that upon filing of the certificate of approval the appointment shall become operative. Section 10 has been amended by chapter 550 of the Acts of 1912, but not in any way affecting the provisions above quoted.

Chapter 494 of the Acts of 1913 provides that every town having a population of more than ten thousand at the last preceding national or State census, and every city in the Commonwealth, shall create a board to be known as the planning board. It further provides that —

In cities, the said board shall be appointed by the mayor, subject to confirmation by the council, and in cities under a commission form of government, so called, the members of the board shall be appointed by the governing body of the city.

It has been stated as a general rule of law governing such cases as are suggested by your question, that —

When the provisions of a general law, applicable to the entire State, are repugnant to the provisions of a previously enacted special law, applicable in a particular locality only, the passage of such general law does not operate to modify or repeal the special law, either in whole or in part, unless such modification or repeal is provided for by express words, or arises by necessary implication. (Cyc., Vol. 36, p. 1090.)

The point involved was considered by the Supreme Judicial Court of this Commonwealth in the case of *Brown* v. *Lowell*, 8 Met. 172, and the court, speaking by Chief Justice Shaw, said: —

That a subsequent legislative act repeals all prior acts repugnant to it, is a principle which results from the unlimited nature of legislative power. The last expression of the legislative will must be carried into effect, as the law of the land; and if, on its true construction, it is directly repugnant to any prior act, it necessarily annuls it, because both cannot exist together. But, to have this effect, it must appear that the legislative will was so exercised; or, in other words, that it was the intention of the Legislature, that the subsequent act should so operate, notwithstanding any repugnancy to former acts. It may happen that acts of special legislation may be made in regard to a place, growing out of its peculiar wants, condition, and circumstances;

as formerly various acts were passed in relation to the town of Boston. Afterwards, a general act may be passed, having some of the same purposes in view, extending them generally to all the towns of the Commonwealth, with provisions adapted to the condition of all towns. It would be a question depending upon a careful comparison of the two acts, and the objects intended to be accomplished, whether the general act must be deemed an implied repeal of the special prior act. In general, we should think it would require pretty strong terms in the general act, showing that it was intended to supersede the special acts, in order to hold it to be such a repeal.

This language was referred to and quoted with approval in *Copeland* v. *Springfield*, 166 Mass. 498.

In the case last cited the question was whether a provision of the charter of the city of Springfield, conferring authority upon the city to cause sidewalks to be made and repaired and to assess the whole expense upon the abutters, was repealed by the provisions of chapter 444 of the Acts of 1895, to the effect that the board having power to establish sidewalks in any city may construct or complete walks in any street where public convenience requires it and may assess upon abutters not more than one-half of the expense.

The court in that case held that the special provision of the city charter had not been repealed by the later enactment, and cited many authorities.

If the later enactment is evidently intended to supersede all prior acts of the matter in hand, and to comprise in itself the sole and complete system of legislation on that subject, it must, as the last expression of the legislative will, prevail.

Turning now to an examination and comparison of the two statutes in question, we find that the object and purpose of chapter 494 of the Acts of 1913 is to provide that cities and towns shall have a planning board, and that the matter of confirmation of appointments to such boards is a mere detail or adjunct to the general plan; while the object, purpose and intent of sections 9 and 10 of chapter 486 of the Acts of 1909, so far as their purpose can be gathered from their language, was to establish such a system as would insure to the city of Boston expert service from the heads of all city departments and from the members of all municipal boards, and to this end a special system for an examination as to the qualifications of appointees and approval of appointments to those leading positions in the government of the city by the Civil Service Commission was provided for. The purpose, intent and object

that prompted the two enactments in question were so widely different that I cannot believe it to have been the intention of the Legislature of 1913, in the enactment under consideration, to make any change in the method of appointment and confirmation to any municipal board of the city of Boston.

It is my opinion that appointments to the planning board of the city of Boston are within the provisions of sections 9 and 10 of chapter 486 of the Acts of 1909, and that your Board has the same duty and authority as to such appointments that it has in respect to appointments to other municipal boards of that city.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Liquor Law — Licenses rendered void, when — Conviction — Appeal.

The provisions of R. L. c. 75, § 107, rendering a liquor license void upon conviction of the licensee, do not apply while an appeal on conviction in a lower court is pending.

FEB. 25, 1914.

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

DEAR SIR: — You ask my opinion as to whether a license granted under the provisions of section 100 of chapter 75 of the Revised Laws is rendered void by the conviction of the person holding the license in a police or district court of a violation of section 106 of said chapter, an appeal from said conviction having been taken which is still pending.

Section 107 of chapter 75 of the Revised Laws provides as follows: —

> A conviction under the provisions of the preceding section of any person licensed under the provisions of section one hundred shall render his license void, and no new license shall be granted to him for the balance of the term.

The word "conviction," as used in this section, is evidently used as implying a final judgment and sentence of the court upon a verdict or confession of guilt. Under the provisions of the statute last above quoted, the effect of a conviction of the kind therein named is to deprive the person convicted of a valuable right without an opportunity for further trial or investigation. It is very readily apparent that the trial in

the appellate court may result in establishing the innocence of the accused, in which case the license ought not to become void but to remain in force. It is my opinion that in the circumstances disclosed by your inquiry the license in question does not become void while an appeal is pending.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Labor — Police Officers — Chauffeurs.

Chauffeurs employed as drivers of a police patrol, and receiving pay as such, are subject to the laws regulating the hours of labor of chauffeurs and not of police officers, even though they are special police officers by appointment and serve as such without pay.

FEB. 25, 1914.

ROBERT N. TURNER, Esq., *Commissioner of Labor.*

DEAR SIR: — I have your letter with inquiry from the chief of police in Newton in which he says: —

I am employing two chauffeurs as drivers of the auto patrol, one of whom works from 8 A.M. to 6 P.M., the other from 6 P.M. to 8 A.M. the following morning. These men are citizen operators, but are appointed special police without pay and draw their salaries as chauffeurs.

Will you kindly inform me if the fact that they are police officers makes their employment of over eight hours a day legal, or am I violating the labor law?

The chief of police does not state whether the city of Newton has accepted the provisions of the eight-hour law, so called. I assume, however, that it has done so. As I understand the letter of the chief the two men mentioned are not employed as policemen but as chauffeurs, they draw no salary as police officers but are paid for the work they actually perform, and are classified on the pay roll as chauffeurs and not as police officers.

It is my opinion that the hours of labor of these men should be governed by the kind of service for which they are actually employed and paid, and the fact that they are special police officers without pay does not, in my opinion, affect the number of hours of labor that shall constitute for them a day's work.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Board of Education — Transportation of Pupils — "Preceding Year" defined.

Where towns or cities under St. 1913, c. 396, are required to provide transportation for high school pupils attending school in other towns or cities, the statute is not to be construed as authorizing towns to provide board for such pupils.

Under St. 1913, c. 396, the words "the preceding year" refer to the fiscal school year as used in St. 1913, c. 356.

Feb. 25, 1914.

State Board of Education.

Gentlemen: — You ask for an opinion upon questions that have arisen with regard to certain provisions of chapter 396 of the Acts of 1913, as follows: —

1. In some instances, parents whose children are attending high schools in other towns or cities than that of their residence are asking school committees to make payment for the board of these children. Can such a claim be recognized as coming within the term "transportation" as used in the act?

2. A statement is desired as to the meaning of the term "the preceding year" as found in lines 18 and 24 of this act. Does the year mean the fiscal year of the town?

In July, 1914, towns will send to the Board of Education statements of amounts paid for transportation, under this act, for the school year ending June 30, 1914; in such a case, is reimbursement to be based upon the payments from local taxation for schools for the town year closing before July 1, 1914, or for the town year closing before July 1, 1913?

Replying to your first question, I have to say that in view of the statutory rule that "words and phrases shall be construed according to the common and approved usage of the language," it is my opinion that a claim made by reason of payment for board of children cannot be recognized as coming within the term "transportation" as used in the statute above referred to.

You have also requested a construction of the phrase "the preceding year" in the same statute.

By another act of 1913, namely, chapter 356, the annual return by school committees to the State Commissioner of Education of the amount raised and expended by each town for school purposes, although made annually at the close of the *school* year, refers to the taxes of the last preceding *fiscal* year.

The statute before me provides, in the case of the amount paid for out-of-town high school education, for a return

within thirty days of the expenditure. But as payment between towns is by custom always made at the close of the school year, the statutory requirement amounts to a requirement for annual returns at the close of each school year.

The statute before me does not provide for annual reimbursements, or for any form of returns, in the case of the amount paid for transportation. Nevertheless, I understand that, in conformity with the custom as to high school reimbursement, and in conformity with the statutory requirement as to all other returns, the State Commissioner of Education requires an annual return by *school* years at the close of each school year, and makes an annual reimbursement on the basis of such return.

Thus we have annually at the close of the school year two returns, one showing the amount paid for transportation during the last *school* year, the other showing the amount expended for the support of public schools during the last *fiscal* year. The most reasonable rule would appear to be to reimburse the towns on the basis of the two returns which are due together.

Considered in connection with the custom, it is my opinion that the words "the preceding year," in chapter 396 of the Acts of 1913, should be construed as referring to the same year as the words "the fiscal year last preceding the date of the certificate," in chapter 356.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Cities and Towns — Ice.

A law enacted by the Legislature authorizing cities and towns to cut, store and sell ice from reservoirs and ponds owned or controlled by such cities and towns would be unconstitutional, and such cities and towns may not acquire or hold property for such purposes.

FEB. 26, 1914.

To the Honorable Senate and House of Representatives.

GENTLEMEN: — You have required my opinion upon the following questions: —

First. — Is it within the constitutional power of the General Court to enact a law conferring upon a city or town within the Commonwealth the power, acting by its water commissioners, to cut, store and

sell ice from reservoirs and ponds owned or controlled by such city or town in connection with its water supply?

Second. — Is it within the constitutional power of the General Court to enact a law conferring upon a city or town within the Commonwealth the power to cut ice in the reservoirs and ponds owned or controlled by such city or town, and to store the ice and to sell it at wholesale or retail, and to fix and collect rates to be paid therefor, and to acquire by lease or purchase and to hold property, lands and easements for said purposes?

Third. — Is it within the constitutional power of the General Court to enact a law conferring upon a city which owns and operates a system for supplying its inhabitants with water, acting by its water commissioners, the power to cut ice in the reservoirs, ponds and other sources of water supply owned and controlled by such city, and to store the ice so cut and to sell the same at prices fixed by the water commissioners?

The real question is: May a city be authorized by the Legislature to cut, store and sell ice from reservoirs, ponds and other sources of water supply owned or controlled by such city or town; in other words, may a city or town deal in ice cut and harvested from reservoirs or ponds which it owns or controls?

In recent years it has become more and more urgent to have the municipalities, under legislative sanction, construct, maintain and operate public utilities, and to regulate the operation and to control the rates of charges for commodities furnished or services rendered to the public. In England and in some of the European countries the scope of municipal operations has been greatly extended, and these operations are known under the name of "municipal trading." In the United States, however, the limitations and restrictions placed upon legislative authority by the written Constitutions of the respective States has formed an obstacle which has prevented the development of municipal trading to any degree that even attempts to approach the extent to which it has gone in England. (Dillon on Municipal Corporations.)

The test of constitutionality is whether the service proposed is a public service.

If such a business as is suggested by these questions is to be carried on it must be by money raised by taxation, and it is settled in this Commonwealth "that the Legislature can authorize a city or town to tax its inhabitants only for public purposes." *Opinion of the Justices*, 155 Mass. 598.

Great difficulty has been found in clearly defining a public purpose, and in the opinion last cited the learned justices said: —

It is not easy to determine in every case whether a benefit conferred upon many individuals in a community can be called a public service within the meaning of the rule that taxes can be laid only for public purposes.

Again, the justices of the Supreme Court have said: —

It is impossible to define with entire accuracy all the characteristics which distinguish a public service and a public use from services and uses that are private. (*Opinion of the Justices*, 150 Mass. at p. 595.)

The Legislature of 1892 requested the opinion of the justices of the Supreme Court as to whether the Legislature could constitutionally authorize a city or town to buy coal and wood in excess of its ordinary requirements for the purpose of selling such excess to its own citizens. Several questions of the same import were propounded to the justices. In response to these inquiries the justices said, in part, that the question —

must be determined by considering whether the carrying on of such a business for the benefit of the inhabitants can be regarded as a public service. This inquiry underlies all the questions on which our opinion is required. If such a business is to be carried on, it must be with money raised by taxation. It is settled that the Legislature can authorize a city or town to tax its inhabitants only for public purposes. This is not only the law of this Commonwealth, but of the States generally and of the United States. (*Opinion of the Justices*, 155 Mass. 601.)

The Legislature of 1903 required the opinion of the justices upon various questions in regard to the purchase of coal and wood as fuel by a city or town, in excess of its ordinary requirements, for the purpose of selling such excess so purchased to its inhabitants or others (1) at cost, (2) at less than cost, or (3) at a profit. In a discussion of the principles involved the learned justices said: —

There is nothing materially different between the proposed establishment of a governmental agency for the sale of fuel and the establishment of a like agency for the sale of other articles of daily use. The business of selling fuel can be conducted easily by individuals in com-

petition. It does not require the exercise of any governmental function, as does the distribution of water, gas and electricity, which involves the use of the public streets and the exercise of the right of eminent domain. It is not important that it should be conducted as a single large enterprise with supplies emanating from a single source, as is required for the economical management of the kinds of business last mentioned. It does not even call for the investment of a large capital, but it can be conducted profitably by a single individual of ordinary means. (*Opinion of the Justices*, 182 Mass. 605.)

In the opinion last above cited the justices further said: —

Until within a few years it generally has been conceded, not only that it would not be a public use of money for the government to expend it in the establishment of stores and shops for the purpose of carrying on a business of manufacturing or selling goods in competition with individuals, but also that it would be a perversion of the function of government for the State to enter as a competitor into the field of industrial enterprise, with a view either to the profit that could be made through the income to be derived from the business, or to the indirect gain that might result to purchasers if prices were reduced by governmental competition. There may be some now who believe it would be well if business was conducted by the people collectively, living as a community, and represented by the government in the management of ordinary industrial affairs. But nobody contends that such a system is possible under our Constitution. It is plain, however, that taxation of the people to establish a city or town in the proprietorship of an ordinary mercantile or manufacturing business would be a long step towards it. If men of property, owning coal and wood yards, should be compelled to pay taxes for the establishment of a rival coal yard by a city or town, to furnish fuel at cost, they would thus be forced to make contributions of money for their own impoverishment; for if the coal yard of the city or town was conducted economically, they would be driven out of business. A similar result would follow if the business of furnishing provisions and clothing, and other necessaries of life, were taken up by the government; and men who now earn a livelihood as proprietors would be forced to work as employees in stores and shops conducted by the public authorities. (*Opinion of the Justices*, 182 Mass. at p. 607.)

In 1907 a bill to authorize the city of Holyoke to "cut and harvest ice from any great pond or river in its limits, and from any ponds or reservoirs used by the municipality as a water supply, and to store and sell the same at wholesale to the inhabitants of the city" was submitted by the Governor to the then Attorney-General, Hon. Dana Malone, whose opinion

was that the bill referred to could not constitutionally be enacted.

I am unable to differentiate between the business of dealing in coal and fuel and other necessaries of life and the business of cutting, harvesting and selling ice. The fact that in the instances specified in the questions submitted to me the ice is to be cut from reservoirs, ponds or other sources of water supply owned or controlled by the city or town cutting, storing and selling it, does not, in my opinion, materially change the legal aspect of these questions.

In view of the opinions of the justices and of my learned predecessor, above quoted, and of the provisions of the Constitution, I am constrained to the conclusion that all the questions submitted to me in this inquiry must be answered in the negative, and that such legislation as is suggested by these inquiries, if enacted, would be unconstitutional.

Very respectfully,

THOMAS J. BOYNTON, *Attorney-General.*

State Hospitals — Boards of Trustees — Salaries of Officers — When subject to Approval of Governor and Council.

Where offices are created in connection with State institutions under St. 1909, c. 504, either directly or by action of the trustees, salaries to be paid persons holding such offices must be approved by the Governor and Council.

MARCH 3, 1914.

His Excellency DAVID I. WALSH, *Governor of the Commonwealth.*

SIR: — You have requested my opinion as to who, among the appointees of a board of trustees of one of the State hospitals, are persons whose salaries are subject to approval by the Governor and Council under the provisions of section 18 of chapter 504 of the Acts of 1909. Section 17 of the same chapter has some bearing upon the answer to your inquiry, and provides in part as follows: —

> The trustees of each institution shall have charge of the general interests thereof, and shall see that its affairs are conducted according to law and to the by-laws and regulations established by them.

Section 18 provides as follows: —

> They shall appoint a superintendent who shall be a physician and who shall constantly reside at the institution, assistant physicians,

one of whom in each institution for the insane in which women are received as patients and in which more than two assistant physicians are employed shall be a woman, and a treasurer who shall give bond for faithful performance of his duties; shall appoint or make provision in by-laws for appointing such officers as in their opinion may be necessary for conducting efficiently and economically the business of the institution; and shall determine, subject to the approval of the governor and council, the salaries of all the officers. All their appointments shall be made in such a manner, with such restrictions and for such terms, as the by-laws may prescribe. . . . The trustees shall also establish by-laws and regulations, with suitable penalties, for the government of the institutions, and shall provide for a monthly inspection and trial of the fire apparatus belonging to the institutions, and for the proper organization and monthly drill of the officers and employees in its use.

This question was propounded to one of my predecessors in office, the Hon. Dana Malone, and I quote his opinion in full: —

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

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

While I agree with the views and conclusion of my learned predecessor, I will add that this statute, to my mind, distinguishes clearly between officers and employees of the institutions. The statute creates and provides for several offices in each institution. It establishes the office of superintendent, of assistant physicians and of treasurer, and it confers upon the board of trustees authority to create offices in addition to those specified in the statute, under such title, in such number and of such character as in their opinion may be necessary for conducting efficiently and economically the business of the institution, and also authorizes them to make appointments to the offices they have created; and under its pro-

visions the salaries pertaining to offices created by the statute itself or by act of the board of trustees are all subject to the approval of the Governor and Council. The by-laws made by the trustees in pursuance of the provisions of the statute, or the records of the proceedings of the trustees, should show every office created by them. If, for instance, the board of trustees, acting under the authority granted by the statute, has created the office of chief engineer, the salary attached to that office is subject to the approval of the Governor and Council. If, however, the board of trustees has not created that office, then the Governor and Council have no concern with the salary paid to the man employed as chief engineer. In the one case he becomes an officer under the statute, whose salary must be subject to the approval of the Governor and Council, and in the other he is simply an employee, with whose salary the Governor and Council have no concern.

I have not the by-laws or other records of proceedings of the board of trustees before me, and am therefore unable to render a more definite opinion upon the matter you have in hand.

The question whether the chief engineers or the book-keepers are officers or employees is, in my opinion, to be determined by reference to the action of the board of trustees in establishing offices under the statute.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Board of Education — Residence of Minors for School Purposes.

The word "residence," under St. 1911, c. 471, § 7, relating to applicants for admission to an industrial, agricultural or household arts school, means the actual residence of such applicants.

MARCH 10, 1914.

State Board of Education.

GENTLEMEN: — You have requested my opinion relative to the meaning of the words "residence" and "resides" as used in section 7 of chapter 471 of the Acts of 1911. You make reference in your communication to certain cases of "particular difficulty," as where pupils who are in attendance upon the evening industrial school in Boston move to an adjoining city or town.

Each case of this class depends so much upon its own circumstances that it is difficult to find authorities for anything more than a few

general positions which are plain and well understood." (*Sears* v. *Boston*, 1 Met. 250.)

It is said that one is a resident of a place from which his departure is indefinite as to time, definite as to purpose; and for this purpose he has made the place his temporary home. 53 Fed. Rep. 311.

The word "residence" has been defined as meaning "personal presence in a fixed and permanent abode." Where a resident of a particular place goes to another place or country, the great question whether he has ceased to be a resident of one place and become a resident of another will depend mainly upon the question, to be determined from all the circumstances, whether the new residence is temporary or permanent, whether it is occasional, for the purpose of a visit, or of accomplishing a temporary object, or whether it is for the purpose of continued residence and abode until some new resolution be taken to remove. *Sears* v. *Boston, supra.*

The word "residence" is used in different senses. Generally, in the laws relating to taxation, voting and settlement, it means the same as domicil; and usually it means the same in the law of divorce, although with a well-recognized exception.

Generally speaking, the question as to what constitutes residence is mainly a question of fact, and the element of intention enters into it. The residence must be both actual and intended. *In re Dr. Munroe*, 5 Mad. Ch. R. 379.

Actual residence and the intention to remain there permanently or for an indefinite time without any fixed or certain purpose to return to the former place of abode are required to constitute a change of domicil. (*Winans* v. *Winans*, 205 Mass. 388, 391.)

And the intention may even be to reside for a definite term of years, as in the case of a minister (McCrary, Elections, 559), or of a mechanic, day laborer or student. *Lyman* v. *Fiske*, 17 Pick. 231.

Each successive domicil continues, until changed by acquiring another. (*Opinion of the Justices*, 5 Met. 587.)

That is to say, one never has at any given time more than one place of domicil; and until one's purpose to change his

place of domicil or residence has become fixed, he cannot be said to have abandoned a former residence. *Oliveri* v. *Atkinson*, 168 Mass. 28; *Worcester* v. *Wilbraham*, 13 Gray, 586.

Your concern, however, is chiefly as to the residence of minors. The residence of a minor follows that of the father, if he is living, and of the mother if the father is dead. Illegitimate children take the residence of the mother. 14 Cyc. 843–4. So that it becomes necessary in many cases that you consider the residence of the father, or of the mother if the father is dead.

In the case of a person above the age of twenty-one years parental support is immaterial unless accompanied by other facts tending to show legal residence with the parents.

The word "residence" as used in the statutes referred to in your communication seems to have a somewhat different signification than in any of the cases I have referred to.

I note your statement to the effect that you have ruled that "every child shall have a right to attend the public schools of the city or town where he actually resides," and that actual residence in a municipality constitutes the applicant a resident, for the purposes of chapter 471 of the Acts of 1911. I am of the opinion that this rule is correct.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Harbor and Land Commissioners — Jurisdiction over Ice Cutting on Great Ponds.

The Board of Harbor and Land Commissioners has no jurisdiction over the cutting of ice on great ponds, but under R. L., c. 96, §§ 18 and 25, has authority to permit ice-harvesting structures to encroach on such ponds or to abate as nuisances structures erected without a license.

MARCH 11, 1914.

Board of Harbor and Land Commissioners.

GENTLEMEN: — You have inquired whether your Board has any jurisdiction with reference to the cutting of ice on great ponds belonging to the Commonwealth.

By the law of Massachusetts, great ponds, not appropriated before the Colony Ordinance of 1647 to private persons, are public property, the right of reasonably using and enjoying which, for taking ice for use or sale, as well as for fishing and fowling, boating, skating, and other lawful purposes, is common to all, and in the water or ice of which, or in the land under them, the owners of the shores have no peculiar

rights, except by grant from the Legislature, or by prescription, which implies a grant. (*Hittinger* v. *Eames*, 121 Mass. 539, 546.)

It is too well settled to be disputed that the property in the great ponds is in the Commonwealth; that the public have the right to use them for fishing, fowling, boating, skating, cutting ice for use or sale, and other lawful purposes; and that the owners of the shores have no exclusive rights in them except by a grant of the Legislature. . . .

The right to cut ice is common to all the public. (*People's Ice Co.* v. *Davenport*, 149 Mass. 322, 324.)

The right to cut ice therefrom for use or sale is common to all, and the owners of the shores have no peculiar right in the water or ice, or in the land under them, except by grant of the Legislature, or by prescription from which a grant is to be implied. (*Gage* v. *Steinkrauss*, 131 Mass. 222.)

Persons have "no peculiar title or right in the pond by virtue of being lessees of an ice house and land upon the shore." *Rowell* v. *Doyle*, 131 Mass. 474, 476.

I have been unable to find that there has been any delegation by the Legislature to your Board of the power to limit the public right to take ice from great ponds. By section 18 of chapter 96 of the Revised Laws your Board may authorize the encroachment on great ponds for the purpose of building structures to be used in ice taking, but such license would, of course, confer no exclusive right to take ice.

Under section 25 of said chapter your Board can abate as a nuisance any such structures erected without license. See *Attorney-General* v. *Ellis*, 198 Mass. 91.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Board of Registration in Pharmacy — Corporations — Drug Stores.

Under St. 1913, c. 705, § 4, a drug store, if managed by a registered pharmacist, may be owned by a corporation some of whose stockholders are not registered pharmacists.

MARCH 13, 1914.

State Board of Registration in Pharmacy.

GENTLEMEN: — In your communication of recent date you state that "the Board of Registration in Pharmacy has been petitioned by the Massachusetts State Pharmaceutical Association to refuse permits to such new stores as have among their stockholders unregistered persons actively engaged in the business of pharmacy. See § 2, c. 720, Acts of 1913;

also c. 705, Acts of 1913." And you add that "information is respectfully asked if the Board can comply with said petition, provided the store is under the direct supervision of a registered stockholder."

I take it that your inquiry relates to corporations that desire to open and keep open drug stores, and which have among their stockholders persons who are not registered pharmacists but who are nevertheless actively engaged in the business of pharmacy.

It is difficult to understand, in view of the provisions of the law and the penalties involved, how any unregistered person can now be actively engaged in the business of pharmacy.

It may be well to consider just what that business is. "Pharmacy" is defined as meaning —

1. The art or practice of preparing, preserving, and compounding medicines, and of dispensing them according to the formulæ or prescriptions of medical practitioners.
2. The occupation of an apothecary or pharmaceutical chemist.
3. A place where medicines are prepared and dispensed; a drug store; an apothecary's shop. (Century Dictionary.)

It will be noted that the definition relates solely to drugs or medicines and the compounding and dispensing of the same, and contains no reference to any one of the great number of articles of ordinary merchandise now to be found on sale in stores where the business of pharmacy or the drug business is carried on.

Section 1 of chapter 705 of the Acts of 1913 defines the term "drug business," as used in that act, as follows: —

The term "drug business" as used in this act shall mean the sale of opium, morphine, heroin, codeine or other narcotics, or any salt or compound thereof, or any preparation containing the same, or cocaine, alpha or beta eucaine, or any synthetic substitute therefor, or any salt or compound thereof, or any preparation containing the same, and the said term shall also mean the compounding and dispensing of physicians' prescriptions.

Said chapter further provides in sections 2, 3 and 4 as follows: —

Section 2. No store shall be kept open for the transaction of the retail drug business unless it is registered with and a permit therefor

has been issued by the board of registration in pharmacy as herein provided.

Section 3. The board of registration in pharmacy shall, upon application, issue a permit to keep open a store for the transaction of the retail drug business to such persons, firms and corporations as the board may deem qualified to conduct such a store. The application for such a permit shall be made in such manner and in such form as the board shall determine. A permit issued as herein provided shall be exposed in a conspicuous place in the store for which the permit is issued and shall expire on the first day of January following the date of its issue. The fee for the permit shall be one dollar.

Section 4. No such permit shall be issued for a corporation to keep open a store for the transaction of the retail drug business, unless it shall appear to the satisfaction of the said board that the management of the drug business in such store is in the hands of a registered pharmacist.

The section last above quoted makes special provision in regard to permits to corporations, and provides that no such permit shall be issued to a corporation unless it shall appear to the satisfaction of your Board that the management of the drug business in the store of the corporation is in the hands of a registered pharmacist.

In the sale of the stock of a corporation, some and possibly a large part of it will naturally pass into the ownership of persons who are not registered pharmacists. The purpose of the statute is to protect the public from the dangers that would be occasioned by the compounding and dispensing of medicines and drugs by ignorant and unskilled persons. Under the provisions of section 4 of the statute above quoted it is clear that if and when it shall appear to the satisfaction of your Board that the management of the drug business in the store for which a permit is sought is in the hands of a registered pharmacist, the measure of safety required by the law has been attained and the provisions of the statute are satisfied. It is not to be expected that all the stockholders of a corporation, even though it be organized for the special purpose of carrying on the drug business, will be registered pharmacists; and the fact that some stockholder in such a corporation is unlawfully engaged in the drug business would not seem to be a sufficient reason for refusing a permit.

The Board of Registration in Pharmacy is, in my opinion, required under the statute of 1913 to act in good faith on each and every application made to it for a permit, and to

grant permits only to such persons, firms and corporations as it may deem qualified to conduct a store for the transaction of the retail drug business as defined in the statute.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Civil Service — Assistant Assessors of the City of Boston.

St. 1913, c. 484, requiring appointments of first assistant assessors in the city of Boston to be subject to civil service does not affect the provisions of St. 1894, c. 276, relating to assistant assessors other than first assistants.

MARCH 17, 1914.

Civil Service Commission.

GENTLEMEN: — You have requested my opinion upon the following questions: —

First. — Are section 13 of chapter 19 of the Revised Laws and chapter 276 of the Acts of 1894 inconsistent with the provisions of chapter 484 of the Acts of 1913, and therefore repealed?

Second. — If the above question is answered in the negative is there any violation of said section 13 of chapter 19 of the Revised Laws if, in its endeavor to carry out the provisions of each of the above-mentioned acts relating to the appointment of assistant assessors, the Civil Service Commissioners make inquiries of the applicants as to their politics and certify to fill vacancies accordingly?

Chapter 276 of the Acts of 1894 provides as follows: —

In the city of Boston the assistant assessors shall be appointed in equal numbers from the two leading political parties, for each grade of assistant, and shall be assigned to the various assessment districts so that the assistant assessors assigned to any district shall equally represent such parties.

Section 13 of chapter 19 of the Revised Laws provides in part: —

No question in any examination shall relate to, and no appointment to a position or selection for employment shall be affected by, political or religious opinions or affiliations.

Chapter 484 of the Acts of 1913 provides: —

SECTION 1. All appointments of first assistant assessors in the city of Boston shall be for an indeterminate period, and shall be subject to the civil service rules established under the provisions of chapter

nineteen of the Revised Laws and acts in amendment thereof and in addition thereto.

Section 2. First assistant assessors in the city of Boston holding office at the time of the passage of this act shall continue to hold office as if appointed under this act.

Section 3. All acts or parts of acts inconsistent herewith are hereby repealed.

The intention of the Legislature in the enactment of chapter 484 of the Acts of 1913 was, first, to secure the retention in office of those then holding positions of first assistant assessors of the city of Boston, and second, to provide that appointments to those positions should in the future be made in accordance with the civil service law and the rules made in pursuance of that law by your commission. Chapter 276 of the Acts of 1894 and chapter 484 of the Acts of 1913 both have relation to the city of Boston and to the office of first assistant assessors. The purpose and intention of the later enactment are certainly not consistent with the purpose of chapter 276 of the Acts of 1894, and therefore repeal the provisions of the earlier statute so far as that statute relates to the appointment of first assistant assessors. It is my opinion that this repeal goes no farther than the office of first assistant assessors, and that assistant assessors other than the first may be appointed by the mayor of Boston in accordance with the provisions of chapter 276 of the Acts of 1894. I am also of the opinion that the provisions of section 13 of chapter 19 of the Revised Laws are not affected or in any way modified by the provisions of chapter 484 of the Acts of 1913.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Labor and Industries — Suction Shuttle.

The use of the suction shuttle in factories, by whatever device it is operated, is forbidden under St. 1911, c. 281, § 1.

March 17, 1914.

State Board of Labor and Industries.

Gentlemen: — Your communication of March 10, as I understand it, requests my opinion upon the following question: May the proprietor of a cotton factory use the suction

shuttle, so called, provided he furnishes the employee using the shuttle with a hook for threading it, making threading by suction unnecessary?

Section 1 of chapter 281 of the Acts of 1911 provides as follows: —

> It shall be unlawful for any proprietor of a factory or any officer or agent or other person to require or permit the use of suction shuttles, or any form of shuttle in the use of which any part of the shuttle or any thread is put in the mouth or touched by the lips of the operator. It shall be the duty of the state board of health to enforce the provisions of this act.

The danger attending the use of shuttles of this type would be avoided by the use of a hook for threading them, but the Legislature regarded this type of shuttle as so objectionable that it enacted that it should be unlawful for any proprietor of a factory or any officer or agent or other person to require or permit its use. A change in the method of using the shuttle in no way alters the statute. I am of the opinion that the use of the suction shuttle, by whatever device it is operated, is unlawful, and will be so until the statute is changed.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Board of Agriculture — Prizes.

Under St. 1913, c. 96, the State Board of Agriculture has authority to issue prizes, in its discretion, for the best system of farm bookkeeping and the best plan of a dairy barn.

MARCH 17, 1914.

State Board of Agriculture.

GENTLEMEN: — You have requested my opinion upon the following question: Is the Dairy Bureau of the State Board of Agriculture empowered by chapter 96 of the Resolves of 1913 to award cash prizes for the best system of farm bookkeeping, open to the world, and for the best plan of a dairy barn, open to the world?

The evident purpose of this resolve is that stated in its title, — "to provide for the encouragement of dairying and the production of milk and dairy products of superior quality." The resolve provides that this may be done by offering

prizes: (1) for the best kept stables, (2) the lowest bacteria counts, (3) the best quality of milk, (4) or otherwise, as the Board may determine; (5) by demonstrations illustrating the best methods of dairying; (6) by agents who shall instruct the citizens of the Commonwealth in matters of stable construction and management and dairy methods in general; (7) by the distribution of literature giving information in regard to the best methods of dairying, and especially in regard to the production of clean milk; and (8) and lastly, "in such other manner as the Board may deem best for the encouragement of dairying and the production of clean milk."

This resolution confers upon the Board of Agriculture authority to proceed in its own discretion, either by the means suggested in the resolution or by such other means and methods as in its judgment will in the greatest degree make for the encouragement of dairying and the production of milk and dairy products of superior quality. The only limitation upon the exercise of the discretion of the Board is the necessary one that applies to all cases of the kind, — that it be exercised in good faith.

The scope of the resolution under which you act in this matter is limited to the encouragement of dairying, etc. It may be a matter of serious consideration whether a system of farm bookkeeping falls within the purpose of the resolution. However, as, in my opinion, your Board is the final judge of that question, I offer no further suggestion of my own upon this point.

It is my opinion that if the Board of Agriculture, in the exercise of its discretion and judgment, believes the purposes sought by the enactment of chapter 96 of the Resolves of 1913 will be best served by awarding cash prizes for the best system of farm bookkeeping and for the best plan of a dairy barn, the competition to be open to the world, it has authority to offer and award such prizes.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Annulment of Marriage — Payment of Alimony.

Courts cannot make provision for alimony upon annulment of marriage.

March 23, 1914.

Committee on Social Welfare.

Gentlemen: — You have requested my opinion upon the following question: "In case of a petition for nullity of marriage does the court now have power to make provision for the support of the wife?"

The statute, R. L., c. 151, § 11, provides, among other things, that in suits for annulling a marriage a libel may be filed in the same manner as a libel for divorce, and that "all the provisions of chapter one hundred and fifty-two relative to libels for divorce shall, so far as appropriate, apply to libels under the provisions of this section."

The real question, then, is, "To what extent are the provisions of chapter 152, relative to decrees for the payment of alimony, appropriate to proceedings for the annulment of a marriage?"

It may aid us to reach a sound conclusion in regard to this matter if we consider briefly the character and results of actions for divorce and actions for nullity. The action for divorce is based upon the fact of a valid marriage. The action for nullity is based upon the fact that there has been no valid marriage. In its consequences a sentence or decree of nullity differs materially from a decree of divorce. The latter assumes the validity of the marriage. If the marriage was not valid, no decree of divorce could be made, and the operation of the divorce is entirely prospective; while a decree of nullity is retroactive in that it renders the marriage void from the beginning, and nullifies all its legal results. The parties are to be regarded as if no marriage had ever taken place. They are single persons, if they were single before. Their rights of property as between themselves are to be viewed as having never been affected by the marriage.

The right to alimony upon the granting of a decree of divorce from the bond of matrimony is purely statutory. At the common law, alimony was awarded only in those cases in which the marriage relation continued, that is, in cases of divorce from bed and board; and no alimony could be awarded upon a divorce from the bond of matrimony. *Davol* v. *Davol*, 13 Mass. 264; *Jones* v. *Jones*, 18 Me. 308.

Apart from any consideration of our statute, it may be said that as a general proposition a woman, upon a sentence of nullity, is not entitled to permanent alimony, although some authorities hold that she is entitled to alimony *pendente lite*. 2 Bishop on Marriage, Separation and Divorce, § 1597.

This question does not appear to have been passed upon by our Supreme Judicial Court, the nearest approach to it being found in the case of *Adams* v. *Holt*, 214 Mass. 77. It is worthy of note that counsel for the wife in this case, being confronted by the question you have propounded and having occasion to give it most careful consideration, evidently concluded that a claim for alimony could not be sustained, and therefore asked for compensation for services, which was refused.

In rendering its decision in the case just referred to the court said: —

> It has been held that relief in the nature of alimony cannot be afforded except as an incident in connection with a divorce.

And cited *Adams* v. *Adams*, 100 Mass. 365; *Parker* v. *Parker*, 211 Mass. 139.

To the same effect are the cases of *Page* v. *Page*, 189 Mass. 85, and *Shannon* v. *Shannon*, 2 Gray, 285.

While these cases may be said not to be absolutely conclusive in regard to the question before me, inasmuch as none of them presented precisely the same issue, still, the trend of the Massachusetts decisions referred to, when taken into consideration with the essential differences between an action for divorce and an action for annulment of marriage, the difference in results between decrees for divorce and decrees of nullity, and the fact that alimony is incident to suits for divorce and is not incident to suits of nullity, are certainly sufficient to create very grave doubt as to whether alimony can be granted in an action of nullity.

I am of the opinion that the provisions of our statute in regard to alimony are not appropriate to an action of nullity, and that for this reason the court in actions of nullity cannot make provision for the support of the wife. The question is not, however, free from difficulty, and the bill submitted with your question would undoubtedly clear this question of all doubt and uncertainty.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Liberty of the Press — Publication of Names of Drugs taken with Suicidal Intent.

A law prohibiting the publication of the name of any drug, chemical, etc., taken with suicidal intent would be unconstitutional as interfering with the liberty of the press.

March 24, 1914.

Committee on the Judiciary, House of Representatives.

Gentlemen: — You have requested my opinion as to whether House Bill No. 1145, if enacted, would be constitutional.

The proposed bill reads as follows: —

Whoever publishes, or causes to be published, in any newspaper or magazine, or in any other public manner, the name of any drug, chemical, or medicinal preparation when the same has been taken by any person with suicidal intent, or when any such drug, chemical or medicinal preparation has been intentionally or unintentionally administered or applied to any human being or beast, shall be punished by a fine of not less than ten dollars and not more than one hundred dollars, or shall be imprisoned in a jail or house of correction for a term not exceeding one year, or shall be punished by both such fine and imprisonment.

The question presented is whether this bill, if enacted, will be an unlawful interference with the liberty of the press.

By the first amendment of the Constitution of the United States the liberty of the press is secured against restraint, it being provided that Congress shall make no law abridging the freedom of speech or of the press. The Constitution of this Commonwealth, by Article XVI. of the Declaration of Rights, secures the liberty of the press in the following language: —

The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this commonwealth.

Notwithstanding the fact that the liberty of the press is thus secured against restraint, it is true that it is a right that may not be abused. He who uses it is responsible for its abuse.

The liberty of the press, not its licentiousness, is the construction which a just regard to the other parts of the Constitution and to the wisdom of those who framed it, requires. (*Commonwealth* v. *Blanding*, 3 Pick. 304.)

That the licentiousness of the press, not its liberty, may be restrained by the exercise of the police power seems to be well settled, as in the familiar instances forbidding the publication and sale of a newspaper devoted to the publication of scandal and immorality, of the prohibition of blasphemous publications, the exclusion of obscene matter from the mails, and various other enactments. It has ever been the aim of our government to maintain and preserve to the press the full enjoyment of the right secured to it by the Constitution, and to restrain and prevent the abuse of that right. Our problem is to determine how far this right extends; to locate the line of demarcation at which liberty leaves off and where license begins.

It may be said by way of premise that the phrase "liberty of the press" includes a great deal more than the right to discuss freely political and governmental questions. It is a right the enjoyment of which is not confined solely to those who publish books, pamphlets and periodicals. It embodies the right of every individual citizen to be informed. Liberty of speech and of the press is the liberty to know, to utter, to publish and to argue freely upon all questions of public interest, whether political, religious, social, moral, literary, scientific, industrial or financial. Necessarily the field of usefulness and of responsibility of the press increases with every advance of human knowledge. The position occupied by the press in the modern social and business world has been well described, and its legal limitations to a great degree indicated, by Judge Cooley in his work on Constitutional Limitations, wherein, speaking of the press, he says: —

> Through it, and by means of the electric telegraph, the public proceedings of every civilized country, the debates of the leading legislative bodies, the events of war, the triumphs of peace, the storms in the physical world, and the agitations in the moral and mental, are brought home to the knowledge of every reading person, and, to a very large extent, before the day is over on which the events have taken place. And not public events merely are discussed and described, but the actions and words of public men are made public property; and any person sufficiently eminent or notorious to become an object of public interest will find his movements chronicled in this index of the times. Every party has its newspaper organs; every shade of opinion on political, religious, literary, moral, industrial, or financial questions has its representative; every locality has its press to advocate its claims and advance its interests, and even the days regarded as sacred have

their special papers to furnish reading suitable for the time. The newspaper is also the medium by means of which all classes of the people communicate with each other concerning their wants and desires, and through which they offer their wares and seek bargains. As it has gradually increased in value, and in the extent and variety of its contents, so the exactions of the community upon its conductors have also increased, until it is demanded of the newspaper publisher that he shall daily spread before his readers a complete summary of the events transpiring in the world, public or private, so far as those readers can reasonably be supposed to take an interest in them; and he who does not comply with this demand must give way to him who will.

The newspaper is also one of the chief means for the education of the people. The highest and the lowest in the scale of intelligence resort to its columns for information; it is read by those who read nothing else, and the best minds of the age make it the medium of communication with each other on the highest and most abstruse subjects.

The proposed bill, if enacted, will certainly trench upon some of the functions of a free press as described in the passage last above quoted. This measure, if enacted, will prohibit to some extent the spread of information beneficial to many people by showing them what to avoid in the use of drugs, chemicals and medicinal preparations. It will tend, also, to prevent the dissemination not only of knowledge about poisons, but of their antidotes as well. Its effect would be to prevent in some measure the publication of those precautionary suggestions that appear in the press in cases where poison is administered or taken by mistake, — suggestions that are really useful to many members of society. If it be said that some misguided or weak-minded persons make bad use of the information contained in publications which it is the purpose of this bill to prevent, the answer is that every kind of useful knowledge is at times misused and abused, to the great injury of individuals and of the community.

This measure must be considered in the light of the rule that —

> The constitutional liberty of speech and of the press, as we understand it, implies a right to freely utter and publish whatever the citizen may please, and to be protected against any responsibility for so doing, except so far as such publications, from their blasphemy, obscenity, or scandalous character, may be a public offence, or as by their falsehood and malice they may injuriously affect the standing, reputation, or pecuniary interests of individuals. (Cooley on Constitutional Limitations, 5th ed., p. 521.)

Entertaining no doubt whatever that the press may be held in check whenever its publications violate the rule above stated, I am of the opinion that the measure you have submitted to me is obnoxious to the provisions of the Constitution securing the liberty of the press, and that if enacted it would be unconstitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Milk and Cream — Sealed Bottles — Use for Other Purposes.

Under R. L., c. 62, § 43, as amended by St. 1909, c. 531, it is not unlawful to make use of glass bottles and jars which have been sealed as measures of milk and cream for other purposes, but they may not be used again as such measures without being resealed.

MARCH 30, 1914.

Commissioner of Weights and Measures.

DEAR SIR: — You have requested my opinion upon the following question: Is it lawful for any person or firm to use a bottle which is marked according to the provisions of section 43 of chapter 62 of the Revised Laws for any other purpose than that of the sale of milk or cream?

Section 43 of chapter 62 of the Revised Laws, as amended by chapter 531 of the Acts of 1909, provides in part as follows: —

> Glass bottles or jars which are used for the distribution of milk or cream to consumers, . . . shall be sealed as measures under the provisions of section twenty-one or by the manufacturer. All dealers in milk or cream who use glass bottles or jars for the distribution of milk or cream to consumers, which have not been sealed by the manufacturer, shall bring in such bottles or jars to the office of the sealer of weights and measures in their respective cities and towns, to be sealed as aforesaid; but no fee shall be charged or received for sealing them. If a bottle or jar has once been sealed by the sealer of weights and measures or by the manufacturer, it shall not in any case be necessary to have it sealed again at any time while it is used for the distribution of milk or cream to consumers. Glass bottles or jars sealed under the provisions of this section shall not be legal measures except for the distribution of milk or cream to consumers.

The foregoing provisions of the statute, so far as they relate to the subject-matter of your inquiry, relate to the use of bottles marked in accordance with the statute as con-

tainers of milk. In chapter 462 of the Acts of 1910 there is a prohibition of the reuse of paper or fiber bottles and jars in the sale and delivery of milk or cream. Your inquiry, however, relates to the use of glass bottles and jars.

I find nothing in the statutes to which you refer to prohibit the use of a milk bottle or jar marked as required by law, for any proper purpose, except that so long as it is used in the milk or cream business it must be used as the statutes require. The statutory provisions that "glass bottles or jars sealed under the provisions of this section shall not be legal measures except for the distribution of milk or cream to consumers," seems to contemplate the possible use of such bottles and jars outside the milk or cream business.

The facts stated in your letter do not, in my opinion, disclose a violation of law.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Highways — Licensing of Motor Vehicles in Towns by Selectmen.

A law providing that it is unlawful to operate motor vehicles in a town without a license from the selectmen is constitutional.

MARCH 31, 1914.

Committee on Towns, House of Representatives.

GENTLEMEN: — You have requested my opinion upon the constitutionality of House Bill No. 1562, entitled, "An Act to regulate the operation of automobiles and motor vehicles in the town of Nantucket."

The only provisions of the bill about which any constitutional question can arise are contained in section 1, which reads as follows: —

> It shall be unlawful to operate automobiles or motor vehicles of any kind on any highway or townway in the town of Nantucket without a license from the selectmen of said town, which license may contain any provision not inconsistent with any general law now or hereafter in force relating to automobiles or motor vehicles. Any such license may be revoked by the selectmen for cause. The fee to be paid for such license shall be not less than ten dollars.

No specific objection to the constitutionality of this bill has been presented to me, but the first question that suggests

itself in this regard is as to the authority of the Legislature over public ways.

The Constitution of the Commonwealth vests in the Legislature "full power and authority . . . from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same."

In the exercise of the authority vested in it by the Constitution the Legislature has provided for the laying out and construction of public ways, either by means of authority conferred upon a commission of the Commonwealth, as the State Highway Commission, or, in some instances, county commissioners, or by authority conferred upon cities and towns. It would seem to be too late to question the general authority of the Legislature to regulate the use of the highways in Massachusetts. Generally speaking, the highways within and through the State are in fact constructed by authority of the State itself, and the State has full power to provide all proper regulations of police to govern the action of persons using them. Cooley on Constitutional Limitations, 7th ed., p. 860.

In this Commonwealth the Legislature has always exercised its authority in such manner as seemed necessary or proper to regulate the use of the highways. Among the familiar instances of such legislative regulation are: the law of the road that when persons meet on a bridge or way, traveling with carriages, wagons, carts, sleds, sleighs, bicycles or other vehicles, each shall seasonably drive his carriage to the right; that the driver of a carriage or other vehicle passing a carriage or other vehicle shall drive to the left; that no person shall travel on a bridge or way with a sleigh or sled drawn by a horse unless there are at least three bells attached to some part of the harness (R. L., c. 54, §§ 1, 2 and 3); that the driver of every vehicle on a bridge or way, public or private, where there is not an unobstructed view of the road for at least one hundred yards shall keep his vehicle on the right of the middle of the traveled part of such bridge or way. (St. 1908, c. 512, § 1.) So, too, it was long ago held that the

speed of travel may be regulated with a view to safe use and general protection and to prevent a public nuisance. *Commonwealth* v. *Worcester*, 3 Pick. 461; *Commonwealth* v. *Stodder*, 2 Cush. 562. And the Legislature has provided that one may not allow his beasts to run at large on a public way. *Commonwealth* v. *Curtis*, 9 Allen, 266. The riding of bicycles on sidewalks is prohibited. R. L., c. 52, §§ 9, 10, 11 and 12. The construction of bicycle paths in the highway and the reservation of spaces for the use of horseback riders in certain parts of public ways has been authorized. R. L., c. 48, § 45.

The Legislature has power to authorize, and has authorized, certain obstructions in highways which would otherwise be a public nuisance, such as the laying of railroad tracks. *Commonwealth* v. *Old Colony & Fall River R.R. Co.*, 14 Gray, 93; *Springfield* v. *Connecticut River R.R. Co.*, 4 Cush. 71. And the Legislature may grant a power to take land already appropriated and in use as a public way for another public use. *Springfield* v. *Connecticut River R.R. Co.*, 4 Cush. 71; *Boston* v. *Brookline*, 156 Mass. 172; *Newton* v. *Newton*, 188 Mass. 226.

Many other instances of the exercise of legislative authority in the control and regulation of the use of highways might be cited.

Legislation has also been enacted directly regulating the use of automobiles and motor vehicles on public ways, and also authorizing various boards, towns and cities to make by-laws and ordinances in regard to the same matter; and the constitutionality of this legislation has been sustained by the Supreme Judicial Court. An instance of legislation of this kind is to be found in chapter 203 of the Acts of 1907, which provides that —

> Any person who operates an automobile or motor vehicle, and any owner of an automobile who permits such machine to be operated in or over any highway or private way laid out under authority of law or otherwise, from which automobiles or motor vehicles are excluded, provided notice of such exclusion is conspicuously posted at the entrance to such way, shall be liable to any or all of the provisions and penalties provided in section nine of chapter four hundred and seventy-three of the acts of the year nineteen hundred and three, as amended by section three of chapter four hundred and twelve of the acts of the year nineteen hundred and six, for violation of the laws regulating the use of automobiles and the conduct of operators thereof.

This act has been re-enacted in and superseded by section 15 of chapter 534 of the Acts of 1909, and is now in force. Its operation on the island of Nantucket may, however, be prevented by the proviso contained in section 17 of said chapter, to the effect that —

> No ordinance, by-law or regulation now in force upon the island of Nantucket relating to the use or operation of motor vehicles shall be affected by the provisions of this act.

I have not before me the ordinances or by-laws of the town of Nantucket, and am therefore unable to say whether this section is in force in Nantucket or not.

In the case of *Commonwealth* v. *Kingsbury*, 199 Mass. 542, the constitutionality of chapter 203 of the Acts of 1907 and of the sections therein referred to come into question. Acting under the provisions of this statute the selectmen of Ashfield duly posted notices excluding automobiles from certain highways within their jurisdiction, and the defendant, disregarding the notices, drove his automobile upon and over one of the ways thus posted and from which automobiles were excluded. In its discussion of the constitutional right of the Legislature to enact such a law the court said: —

> Automobiles are vehicles of great speed and power, whose appearance is frightful to most horses that are unaccustomed to them. The use of them introduces a new element of danger to ordinary travellers on the highways, as well as to those riding in the automobiles. In order to protect the public great care should be exercised in the use of them. Statutory regulation of their speed while running on the highways is reasonable and proper for the promotion of the safety of the public. It is the duty of the Legislature, in the exercise of the police power, to consider the risks that arise from the use of new inventions applying the forces of nature in previously unknown ways. The general principle is too familiar to need discussion. It has been applied to automobiles in different States with the approval of the courts. *Commonwealth* v. *Boyd*, 188 Mass. 79. *Christy* v. *Elliott*, 216 Ill. 31. *People* v. *Schneider*, 139 Mich. 673. *People* v. *MacWilliams*, 86 N. Y. Supp. 357.
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> It seems too plain for discussion that, with a view to the safety of the public, the Legislature may pass laws regulating the speed of such machines when running upon highways. The same principle is applicable to a determination by the Legislature that there are some streets and ways on which such machines should not be allowed at all. In some parts of the State, where there is but little travel, public necessity and convenience have required the construction of ways which

are steep and narrow, over which it might be difficult to run an automobile, and where it would be very dangerous for the occupants if automobiles were used upon them. In such places it might be much more dangerous for travellers with horses and with vehicles of other kinds if automobiles were allowed there. No one has a right to use the streets and public places as he chooses, without regard to the safety of other persons who are rightly there. In choosing his vehicle, every one must consider whether it is of a kind which will put in peril those using the streets differently in a reasonable way. In parks and cemeteries and private grounds, where narrow roads with precipitous banks are sometimes constructed for carriages drawn by horses, it has been a common practice to exclude automobiles altogether, chiefly because of the danger of their frightening horses.

The general principle referred to was applied long ago to a different kind of vehicle, in *Commonwealth* v. *Stodder*, 2 Cush. 562, a case which relates to an ordinance of the city of Boston, prescribing the streets on which certain omnibuses might be run and excluding them from other streets. . . .

The right of the Legislature, acting under the police power, to prescribe that automobiles shall not pass over certain streets or public ways in a city or town, seems to us well established both upon principle and authority.

So far, then, as the power and authority of the Legislature is concerned, I am of the opinion that the proposed bill is within the provisions of the Constitution.

It may, however, be urged that the power of the Legislature to regulate the use of highways cannot be delegated to a board of selectmen. This question also has been discussed by the Supreme Judicial Court. It received very full consideration in the case of *Brodbine* v. *Revere*, 182 Mass. 598. In that case the question at issue was as to the constitutionality of section 3 of chapter 288 of the Acts of 1894, conferring authority upon the Metropolitan Park Commissioners to make rules and regulations for the government and use of the roadways or boulevards under their care, "breaches whereof shall be breaches of the peace and punishable as such in any court having jurisdiction of the same." It was contended that this was an unconstitutional attempt to delegate legislative power. In speaking of this question the court said: —

> It is well established in this Commonwealth and elsewhere that the Legislature cannot delegate the general power to make laws conferred upon it by a Constitution like that of Massachusetts. (Citing numerous authorities.)

The court further said: —

This doctrine is held by the courts almost universally.

There is a well-known exception to it, resting upon conditions existing from ancient times in most of the older States of the Union, which the Constitutions of the States generally recognize, namely, the existence of town or other local governmental organizations which have always been accustomed to exercise self-government in regard to local police regulations and other matters affecting peculiarly the interests of their own inhabitants. On this account the determination of matters of this kind has been held to be a proper exercise of local self-government which the Legislature may commit to a city or town. *Commonwealth* v. *Bennett*, 108 Mass. 27. *Stone* v. *Charlestown*, 114 Mass. 214. *Opinion of the Justices*, 160 Mass. 586. *People* v. *Albertson*, 55 N. Y. 50. *Gloversville* v. *Howell*, 70 N. Y. 287. *State* v. *Morris County* 7 Vroom, 72. . . . It is very clear, where the people of a city or town have become so numerous that the management of their municipal affairs can be conducted conveniently only by a representative body like a city council, that municipal legislation, such as making ordinances and regulations as to local matters affecting the health, safety, and convenience of the people, may be intrusted to the people's chosen representatives in a city government. Hence city councils are usually authorized to pass ordinances, as voters of towns adopt by-laws. In this Commonwealth legislation has gone further than this. Apparently on grounds of expediency amounting almost to necessity, the making of rules and regulations for the preservation of the public health has been intrusted to boards of health in towns as well as in cities, and to a State board of health, and a violation of the rules established by city or town boards has long been and is now punishable in the courts. . . . The validity of these statutes, which has long been recognized, stands upon one or both of two grounds. They may be considered as being within the principle permitting local self-government as to such matters, the board of health being treated as properly representing the inhabitants in making regulations, which often are needed at short notice and which could not well be made, in all kinds of cases, by the voters in town meetings assembled. Perhaps some of these statutes may also be justified constitutionally on the ground that the work of the board of health is only a determination of details in the nature of administration, which may be by a board appointed for that purpose, and that the substantive legislation is that part of the statute which prescribes a penalty for the disobedience of the rules which they make as agents performing executive and administrative duties.

Again the court says: —

There is also a strong ground for the contention that the quoted language of the statute simply leaves to the board the administration of details which the Legislature cannot well determine for itself, and

which it may therefore leave to the determination of a subordinate tribunal, and that the substance of the legislation is found in that part of the statute which prescribes punishment for disregard of the regulations so determined.

This decision is cited with approval in *Commonwealth* v. *Kingsbury,* 199 Mass. 542. See also, *Crowninshield* v. *Crowninshield,* 187 Mass. 221; *Nelson* v. *State Board of Health,* 186 Mass. 330.

The authorities above cited seem quite sufficient to show the authority and power of the Legislature to control and regulate the use of the highways of the Commonwealth, and that the Legislature may in the exercise of its discretion confer upon towns or other local governmental organizations matters affecting peculiarly the interests of their own inhabitants and matters of local police regulation.

I note further that the proposed bill, subject to a limitation as to general laws now or hereafter in force, and as to the minimum fee to be charged for a license under it, leaves the amount of license fee and the provisions of the license to be fixed by the selectmen of Nantucket. Legislation of this precise character, so far as the fixing of license fee is concerned, was considered by the Supreme Judicial Court, and its constitutionality sustained in the case of *Boston* v. *Schaffer,* 9 Pick. 415. In that case it was urged that a statute granting authority to the mayor and aldermen of the city of Boston to license theaters, "on such terms and conditions as to them may seem just and reasonable," was unconstitutional; but the court held the statute to be valid, and sustained the action taken by the mayor and aldermen of Boston under its provisions.

In the consideration of this proposed measure of legislation I must and do assume that the Legislature, in its passage (if it is passed), judged its enactment to be for the good and welfare of the Commonwealth, and that the action of the selectmen of Nantucket, in determining the provisions of the license and the amount of the license fee, will be reasonable.

I am of the opinion that the proposed bill, if enacted, will be constitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Trust Companies — Use of word "Bank" as part of Business Name.

There is no statutory prohibition of the use of the word "bank" as a part of the business name of a trust company.

March 31, 1914.

Hon. Augustus L. Thorndike, *Bank Commissioner.*

Dear Sir: — You request my opinion upon the following question: —

A trust company incorporated under the laws of this Commonwealth, and acting under chapter 116 of the Revised Laws, wishes to change its name so that it will be known as a bank and trust company.

Will you please advise me if, in your opinion, a trust company by using the word "bank" as part of its name would be conflicting with the laws under which it is operating. Also would it be in conflict with chapter 115 of the Revised Laws if a trust company which is operating under another statute should designate itself as a bank.

Section 3 of chapter 116 of the Revised Laws, as amended by section 1 of chapter 491 of the Acts of 1909, provides in part: —

No person or association and no bank or corporation, except trust companies incorporated as such in this commonwealth, shall use in the name or title under which his or its business is transacted the words "Trust Company" even though said words may be separated in such name or title by one or more other words, or advertise or put forth a sign as a trust company or in any way solicit or receive deposits as such.

Section 16 of chapter 590 of the Acts of 1908, as amended by section 4 of chapter 491 of the Acts of 1909, provides: —

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. Nor shall any person, partnership, corporation or association except co-operative banks incorporated under the laws of this commonwealth and corporations described in the first sentence of this section hereafter transact business under any name or title which contains the words "bank" or "banking," as descriptive of said business.

The statutes seem to prohibit the use of the name "trust company" by any but a corporation that is in fact a trust company, but also seems to contemplate the possible use of other words as a part of the name of the corporation in combination with the words "trust company." There is a real distinction between a bank and a trust company, although many of the functions of the two kinds of corporations are the same. I do not, however, find any prohibition of the use of the word "bank" in connection with the words "trust company," and am of the opinion that the word "bank" may be used as part of the corporate name with the words "trust company," so far as any strictly legal question is concerned. Whether as a matter of policy the use of the name ought to be permitted is a matter not for the consideration of this department.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Taxation of Industries — Exemptions.

A law exempting manufacturing property from taxation for a term of years, when authorized by local authorities, would be unconstitutional.

APRIL 3, 1914.

To the Honorable House of Representatives.

GENTLEMEN: — You have requested my opinion upon the constitutionality of House Bill No. 1386, which amends chapter 12 of the Revised Laws by inserting after section 6 thereof the following sections: —

SECTION 7. The voters of any city or town may vote to exempt, or may authorize the city or town council or board of aldermen of such city or town to exempt from taxation for a period not exceeding

ten years, such manufacturing property as may thereafter be located in said city or town in consequence of such exemption, and the land on which such property is located.

Section 8. Property so exempted under the preceding section shall not, during such period of exemption, be liable to taxation while such property is used for the purposes for which it was so located.

By the Constitution of the Commonwealth, Part Second, Chapter I., Section I., Article IV., the General Court is empowered —

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; . . .

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the commonwealth, taken anew once in every ten years at least, and as much oftener as the general court shall order.

These are the only provisions of the Constitution directly affecting the subject of taxation. The Constitution contains certain provisions in regard to taxation for specific purposes, recognizing the importance of the public worship of God and of instruction in piety, religion and morality, and also in regard to the encouragement of literature and science, the diffusion of education among the people, and the promotion of general benevolence and public and private charity.

It is said that —

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.)

The general purpose of the constitutional provision above quoted is to put the burdens of government equally upon all the people, in proportion to their ability to bear them. (*Opinion of the Justices, supra.*)

To exempt a new industry from taxation, as provided in this proposed bill, would in some, and probably in many, instances result, in effect, in taxing an old established indus-

try to aid in establishing a competitor in business. The exemption of any property from taxation results in the disproportionate taxation of the other property in the same taxing district, and as the Constitution permits only proportional taxation, all property within the Commonwealth, which is owned and held in such a way that it ought to be available to its owner to increase his ability and enlarge his duty in defraying the expenses of the government, must be subjected by law to the annual tax levy.

The statute exempting property from taxation is unconstitutional unless it applies only to property already taxed in some other way, or to property devoted to a public or semi-public use, or to property of insignificant value and of such a character that it may be supposed to be owned by every one alike. (Nichols on Taxation in Massachusetts, § 39.)

The result of my examination of the Constitution and the authorities under it is that I am of the opinion that this bill will, if enacted, be unconstitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Treasurer and Receiver-General — Bonds — Names of Purchasers.

The Treasurer and Receiver-General is not required to disclose the names of purchasers of State bonds.

APRIL 3, 1914.

Hon. FREDERICK W. MANSFIELD, *Treasurer and Receiver-General.*

DEAR SIR: — You ask my opinion upon the following question: Is the State Treasurer required by any existing law, or is it proper for him, to disclose the names and addresses of purchasers of tax-exempt State bonds?

I have to say that while it might under some circumstances become the right of the State Auditor to demand such information, when it would also become the duty of the Treasurer and Receiver-General to give it to the Auditor, and while the Governor and Council would, in my opinion, have authority to demand and receive such information, I am clearly of the opinion that there is no law requiring that names of purchasers of tax-exempt bonds from the State Treasurer and Receiver-General be made public.

Your question goes further and requests my opinion as to the propriety of making such disclosure. While this is somewhat beyond the scope of my duties, I may say that inasmuch as the bonds are tax-exempt there seems to be no reason why the general public should be informed as to who the purchasers of these securities may be. The publication of a list of names and adresses of the purchasers could not be useful to any one except to intermeddlers, curiosity seekers and those who are generally busy with other men's matters. I think no bonding house would disclose the names of its customers, and that to publish a list of names would be to disturb the confidence that ought to exist between buyer and seller in a matter of this kind. If these bonds were taxable, and the question should arise as to giving information to local boards of assessors, an entirely different question would be presented.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Clerks of Court — Naturalization Fees.

Clerks of court are not entitled to naturalization fees except such portion as is necessary for additional clerical assistance, travel and other expenses while acting under the naturalization act.

APRIL 3, 1914.

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

DEAR SIR: — You have requested my opinion upon the following question: Have clerks of courts the right to retain for their own use and benefit one-half of the naturalization fees, under the naturalization laws of the United States and the laws of this Commonwealth?

Section 37 of chapter 165 of the Revised Laws provides that —

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

It is clearly the meaning of this section that the salaries of clerks of courts are to be in full of all compensation for their official services. This section is supplemented by chapter 253

of the Acts of 1908, which makes elaborate provision for the keeping of an exact account of all fees received by clerks of courts or by any assistant or other person in their offices or employment, for any acts done or services rendered in connection with their said offices, and provides that they shall, on or before the tenth day of each month, pay over to the treasurer of the county, or to such other officer as may be entitled to receive them, all fees received during the preceding calendar month, and shall render an account thereof under oath, but subject to the proviso that —

The said clerks may retain that part of any moneys received by them under or by authority of the naturalization laws of the United States which they shall certify under oath to the treasurers of their respective counties have actually been expended by them for clerical assistance, travel and other expenses, while acting under said laws.

The United States naturalization act of June 29, 1906, provides —

That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts: United States circuit and district courts now existing . . . ; also all courts of record in any State or territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

It is further provided in section 13 of that act —

That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

. . . . . .

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Immigration and Naturalization, and paid over to such Bureau within thirty days from the close of each quarter in each and every fiscal year. . . .

In addition to the fees herein required, the petitioner shall, . . . deposit with and pay to the clerk of the court . . . *Provided,* That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars.

The question, then, is, may clerks of courts of this Commonwealth having jurisdiction in naturalization cases, notwithstanding the provisions of the State statute that their salaries shall be in full compensation for their services, and that they must account for and pay over all fees as above set forth, retain for their own emolument one-half the naturalization fees received by them, less the amount actually paid by them for clerical assistance, travel and other expenses while acting under the naturalization laws?

The apparent conflict of laws has been productive of some contrariety of opinion. Under date of May 24, 1907, Hon. Dana Malone, then Attorney-General, rendered an opinion on this question to the effect that —

> Clerks of courts cannot retain for their own use one-half of said naturalization fees received by them under the naturalization laws of the United States, as their duties and powers are prescribed by the laws of this Commonwealth, and they perform the duties required by the United States naturalization act by virtue of their offices as clerks of courts of this Commonwealth, and not through appointment by the United States, and our law especially requires that all naturalization fees be paid over to the treasurer of the county.

The same question arose in the case of *Hampden County* v. *Robert O. Morris*, 207 Mass. 167, and the Supreme Judicial Court decided that clerks of courts may retain one-half of the naturalization fees received by them, first paying from these fees for all additional clerical force required in performing the duties imposed by the naturalization act.

Under date of Jan. 5, 1914, the Supreme Court of the United States handed down a decision, covering the precise point under consideration, in the case of *Mulcrevy et al.* v. *City and County of San Francisco*. The plaintiff in error was elected county clerk and became ex officio clerk of the Superior Court, a court having jurisdiction of naturalization cases. The city charter under which he was elected provided that "the salaries provided in this charter shall be in full compensation for all services rendered." In its opinion the court said: —

> On the merits the case presents no difficulty. It involves only the construction of the act of Congress already referred to above. We accept the State court's construction of the charter of the city and county of San Francisco. Indeed, its clearness leaves no room for construction. The salary it provides is declared to be "in full compensation for all services rendered." And it is provided that "every

officer shall pay all moneys coming into his hands as such officer, no matter from what source derived or received, into the treasury of the city and county." The provisions are complete and comprehensive, and express Mulcrevy's contract with the city, the performance of which his office imposed upon him; and, of course, the fees received by him in naturalization proceedings, because he was clerk of the Superior Court, were in compensation for official acts, not personal acts.

. . . If it be granted that he was made an agent of the national government, his relations to the city were not thereby changed. He was still its officer, receiving fees because he was — not earning them otherwise or receiving them otherwise, but under compact with the city to pay them into the city treasury within twenty-four hours after their receipt.

. . . He was given office accommodations, clerks to assist him, and yet contends that notwithstanding such equipment and assistance, notwithstanding his compact, he may retain part of the revenues of his office as fees for his own personal use. We cannot yield to the contention; nor do we think the act of Congress compels it. The act does not purport to deal with the relations of a State officer with the State. To so construe it might raise serious questions of power, and such questions are always to be avoided. We do not have to go to such lengths. The act is entirely satisfied without putting the officers of a State in antagonism to the laws of the State — the laws which give them their official status. It is easily construed and its purpose entirely accomplished by requiring an accounting of one-half of the fees to the United States, leaving the other half to whatever disposition may be provided by the State law. Counsel cite some State decisions which have construed the act of Congress as giving a special agency to the clerks of the State courts, and as receiving their powers and rights from the national enactment. The reports of the Department of Commerce and Labor are quoted from, which, it is contended, exhibit by their statistics and recommendations the necessity of national control. State decisions expressing a contrary view are frankly cited. This contrariety of opinion we need not further exhibit by a review of the cases. We have expressed our construction of the act, and it is entirely consonant with the purpose of the act and national control over naturalization.

The Supreme Judicial Court of this Commonwealth has always recognized the Supreme Court of the United States as the final arbiter as to the meaning of Federal statutes and as to questions arising under the Federal Constitution. *Commonwealth* v. *People's Express Co.*, 201 Mass. 564.

This principle is now universally accepted throughout the country, and in one form or another has received the sanction

of our Supreme Judicial Court in numerous instances. *Braynard* v. *Marshall*, 8 Pick. 194; *Sims's Case*, 7 Cush. 285; *Eliot* v. *McCormick*, 144 Mass. 10; *Chesley* v. *Nantasket Beach Steamboat Co.*, 179 Mass. 469; *Opinion of the Justices*, 207 Mass. 601; *Opinion of the Justices*, 208 Mass. 619; *Commonwealth* v. *Phelps*, 210 Mass. 78.

A decision of the Supreme Court of the United States as to the meaning of a Federal statute is a declaration of the law of the land, binding upon judges of State courts and upon individual citizens, and stands as such until overruled or modified by the court that made it, or until the law is changed by the legislative arm of the Federal government.

I am therefore of the opinion that clerks of courts are not entitled to retain any portion of the naturalization fees that may be paid to them, except as specified in the statute, to pay for additional clerical assistance, travel and other expenses while acting under the naturalization act.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Grade Crossings — Powers of Legislature.

The Legislature has authority to fix the time for the filing of a report by a grade crossing commission.

APRIL 3, 1914.

Hon. CALVIN COOLIDGE, *President of the Senate.*

DEAR SIR: — The Senate has transmitted to me an order which reads as follows: —

Whereas, There is pending in the Senate a resolve to expedite the filing of a report relative to the abolition of the grade crossing in the center of the town of Winchester, printed as House Document No. 214; and

Whereas, There is a question as to whether this resolve is not an interference by the legislative power with the judicial power, within the terms of Article XXX of the Declaration of Rights; it is therefore

Ordered, That the opinion of the Attorney-General be requested by the Senate as to whether this resolve, if enacted, will be constitutional.

The powers and duties of the court with relation to the pending grade crossing matter —

belong to that class not strictly judicial, but partaking both of the judicial and the executive character, like those of laying out highways

and assessing damages therefor, superintending the administration and distribution of the estates of insolvent debtors, and many others which might be named, the exercise and control of which may be vested by the Legislature at its discretion, unless restrained by specific constitutional provisions, either in judges appointed by the Governor and holding during good behavior, or in commissioners or other officers appointed or elected in such manner and holding for such terms as the Legislature may prescribe. (*New London Northern R.R.* v. *Boston & Albany R.R.*, 102 Mass. 386, 387.)

As the whole subject of the crossing of highways by railroads can from time to time be regulated by the Legislature, the Legislature can, even after a final decree has been rendered, make other provisions, and require the crossings to be constructed in a manner different from that established by the decree. The Legislature can amend the statutes under which this proceeding has been commenced, and if the amended act is made applicable to the pending proceeding and is valid, the court in rendering a final decree must proceed in accordance with the statutes as amended. (*In re Northampton*, 158 Mass. 299, 302.)

If it is to be treated as special legislation prescribing new rules and additional provisions for making a public improvement in substitution for those under which the court and commissioners have been acting, it was within the power of the Legislature to enact it. (*Providence Steamboat Co.* v. *Fall River*, 183 Mass. 535, 540.)

Thus the Legislature has full jurisdiction of grade crossing matters, except that it may not direct what order or finding shall be made by the court or a commission. But the Legislature may make an order or finding which the court or a commission could have made in a matter pending, and may direct the court to proceed as though the court or commission had made the order or finding. This is a fine distinction, as was pointed out in the dissenting opinions in the above quoted cases. Nevertheless, it is apparently law.

A statute setting the time for the report of the commission may be construed as an amendment to, or as a substitute for part of, section 36 of Part I. of chapter 463 of the Acts of 1906, and as such may be supported under the principles laid down in the above quoted cases.

It is therefore my opinion that the resolve in question would be constitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Schoolhouses — Use for Municipal and Other Purposes — Liability for Damages.

No liability attaches to a city or town for damages caused by defects or negligence in or around public school property while said property is used strictly for municipal purposes.

April 6, 1914.

Committee on Education.

Gentlemen: — You have requested my opinion on the legality, advisability and value of adding to section 1 of House Bill No. 803 the following clause: "such use shall not be construed to impose any additional liability on the city or town," so that this section would read: —

For the purpose of promoting the usefulness of the public school property the school committee of any city or town may conduct such educational and recreation activities in or upon school property under its control, and shall allow the use thereof by individuals and associations, subject to such regulations as the school committee shall establish, for such educational, recreation, social, civic, philanthropic and similar purposes as the committee may deem to be for the interest of the community, provided that such use shall not interfere or be inconsistent with the use of the premises for school purposes. Such use shall not be construed to impose any additional liability on the city or town.

A city or town is not answerable in damages for the acts or neglect of its public officers in the discharge of their official functions, nor for injuries to individuals caused by defects or negligence in or around a schoolhouse or yard, because the maintenance of schools is a public function. 28 Cyc. 1308.

In a case where the plaintiff fell and was seriously injured by reason of an unsafe staircase in a schoolhouse, the defendant was held not liable, for the reason last stated. *Hill* v. *Boston*, 122 Mass. 344.

Similar decisions are to be found in *Sullivan* v. *Boston*, 126 Mass. 540, and *Bigelow* v. *Randolph*, 14 Gray, 541.

But where a city or town lets for hire a building erected for municipal purposes, it is liable for an injury caused by a defect or want of repair in the building, or for the negligence of its agents or servants in the maintenance of the building. 28 Cyc. 1308.

So in the case of *Little* v. *Holyoke*, 177 Mass. 114, the city was held liable in an action for personal injuries caused by the plaintiff falling down a flight of stairs in a hall of the de-

fendant city. The city occasionally let the hall for public gatherings, and on the evening in question the hall was let for the purposes of an entertainment to be given by the lessee.

Of similar import is the case of *Worden* v. *New Bedford*, 131 Mass. 23.

The proposed legislation apparently contemplates the letting of public school property for hire, subject to such regulations as the school committee shall establish, for such educational, recreation, social, civic, philanthropic and similar purposes as the committee may deem to be for the interest of the community; and the question arises, can a city or town acting under the provisions of this act be exempted from liability for an injury caused by a defect or want of repair in the building or other property let, or by act or neglect of its servants and agents? To state the question another way, can the Legislature exempt cities and towns from liability for injuries incurred during the use of school buildings for some purposes?

The Constitution of Massachusetts guarantees a certain remedy for all injuries or wrongs. Declaration of Rights, Art. XI. Statutes in conflict with this article necessarily are void. *Hunt* v. *Lucas*, 99 Mass. 404.

No question of vested rights is involved. We have not here the question as to whether vested rights of action may be interfered with, but rather, whether rights of action may be prevented from accruing. Article XI. of the Constitution, above cited, is merely an assertion of the old common-law rule that for every wrong there must be a remedy. As I have already stated, one of the exceptions to this rule is that a municipality is not liable for injuries caused by a municipal use of municipal property. For the Legislature to exempt municipalities further would be in conflict with Article XI. of the Declaration of Rights. To exempt municipalities and not exempt private concerns doing the same business of renting halls would be an unconstitutional discrimination.

Is the contemplated use strictly a municipal use? If so, exemption from liability by statute is unnecessary. If not a municipal use, exemption is impossible.

It is respectfully suggested that the bill be so phrased as to make it clearly appear that the use of school property permitted by it shall be municipal. The addition of the proposed clause may tend to support this construction.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Labor — Construction of Public Works.

Under St. 1909, c. 514, § 21, the phrase "construction of public works" refers to actual building operations and not to the work of preparing material.

April 8, 1914.

Robert N. Turner, Esq., *Commissioner of Labor.*

Dear Sir: — You have requested my opinion on the following question: —

A general contractor, engaged in the construction of a public building for one of the cities of the Commonwealth, has made a contract for the special preparation of a portion of the material to be used in the construction of the said building with a subcontractor from outside the Commonwealth, who was the lowest bidder. The work on the said material in adapting it for use in the building is being done outside the Commonwealth, and by persons not citizens of Massachusetts. The general contractor knew at the time the contract was made that the work was to be done in this way and by such persons. Moreover, the contract with the subcontractor contains no provision that in the employment of mechanics or laborers preference shall be given to citizens of Massachusetts or citizens of the United States.

Will you kindly advise whether or not in your opinion the above facts constitute a violation of the Acts of 1909, chapter 514, section 21?

Section 21 of chapter 514 of the Acts of 1909 reads as follows: —.

In the employment of mechanics and laborers in the construction of public works by the commonwealth, or by a county, city or town, or by persons contracting therewith, preference shall be given to citizens of the commonwealth, and, if they cannot be obtained in sufficient numbers, then to citizens of the United States; and every contract for such works shall contain a provision to this effect. Any contractor who knowingly and wilfully violates the provisions of this section shall be punished by a fine of not more than one hundred dollars for each offence.

The question hinges on the meaning of the words "construction of public works." This phrase was interpreted by Attorney-General Dana Malone, in 1906, to include only the actual building operations. III. Op. Atty.-Gen. 9. The literal meaning of the word "construction" is "putting together."

An early precedent is found in 1 Kings VI., VII., in which it is stated that King Solomon's Temple "was built of stone *made ready* at the quarry; and there was neither hammer nor

axe nor any tool of iron heard in the house, *while it was in building.*"

Your very letter of inquiry refers to the contractor as engaged in the construction of the building, and to the sub-contractor as engaged in the preparation of material to be used in the construction.

I am of opinion that the words "construction of public works" were used by the Legislature with the intention that they be narrowly construed, and that the facts as stated in your letter do not constitute a violation of the statute.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Commissioners on Fisheries and Game — Expenses.

Traveling expenses incurred on strictly official business, but no other expenses, may be allowed the Commissioners on Fisheries and Game.

APRIL 9, 1914.

HON. FRANK H. POPE, *Auditor of the Commonwealth.*

DEAR SIR: — In your letter requesting an opinion from this department as to whether certain bills for expenses presented for allowance by members of the Commission on Fisheries and Game should be allowed, you state that "in the case of one of the members making regular trips from his home by way of Highland station to Boston he seeks to charge the State for fares between his home and his Boston office, where he transacts private business, on the days on which he performs any business for the State;" that "another contention of the Commission is that as their duties are not all performed in the office in the State House, they are entitled to traveling expenses from their homes to Boston on days when the State's business requires them to visit any place in Boston outside of the office in the State House;" and further, that certain members of the Commission on Fisheries and Game "visit the State House almost daily, and contend that should there be business of the commission requiring them to visit any other place in Boston than the office in the State House, they should be allowed expenses for traveling from their homes, and also for their midday meal on those days."

In many instances special provision has been made for the payment of traveling and other expenses necessarily incurred

in the service of the Commonwealth. Thus it was provided that each member of the former Board of Cattle Commissioners should receive ". . . his actual travelling expenses which have been necessarily incurred;" that members of the State Board of Charity shall receive ". . . their travelling and other necessary expenses." So, too, that each member of the Civil Service Commission shall be paid ". . . his travelling and other expenses incurred in the performance of his official duties."

The law covering the payment of expenses of members of the Commission on Fisheries and Game is found in section 54 of chapter 6 of the Revised Laws, and the rule governing the payment of such expenses is found in the words, "shall be allowed their actual reasonable expenses incurred in the performance of such duties."

No case has arisen under this provision of the statute for determination by the Supreme Judicial Court of this Commonwealth. The case of *Richardson* v. *State*, a case involving a similar question, was decided by the Supreme Court of Ohio in 1902. The purpose of the action was to determine whether money paid to Richardson out of the county treasury as compensation for his services as county commissioner was illegally paid, and if so, to recover judgment for the same. The Ohio statute is as follows: —

> Each county commissioner shall be allowed three dollars for each day that he is employed in his official duties, and five cents per mile for his necessary travel, for each regular or called session, not exceeding one session each month, or twelve in any one year, and five cents per mile when traveling within their respective counties on official business, to be paid out of the county treasury on the warrant of the county auditor; . . . and when necessarily engaged in attending to the business of the county pertaining to his office under the direction of the board, and when necessary to travel on official business out of his county, shall be allowed, etc.

In its decision of the case the court said: —

> It must be conceded that the $3 per day allowed the commissioner is the limit of his compensation for his day's work, in whatever way it may be performed in the discharge of his official duties. He cannot lawfully claim that the county is also bound to pay his board or other personal expenses. And the "mileage" allowed him is intended to compensate him for expenses of his travel on official business. . . . To make such expenses an additional burden on the public funds would require a plain and unequivocal provision of the statute. An intention to do so will not be inferred. . . . The expenses authorized to be paid

a commissioner under the provision of the statute in question are, we think, official expenses only, as distinguished from those which pertain to his personal comforts and necessities. . . . The purpose of the provision was to reimburse him when, in the language of the statute, the money had been "actually paid in the discharge of his official duty.". . . It is a fair inference that, if it had been intended to reimburse the commissioner for expenditures of this character, the Legislature would have expressed that intention in plain terms. It is well settled that the compensation of public officers cannot be enlarged, by implication, beyond the terms of the statute.

The last sentence quoted from the opinion of the Ohio court undoubtedly states correctly the rule of law to be applied in cases like those stated in your letter of inquiry. A member of this commission, traveling from his place of residence to his own office or other place where he regularly carries on his own business, and to which he is going for that purpose, cannot be said to be traveling on the business of the Commonwealth so as to enable him to charge traveling or other expenses; and this is so even though he may transact at his own place of business during the day some item of official business. The expense is not incurred in the performance of his official duty; and the same rule of necessity applies to your question in regard to charges made for meals at the place of residence or place of business of members of the commission. Nor, in my opinion, are members of the commission who receive an annual salary or its equivalent, when on duty in Boston, and who happen in the course of their official duties to have to go to some part of the city other than the office provided by the Commonwealth for their use, entitled by that fact to charge to the Commonwealth the expense of their midday meals. It is to be presumed that they would have the midday meal if they remained in the office provided by the Commonwealth. It is reasonably apparent that the expense of the midday meal is not increased by reason of the fact that their duties call them outside of the office provided by the Commonwealth. I think, however, they may properly charge traveling expenses, as trolley fares paid out by them in going about the city on strictly official business.

It is my opinion that the items specified in your letter of inquiry should not be allowed.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Regulation of Sale of Tickets to Places of Amusement.

It is not within the constitutional powers of the Legislature to provide regulations for the sale of tickets to places of amusement.

April 10, 1914.

Committee on Mercantile Affairs.

Gentlemen: — You have requested my opinion as to whether the substitute suggested by Mr. Caro for House Bill No. 236, relative to the sale of tickets of admission to places of amusement, would be constitutional. Mr. Caro's bill reads as follows: —

It shall be a condition of any license hereafter granted by any city or town, or by any other public authority, for any public entertainment, that tickets of admission to the same shall not be sold to any dealer in such tickets, or to any other person, with the intent or knowledge that such tickets shall be resold to individual purchasers; or with the intent or knowledge that such tickets shall be disposed of in any manner at a price exceeding the price for which they were sold, or exceeding the price advertised for such tickets by the person, firm, or corporation issuing the same. If the said condition is violated by any licensee, the license shall thereupon be revoked by the authority granting the same; and it is hereby made the duty of the licensing authority to see that the said condition is complied with.

It was ruled by my predecessor, Hon. James M. Swift, in an opinion to the House committee on the judiciary, Feb. 15, 1912, that —

The business of conducting a theatre or other place of amusement is a private business, and while such business may be regulated by the Legislature in respect to public morals or safety, under the police power, the right or regulation cannot be extended to the sale of tickets of admission to places of amusement. (III. Op. Atty.-Gen. 491, 492.)

He quotes from the leading case on the subject, as follows: —

The sale of a theatre ticket at an advance upon the original purchase price, or the business of reselling such tickets at a profit, is no more immoral, or injurious to public welfare or convenience, than is the sale of an ordinary article of merchandise at a profit. (*Ex parte Quarg*, 149 Cal. 79, 81.)

The Legislature has certain powers of regulation and has not certain other powers of regulation, and the distinction between these two sorts of powers remains the same, regardless of the manner in which the Legislature seeks to enforce these powers. Direct statutory prohibition or indirect prohibition by means of conditions in licenses are merely methods of enforcement, and do not go to the root of the question of legislative powers.

It is therefore my opinion that the proposed regulation of the sale of tickets to places of amusement is unconstitutional, regardless of the method by which its enforcement is sought.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Insurance Company — Investments — Pecuniary Interest of Officers.

A person who has an interest in real estate, but solely as trustee for another, may lawfully serve on the investment committee of an insurance company which places a loan on said real estate.

APRIL 10, 1914.

Hon. FRANK H. HARDISON, *Insurance Commissioner.*

DEAR SIR: — You request my opinion upon the following statement: —

If a person as a trustee holds a parcel of real estate which, with certain other parcels, is exchanged for stock in a corporation which was organized for the purpose of acquiring such land, and the directors of an insurance company, one member of which is the aforesaid trustee, who is also a member of the insurance company's finance committee, negotiates a mortgage loan with said real estate corporation, can that director and member of the finance committee of the insurance company be held to have acted in violation of the statute (St. 1907, c. 576, § 26, par. 4)?

That paragraph provides that —

All investments and deposits of the funds of the company shall be made in its corporate name, and no director or other officer thereof, and no member of a committee having any authority in the investment or disposition of its funds, shall accept, or be the beneficiary of, either directly or remotely, any fee, brokerage, commission, gift or other consideration for or on account of any loan, deposit, purchase,

sale, payment or exchange made by or in behalf of such company, or be pecuniarily interested in any such purchase, sale or loan, either as borrower, principal, co-principal, agent or beneficiary except that, if a policy holder, he shall be entitled to all the benefits accruing under the terms of his contract.

An examination of the law, apart from the statute, may be in some degree helpful in determining the effect of the statute. It is settled beyond question that the directors of corporations are bound in their official capacity, to act in an entire good faith. They are to be regarded as trustees for the shareholders, and are held to strict fidelity to their trust. They are bound to exercise their powers for the benefit of the corporation only, and cannot deal for themselves and for the corporation in one and the same transaction. A director cannot with propriety vote in the board of directors upon a matter affecting his own private interest any more than a judge can sit in his own case. It has been held by some courts that a director cannot contract with his company, and that such contracts are void; and courts that have not gone to this extreme have held that contracts between directors and corporations, though not void, are always to be subjected to the closest scrutiny, and are voidable unless made in that entire good faith which the law demands of this species of fiduciary. *Nye* v. *Storer*, 168 Mass. 53; *Warren* v. *Para Rubber Shoe Co.*, 166 Mass. 97.

In the case you have stated the director was not a party to the contract, and cannot be said to have accepted or to have been the beneficiary of, either directly or remotely, any fee, brokerage, commission, gift or other consideration for or on account of the loan. It is true that by reason of his position as a director of the insurance company, and as a member of its finance committee, he was a factor in determining whether this loan should be made and the terms upon which it should be made, but you state that he held the real estate in question as trustee, and if that is so, in exchanging his real estate for stock in a corporation he simply changed the form of the trust property. It hardly need be said that a trustee cannot by a sale or exchange of trust property acquire property of his own. If he exchanged the real estate which he held in trust for stock in a real estate corporation, the stock which came to his hands in the course of this transaction was impressed with the same trust under which he held the real estate. He was not an officer of the real estate corporation,

and any gain or benefit accruing to the stock of that corporation in his hands was not at all to his personal profit or benefit, but for the benefit of his *cestui que* trust; so that I do not see how it could be held that the trustee was pecuniarily interested in the loan either as borrower, principal, co-principal, agent or beneficiary.

The statute to which you refer is penal and is to be strictly construed, and even though he held the stock in his own right, it is very difficult to see how he could be held liable under this statute.

I am of the opinion that your inquiry must be answered in the negative.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Surety Companies — Bonds — Renewals.

A surety company bond may be renewed and its term extended by a separate instrument properly executed.

APRIL 11, 1914.

HON. FREDERICK W. MANSFIELD, *Treasurer and Receiver-General.*

DEAR SIR: — You have requested my opinion as to whether or not certificates of renewal furnished and executed by a bonding company that is surety on a bond executed and filed in accordance with the requirements of chapter 656 of the Acts of 1910, is adequate and sufficient to renew a bond.

Chapter 656 of the Acts of 1910 relates to persons, partnerships, associations or corporations engaged in the collection business and conducting a collection agency, bureau or office in this Commonwealth, and requires that every such person, partnership, association or corporation shall file a bond with the Treasurer and Receiver-General.

Your query is whether the certificate of renewal is sufficient to renew and keep in force a bond the term of which has expired or is about to expire.

In its popular sense the word "renew" means "to refresh, revive or rehabilitate an expiring or declining subject, but not appropriate to describe the making of a new contract or the creation of a new existence; to re-establish a particular contract or another period of time; to restore to its former conditions; to make again; to make over, to re-establish; or to

rebuild." 34 Cyc. 1331. The word "renewal" in its broadest sense means "that which is made anew or re-established; a change of something old for something new; the establishment of the particular contract for another period of time; imparting continued or new force and effect; the substitution of a new right or obligation for another of the same nature."

In the case of *Strouse* v. *American Credit Indemnity Co.*, 91 Md. 244, 257, the court in deciding a question involving this point used this language: —

> A renewal of the certificate of the United States Credit System Company means the same certificate with all the stipulations contained for another year, or another certificate to cover another year identical in every word and figure with the certificate it succeeded.

I would suggest that in the use of a certificate of renewal the principal as well as the surety on the bond be made a party. The form of the certificate of renewal in question did not accompany your inquiry, and I am therefore unable to pass upon its sufficiency, but I have no doubt that a bond may be renewed and its term extended to cover such period of time as may be agreed upon by a separate instrument properly executed.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Cities and Towns — Public Documents.

Cities and towns have no authority to dispose of such books, reports and laws as have been received from the Commonwealth under St. 1908, c. 142, §§ 1 and 2.

APRIL 13, 1914.

HENRY E. WOODS, Esq., *Commissioner of Public Records.*

DEAR SIR: — You ask my opinion upon the following question: Have cities or towns authority to dispose of the copies of the series of public documents which they do not care to retain?

Sections 1 and 2 of chapter 142 of the Acts of 1908 are as follows: —

> SECTION 1. Each city and town shall provide a suitable place, or places, to be approved by the commissioner of public records, for the preservation and convenient use of all books, reports and laws received from the commonwealth; and for every month's neglect so to do shall forfeit ten dollars.

Section 2. Said books, reports and laws shall be in the custody or control of the city or town clerk, unless the city council or selectmen shall, by vote, designate some other officer, the town counsel or other person to have said custody or control of either all or part of the same.

This chapter makes it the duty of all our cities and towns to take care of all the books, reports and laws that may be bestowed upon them by the Commonwealth, and requires of them the task of providing a suitable place for the preservation and convenient use of all such books, reports and laws. The authority conferred and the duty created by this statute are to preserve and keep. The only relief against this burdensome situation, that I have been able to find, is contained in chapter 422 of the Acts of 1908, wherein it is enacted that —

In case a city or town at any annual city or town election shall vote not to receive the series of public documents, and the commissioner of public records shall report to the secretary of the commonwealth that in his opinion such city or town is unable to make suitable provision for the care and use of such documents, he may discontinue sending such documents to such city or town.

I regret to say that I am forced to the opinion that towns and cities have no authority to dispose of the books, reports and laws specified in chapter 142 of the Acts of 1908, above quoted, in any other way than to provide a suitable place for their preservation and convenient use, except as provided by chapter 422 of the Acts of 1908.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Civil Service — Sealer of Weights and Measures in Lowell.

The sealer of weights and measures in Lowell is not subject to civil service rules.

April 13, 1914.

Civil Service Commission.

Gentlemen: — You have requested my opinion upon the following questions: —

First. — Was the enactment of chapter 645 of the Acts of 1911 in effect a repeal of the provisions of chapter 382 of the Acts of 1909, and, therefore, does it exempt this position in the city of Lowell from the operation of the civil service law and rules?

Second. — Does the fact that by said section 39 of chapter 645 of the Acts of 1911 providing for the election by the municipal council of a sealer of weights and measures exempt the office from civil service classification in view of the provisions of section 9 of chapter 19 of the Revised Laws above referred to?

Section 9 of chapter 19 of the Revised Laws exempts from civil service classification judicial officers and all officers elected by the people or whose appointment is subject to confirmation by a city council.

Under the authority conferred by chapter 382 of the Acts of 1909 the Civil Service Commission prepared and promulgated a rule of classification which became effective Sept. 1, 1909, and which reads as follows: —

RULE 7.

. . . . . .

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

By section 37 of chapter 645 of the Acts of 1911, which is an act to amend the charter of the city of Lowell, it is provided: —

There shall be the following administrative officers, who shall perform the duties prescribed by law for them, respectively, . . . as the municipal council may prescribe, . . . a sealer of weights and measures.

Section 39 of the last-mentioned chapter provides that —

The municipal council shall have the power to elect the administrative officers named in section thirty-seven. . . .

Section 66 of said chapter provides: —

All special acts and parts of special acts inconsistent herewith are hereby repealed, and no general act or part of a general act inconsistent herewith shall hereafter apply to the city of Lowell. . . .

The provisions of Rule 7, above quoted, relate to sealers of weights and measures holding office by appointment, while the charter of the city of Lowell makes the office of sealer of

weights and measures in that city elective. If we give to the rule made by the Civil Service Commission the force and effect of law, yet the provision of the charter is a later enactment, making a special and exceptional provision in regard to the office of sealer of weights and measures in the city of Lowell, and apparently is intended to deal with the whole subject of election to the office of sealer of weights and measures in that city. The provisions of the chapter are also entirely inconsistent with the civil service rule. It is my opinion, therefore, that the charter of the city of Lowell, by reason of the special provisions it contains, exempts the position of sealer of weights and measures in that city from civil service classification.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Trading Stamps — Excise Tax — License Fees.

A law requiring the payment of a license fee of $6,000 per annum by any firm furnishing trading stamps with any sale of goods would be unconstitutional.

APRIL 17, 1914.

Committee on Mercantile Affairs.

GENTLEMEN: — You have requested my opinion as to the constitutionality of House Bill No. 1643, entitled "An Act relative to the use of stamps, coupons and similar devices for or with the sale of goods, wares and merchandise."

This bill provides that every person, firm or corporation furnishing stamps, coupons, tickets, certificates, cards or other similar devices to any other person, firm or corporation to use in, with or for the sale of any goods, wares or merchandise shall be required to obtain annually "a separate license from the auditor of each county wherein such furnishing or selling or using shall take place, for each and every store or place of business in that county owned or conducted by such person, firm or corporation, from which such furnishing or selling or in which such using shall take place." By section 2 of this bill it is provided that the sum of $6,000 per license shall be paid, and in addition to this, that every person, firm or corporation who shall use any stamps, coupons, tickets, certificates, cards or other similar devices in, with or for the

sale of any goods, wares or merchandise, which shall entitle the purchaser receiving the same to procure from any person, firm or corporation any goods, wares or merchandise free of charge or for less than the retail market price thereof, must also obtain a like license and must also pay a license fee of $6,000 a year.

It would appear that the provisions of this bill are so broad that a person receiving any stamps, coupons, tickets or other similar devices, who should use them for the purpose of procuring any goods, wares or merchandise, is also required by this bill to procure a similar license from the county auditor and to pay the license fee of $6,000.

The taxing power vested by the Constitution in the Legislature is contained in section IV. of article I. of chapter I. of the Constitution, and is expressed in the following language: —

> Full power and authority are hereby given and granted to the said general court . . . 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.

It is readily apparent that the methods of taxation provided by the Constitution are, first, by proportional and reasonable assessments, rates and taxes upon the inhabitants of and persons resident and estates lying within the Commonwealth; and second, as the State may not since the adoption of the Federal Constitution levy duties on imports, by reasonable excises upon any produce, goods, wares, merchandise and commodities.

That the constitutionality of the proposed measure cannot be sustained under the constitutional provision in regard to the levy of proportional rates and taxes upon the inhabitants and persons resident and estates lying within the Commonwealth is so evident as to render comment or discussion unnecessary.

The question then arises, Can this proposed bill be sustained as an exercise of the power to levy reasonable excises?

The Constitution places two limitations upon the authority of the Legislature to levy excise taxes: (1) that they must be reasonable, and (2) that they may be levied only upon

produce, goods, wares, merchandise and commodities. *Portland Bank* v. *Apthorp*, 12 Mass. 252.

Clearly, the use of stamps, coupons or certificates referred to in the bill before me, if subject to an excise tax under the provision of the Constitution last above quoted, is so because it falls under the head of "commodities," and the question to be determined is whether the method of transacting business with or by the use of stamps, coupons, certificates or other similar devices is a commodity.

The Legislature of 1904 passed an act imposing an excise tax on the business of selling, giving or delivering trading stamps, checks, coupons or other similar devices, and the case of *O'Keeffe* v. *Somerville*, 190 Mass. 110, was an action brought to test the validity of that statute. The plaintiff in that case used trading stamps in his business and paid under protest to the city of Somerville the excise tax provided by the statute, and then brought suit to recover back the amount so paid. The Supreme Judicial Court in its decision in that case said: —

> The first and principal question before us is whether the right to conduct the business, in the manner described in the first section (of that statute) is a commodity within the meaning of the constitution.

And said further: —

> It is not necessary in the present case to determine the meaning of the word "commodities," in reference to every possible application of it, but we are of opinion that it is not broad enough to include every occupation which one may follow, in the exercise of a natural right, without aid from the government, and without affecting the rights or interests of others in such a way as properly to call for governmental regulation. Whatever may be done by the Congress of the United States under its general power to levy excise taxes (see *Thomas* v. *United States*, 192 U. S. 363) we are of opinion that, under the limitation to commodities, the General Court of Massachusetts cannot levy an excise tax upon the business of a husbandman or an ordinary mechanic. If this is not the necessary effect of the decision in *Gleason* v. *McKay*, *ubi supra*, it certainly is intimated by the language of the court in the opinion.
>
> In the statute before us the selling or giving of trading stamps, in connection with the sale of articles, can hardly be considered a business in itself; but the business which the statute seeks to reach is the selling of articles under an arrangement to deliver stamps as a part of the sale, or as an accompaniment of it. The statute includes sales of

articles of every kind, and it describes the delivery of stamps in terms that include deliveries which, under the decisions of this court, are entirely unobjectionable in law. *Commonwealth* v. *Sisson*, 178 Mass. 578. *Commonwealth* v. *Emerson*, 165 Mass. 146. Such deliveries have generally been considered permissible in connection with the sale of articles, in the exercise of a common right, and many cases have been decided which invalidate statutes or ordinances intended to prevent such deliveries. *People* v. *Gillson*, 109 N. Y. 389. *People* v. *Zimmerman*, 102 App. Div. (N. Y.) 103. *Ex parte McKenna*, 126 Cal. 429. *State* v. *Dalton*, 22 R. I. 77. *Long* v. *State*, 74 Md. 565. *Young* v. *Commonwealth*, 101 Va. 853.

And further: —

One of the reasons why these methods are allowable is found in the familiar principle that constitutional liberty means "the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." The restrictions upon conduct which may be imposed in the exercise of the police power include everything that may be necessary in the interest of the public health, the public safety or the public morals, and they include nothing more. These doctrines have often been discussed and elaborated, and it is unnecessary to consider them at length in this case. In applying them to the business mentioned in this statute, no reason appears for the imposition of an excise tax upon the business of selling articles with an accompaniment of stamps which entitle the vendee to other property.

It has been further said by our Supreme Court that the mere exercise of a natural right in the performance of labor of the simplest kind, or in making an ordinary simple contract, is not a commodity within the meaning of the Constitution. *Opinion of the Justices*, 196 Mass. 625, 629.

The business or the method of doing business at which this bill is aimed is not, then, according to the decisions of the Supreme Judicial Court, a commodity, and therefore is not and cannot be subject to an excise tax.

It may be urged, however, that the purpose of this bill is not to levy an excise tax but to regulate by means of a license the management and conduct of the method of transacting business by or with the use of trading stamps or other similar devices. It is to be borne in mind that this method of doing business has been repeatedly held by our Supreme Judicial Court to be lawful. *Commonwealth* v. *Emerson*, 165 Mass. 146; *Commonwealth* v. *Sisson*, 178 Mass. 578. And that if the

stamps, coupons or other similar devices mentioned in this bill are used in such a way as to constitute a lottery or game of chance, such use may be punished under criminal statutes already in existence. And it should be further borne in mind that it is the constitutional right of persons in this Commonwealth to acquire and possess property and to transact legitimate business. Declaration of Rights, Art. I.

Coming now to the consideration of the question of the authority of the Legislature to impose license fees, the rule is that —

> If the Legislature has power to prohibit a certain act altogether [as, for instance, the sale of intoxicating liquor] it may establish a pecuniary imposition upon its performance intended as a substantial prohibition or as a drastic limitation of the number of persons who will perform the act; if, however, the Legislature has no power to prohibit the act it cannot establish a pecuniary imposition really intended as a prohibition. . . .
>
> When the Legislature has neither the power to prohibit nor to tax a certain act, but the act is of such a nature that a reasonable inspection is necessary for the public welfare, the Legislature may impose a license fee and prohibit the performance of the act until the fee is paid, but in such a case the fee may cover only the cost of inspection. (Nichols on Taxation in Massachusetts, pp. 4 and 5; Cyc., Vol. 38, p. 927.)

The method of doing business by or with the use of stamps, coupons or other similar devices is one which the Legislature has no authority under the Constitution to prohibit, and since it is not a commodity no excise tax can be levied upon it. The license fee fixed in the proposed bill is greatly in excess of any probable cost of inspection of the business, and is evidently intended to prohibit the transaction of a business that the Supreme Court has held to be lawful.

My conclusion is that the proposed bill, if enacted, will be unconstitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Wrentham State School — Rights of Trustees in Mail addressed to Inmates.

Trustees of the Wrentham State School may exercise discretion in preventing delivery of objectionable mail to inmates.

Valuable enclosures in mail addressed to inmates of Wrentham State School must be delivered or returned.

April 18, 1914.

Trustees of the Wrentham State School.

Gentlemen: — You ask my opinion upon the following questions: —

What are the rights of the trustees to open mail addressed to inmates of the Wrentham State School? If the contents of letters addressed to the inmates of the Wrentham State School are, in the opinion of the superintendent, objectionable, what are the powers of the school in the matter? May the letter be destroyed or must it be returned to the sender, or must it be delivered? What are the rights of the trustees as to letters sent out by the inmates of the institution? Have they the right to open such letters, and if the contents are objectionable destroy them?

Section 7 of chapter 504 of the Acts of 1909 provides that —

The board shall have general supervision of all public and private institutions and receptacles for insane, feeble-minded or epileptic persons or for persons addicted to the intemperate use of narcotics or stimulants, and the Hospital Cottages for Children, and when so directed by the governor may assume and exercise the powers of the board of trustees of said state institutions in any matter relative to the management thereof. The board shall have the same powers relative to state charges in institutions or other places under its supervision and to their property as are vested in towns and overseers of the poor relative to paupers supported or relieved by towns.

By section 85 of this chapter it is further provided: —

All patients in any institution under the supervision of the state board of insanity shall be allowed, subject to the regulations of the board, to write freely to the board, and letters so written shall be forwarded, unopened, by the superintendent or person in charge of the institution to said board for such disposition as it shall consider right; and the board may send any letters or other communications to any patients in any of said institutions whenever it may consider it proper so to do. All other letters to or from the patient may be sent as addressed or to his legal or natural guardian or most interested friend.

Your inquiry raises a question under the Federal postal laws. The assistant attorney-general for the Post-office Department, in an opinion rendered under date of Feb. 6, 1894, ruled that the authorities of an insane asylum are required to exert a proper discretion in the matter of delivering mail to the inmates and in preventing the transmission of letters intended for delivery by such inmates to other persons, especially so when the interests or the recovery of patients might be injured or the safe administration of the affairs of the institution interfered with.

Section 85 of the statute above quoted confers authority upon the State Board of Insanity to supervise the correspondence of all patients in institutions over which they exercise control, of which your institution is one. The language of this section is so clear as to make explanation or comment unnecessary.

Referring to your question as to postage and money enclosed in letters to patients, it is my opinion that in any case where it is inadvisable to deliver the money or stamps or other valuable enclosure found in a letter to the person addressed, it should be returned to the sender.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Commissioner of Corporations — Inspection of Tax Returns.

Only such persons as may have occasion to inspect tax returns for the purpose of assessing or collecting taxes have a right to inspect tax returns of Massachusetts corporations.

APRIL 22, 1914.

ALBERT J. BRUNELLE, Esq., *Secretary, Board of Registration in Pharmacy.*

DEAR SIR: — Under date of April 17 you state that the Board of Registration in Pharmacy respectfully requests an order from this department to the Commissioner of Corporations to permit a representative of your Board to inspect the franchise tax return of the Jaynes Drug Company, to enable your Board to act intelligently upon the applications of the Jaynes Drug Company for permits to operate drug stores and certificates for sixth-class liquor licenses.

The statute, section 40 of Part III. of chapter 490 of the Acts of 1909, as amended, provides as follows with reference to the annual return to be filed by domestic corporations: —

Such return shall be filed with the tax commissioner. In the case of domestic business corporations the whole of said return, and in the case of other corporations so much of said return as relates to the profit or loss which has resulted from the business of the corporation shall be open only to the inspection of the tax commissioner, his deputy, clerks and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or collecting taxes.

It occurs to me that your Board in making this request may have thought that the Jaynes Drug Company is a foreign corporation. It is in fact a Massachusetts corporation, and its return to the Tax Commissioner is subject to the provisions of the statute above quoted. Under this statute the only persons authorized to examine the return are the Tax Commissioner and his clerks and assistants and such other officers of the Commonwealth as may have occasion to inspect it for the purpose of assessing or collecting taxes.

In my opinion it is not within the jurisdiction or authority of the Attorney-General to make such an order as your Board has requested.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Board of Agriculture — Poultry Premium Bounty.

An incorporated poultry association is entitled, under St. 1909, c. 428, to receive aid from the Poultry Premium Bounty Fund for one annual exhibition only.

Unincorporated associations are not entitled to receive aid from the Poultry Premium Bounty Fund.

APRIL 22, 1914.

JOHN C. GRAHAM, Esq., *Head of Poultry Department, Massachusetts Agricultural College.*

DEAR SIR: — You ask my opinion upon the following questions: —

First, under the provisions of the statute can a State poultry association, incorporated, hold more than one exhibition of poultry during a year and receive a part of the poultry premium bounty based on the total number of entry fees received by the association in competition with the local incorporated associations; and second, would a local unincorporated branch of a State association be entitled to draw upon the Poultry Premium Bounty Fund if such local branch held a poultry show or exhibit annually during the months of November, December or January?

The statute governing this matter is found in chapter 428 of the Acts of 1909, and is as follows: —

Section 1. The sum of one thousand dollars shall be paid annually in the month of August from the treasury of the commonwealth to the board of agriculture, which shall be known as a Poultry Premium Bounty, and shall be used by said board to encourage and improve the breeding of poultry. Said bounty shall be distributed by said board among the poultry associations hereinafter designated, during the month of September of each year, on the basis of the total entry fees received by such associations, respectively, during the year preceding that time, as hereinafter provided, and the sum so distributed shall be used by such associations for the purpose of enabling them to hold annual exhibitions of poultry and for the payment of premiums only. The board may make such rules as it may deem suitable for carrying out the provisions of this act; and any part of said bounty not distributed by the board in any year shall be repaid by it to the treasurer and receiver general.

Section 2. No association shall be entitled to any part of said bounty unless it shall have been incorporated under the laws of the commonwealth for the purposes, principally, of holding exhibitions of poultry within the commonwealth.

Section 3. No association shall be entitled to any part of said bounty unless it shall certify to the board of agriculture, not later than the first day of July, under the oath of the president and secretary of such association, that it has held an exhibition of poultry during the months of November, December or January preceding said certificate, the amount of the entry fees paid to the association for such exhibition, and that the association is in need of aid to enable it to continue its exhibitions of poultry, together with such other facts as the board may request.

It is my opinion that an incorporated poultry association is entitled to receive aid from the Poultry Premium Bounty Fund for one show or exhibit annually, and that if a greater number of shows are given by an incorporated association no claim can be sustained for a payment from the premium fund for the additional exhibitions; and this would apply to your proposed corporation as well as to any other.

Second, it is my opinion that under this statute an unincorporated association is not entitled to receive aid from the Poultry Premium Bounty Fund.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Divorce Certificate — Marriage License.

The certificate of divorce or copy of such record required to be filed with town or city clerks, under St. 1912, c. 535, need not be in the English language.

April 22, 1914.

Hon. Frank J. Donahue, *Secretary of the Commonwealth.*

Dear Sir: — You ask if it is necessary that the divorce certificate or certified copy of record presented to a town or city clerk by a divorced person seeking a marriage license under the provisions of chapter 535 of the Acts of 1912 be in the English language.

I am of the opinion that it is the law that such certificate or copy of record need not be in English, but must necessarily be in the language of the court issuing the decree. The town or city clerk must be convinced, by a translation or otherwise, that the certificate or copy of record shows that a divorce has been granted in accordance with the statement of the person applying for the marriage license. The certificate or copy of record must also be attached to the marriage license if one is issued, and becomes a part of the license, and with this the requirements of the statute are satisfied.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Pardons — Expiration of Prison Term.

Where the term of a prisoner expires on Sunday by reason of a pardon issued by the Governor and Council, the prisoner should be discharged on the preceding Saturday.

April 24, 1914.

Gen. Benjamin F. Bridges, *Warden, State Prison.*

Dear Sir: — I am in receipt of the following request for an opinion: —

Section 130, chapter 225 of the Revised Laws reads as follows: "A prisoner whose term expires on Sunday shall be discharged on the preceding Saturday." I have received a pardon issued by the Governor and Council on April 8, a part of which reads as follows: "Now Know Ye, That, upon full consideration of the premises, We do hereby pardon the said offence and release him, the said . . . on April 26, 1914, from any further imprisonment under the sen-

tence aforesaid, and do order that he be discharged accordingly:" I am somewhat in doubt just when to release him, — whether the section 130 above quoted applies to the pardon or not, and I respectfully ask your opinion in the matter.

The question involved is whether the date set in the pardon is strictly and technically the expiration of the prisoner's "term." Section 132 of the chapter referred to in your letter relates to pardons, and states of the Governor's pardon warrant, "Such warrant shall be obeyed and executed, instead of the sentence originally awarded."

In my opinion the effect of such warrant is to substitute a new and shorter term for the original term of imprisonment. The term of the prisoner in question, as shortened by the warrant recited in your letter, expires on Sunday, April 26, 1914. The prisoner should therefore be discharged on the preceding Saturday.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Savings Banks — Investments — Municipal Bonds.

Savings banks may invest in city bonds in certain States where "money and credits" of said city, added to the last assessed valuation, bring the valuation of the taxable property therein within the provisions of St. 1912, c. 580, § 1, *f*.

APRIL 28, 1914.

Hon. AUGUSTUS L. THORNDIKE, *Bank Commissioner.*

DEAR SIR: — You have asked my opinion on the following subject: —

In the official debt statement of the city of Minneapolis, Minn., the city comptroller has not included in the amount of the last valuation of property for assessment of taxes the amount of "money and credits" that are assessed under chapter 285, Laws of Minnesota, 1911. This amounts to more than $41,000,000. The city of Minneapolis has issued additional bonds which throws the net indebtedness more than 7 per cent. of the assessed valuation, if the amount of "money and credits" is not included in the total valuation. This department requests that you give it your opinion if the city of Minneapolis could include in its total valuation the amount of the assessed value of "money and credits," and by so doing would it comply with subdivision *e* of clause second, section 68, chapter 590, Acts of 1908?

I assume, both from your mention of "7 per cent." and from the fact that Minneapolis has more than 100,000 population, that you are inquiring about *f* rather than about *e*, as stated in your letter.

Subdivisions *e*, *f* and g, as amended by section 1 of chapter 580 of the Acts of 1912, read as follows: —

e. In the legally authorized bonds of the states of New York, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Missouri and Iowa, and of the District of Columbia, and in the legally authorized bonds for municipal purposes, and in the refunding bonds issued to take up at maturity bonds which have been issued for other than municipal purposes, but on which the interest has been fully paid, of any city of the aforesaid states which has at the date of such investment more than thirty thousand inhabitants, as established by the last national or state census, or city census certified to by the city clerk or treasurer of said city and taken in the same manner as a national or state census, preceding such investment, and whose net indebtedness does not exceed five per cent of the valuation of the taxable property therein, to be ascertained by the last preceding valuation of property therein for the assessment of taxes.

f. In the legally authorized bonds of the states of California, Delaware, Nebraska, New Jersey, Oregon and Washington, and in the legally authorized bonds for municipal purposes or in refunding bonds which have been issued for other than municipal purposes, but on which the interest has been fully paid, of any city of the states of California, Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and Wisconsin, which has at the date of such investment more than one hundred thousand inhabitants, established in the same manner as is provided in subdivision *e* of this clause, and whose net indebtedness does not exceed seven per cent. of the valuation of the taxable property therein, established and ascertained as provided in subdivision *e* of this clause.

g. In the subdivisions *d*, *e* and *f* of this clause the words "net indebtedness" mean the indebtedness of a county, city, town or district, omitting debts created for supplying the inhabitants with water and debts created in anticipation of taxes to be paid within one year, and deducting the amount of sinking funds available for the payment of the indebtedness included.

Section 1 of the Minnesota statute cited by you contains the meat of the whole statute, and reads as follows: —

"Money" and "credits," as the same are defined in section 798, Revised Laws of 1905, are hereby exempted from taxation other than

that imposed by this act, and shall hereafter be subject to an annual tax of three mills on each dollar of the fair cash value thereof.

I learn from other sources than your letter of inquiry that the bonded indebtedness of Minneapolis, including the issue in question and excluding the water debt and sinking funds, is $15,933,250.82; that the valuation of taxable property, exclusive of money and credits, is $219,609,553; and that $41,072,125 of money and credits is taxable under the provisions of the act cited by you.

The question before me is whether the fact that the tax laid on money and credits is limited by law to $3 a thousand precludes the inclusion of money and credits in determining the valuation of the taxable property of the city. This limit is practically the only distinction between this class of property and the other property, classed as realty and personalty. Money and credits are listed for taxation just as other personalty is listed. The lists are required to be verified, and are tested as to completeness and accuracy in the usual way. The assessment is reviewed and equalized the same as others.

Were it not for the tax limit there would be nothing to differentiate this class of property from other personalty. Does the limit make any real difference with respect to the Massachusetts law relative to legal investments for savings banks?

The determination of the question requires an inquiry into the object of the establishment by the Legislature of the maximum ratio between city indebtedness and valuation. If this ratio was intended as an accurate test of the degree of solvency of the city, then, obviously, property which is only available to a limited extent to satisfy the city's obligations should not be given as much weight as property which is taxable, and therefore available, up to its entire value.

But it is my opinion that the purpose of the ratio is rather to establish a mere arbitrary measure. In this opinion I am fortified by the fact that the measure of size is just such a measure. The bonds of a Minnesota city of 29,999 inhabitants are not legal investment, no matter how solvent it is. The bonds of a Minnesota city having one more inhabitant are. If a Minnesota city has 99,999 inhabitants, and its tax exceeds, by a single mill, 5 per cent. of its valuation, its bonds are not legal investment. Add a single inhabitant, and its bonds thereby become legal investment, and thousands of

dollars more in bonds may be issued, for the allowable ratio has thereby jumped to 7 per cent. All this points to the ratio being a mere arbitrary measure. Therefore the words "taxable property" should be construed broadly. If the Legislature wished to restrict the meaning to "taxable property unlimitedly available for payment of the same," or some similar phrase, the Legislature should have done so expressly.

Broadly speaking, money and credits are taxable property. That point has been determined by the Attorney-General of Minnesota. In certain counties of that State the county auditors are paid as salaries sums "regulated by the assessed valuation of real and personal property for purposes of taxation in their respective counties." In answer to an inquiry from the State public examiner as to whether money and credits should be included in estimating the assessed valuation for the purpose of determining salaries, the State law department said: —

> Your inquiry is answered in the affirmative. Moneys and credits are given an assessed valuation, and although the local tax rate is not applied to such valuation, they are nevertheless personal property having an assessed value, and for the above specified purpose must be included in personal property valuations. (Minnesota Attorney-General's Report, 1910–12, p. 256.)

It is therefore my opinion that the city of Minneapolis may include in its total valuation the amount of the assessed value of money and credits, within the meaning of subdivision *f* of clause second of section 68 of chapter 590 of the Acts of 1908, and amendments thereto.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Prisons — Violation of Parole — Determination of Duration of Sentence.

Although a prisoner released on parole has been returned for breach of same, if his conduct while in prison has been perfect he is entitled to the usual deduction of six days for every month of imprisonment.

APRIL 28, 1914.

Board of Prison Commissioners.

GENTLEMEN: — You have requested my opinion upon the following statement and inquiry: —

A prisoner was committed to the State Prison Feb. 27, 1893, having been sentenced thereto for a term of twenty-five years for

being an habitual criminal. Dec. 20, 1900, he was released upon parole, and returned to the prison Oct. 10, 1901, for having violated the conditions of the same. He was again released upon parole April 9, 1909, and again returned Sept. 22, 1909, for another violation of parole.

During the entire time that he has served in the prison his conduct there has been perfect, he never having been punished for violation of prison rules.

Will you kindly favor the commissioners with your opinion as to when this man's sentence expires, less the time off due him for good conduct in the prison?

The statutes governing this case are to be found in sections 2 and 3 of chapter 435 of the Acts of 1887 and sections 20 and 22 of chapter 222 of the Public Statutes, which appear without substantial change in sections 113, 116 and 129 of chapter 225 of the Revised Laws, section 129 having been amended in 1903.

The first question to be determined is whether the violation of the conditions of his permit by the prisoner is to be regarded as the breaking or violation of a rule of the prison. If it is to be so regarded, then the question of how much shall be taken off the deductions from his term of imprisonment for good behavior rests entirely with your Board. But I am of the opinion that it is not to be so regarded. The permit is granted by the Governor and Council upon such terms and conditions as they prescribe, and it does not appear to have been a condition of the permit that the prisoner while at liberty must observe the rules of the prison, nor does it appear that the terms and conditions upon which the permit was granted were intended to have the force of prison rules or to stand in place of such rules. The prisoner, so far as I am informed, had no notice that a violation of the conditions of his permit would be taken as the violation of a rule of the prison. The language of the statute, "they may issue to him a permit to be at liberty" is inconsistent with the idea that he is to be subject to penalties for a breach of the conditions of his permit as for a breach of the rules of the prison; besides, the statute fixes the penalty for a violation of the terms of his permit, namely, that the permit itself is forfeited, and that for such violation he shall be returned to the prison, and that the time he has been at liberty shall not be taken into consideration in computing the term of his imprisonment.

Now, leaving out of the account the fact that this prisoner has twice violated the terms and conditions of his permit to be at liberty, as not constituting a violation of any prison rule, we come to the question of deductions to be made from the term of his imprisonment for good conduct in prison. The question may arise as to whether such a deduction can be claimed by the prisoner as a matter of legal right, or whether it rests in the discretion of your Board. The question was before the Supreme Judicial Court in the case of *Murphy* v. *Commonwealth*, 172 Mass. 264, and, in rendering its decision, the court said: —

> It seems to us that . . . the convict was and is entitled to deductions for good conduct, and to a permit to be at liberty for the time thus deducted, as a matter of right rather than of favor. The object was to furnish an incentive to good conduct while the convict was in confinement, by offering him a reward therefor.

You state that the conduct of this prisoner during his entire term in prison has been perfect. It is my opinion that it is his legal right to have deducted from his term of imprisonment six days for every month thereof, and that your Board should grant the prisoner, upon such terms as you may deem proper, a permit to be at liberty during the time so deducted from his sentence.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Corporations — Increase of Capital Stock — Filing Fees.

Corporations must pay a filing fee of one-twentieth of one per cent. on all increases of capital stock, and every increase and decrease must be separately considered.

APRIL 29, 1914.

Hon. FRANK J. DONAHUE, *Secretary of the Commonwealth.*

DEAR SIR: — A business corporation organized under the provisions of chapter 437 of the Acts of 1903, with an authorized capital stock of $17,000,000, consisting of $7,000,000 of common stock and the balance in preferred stock, having paid the fees as required by law, by a proper vote reduced its common stock to $700,000, and immediately authorized

an increase of its common stock by the amount of $4,300,000. You request my opinion as to whether a tax of one-twentieth of one per cent. on the $4,300,000 increase should be levied as a filing fee under the provisions of section 89 of said chapter.

Sections 42 and 43 of chapter 437 of the Acts of 1903 relate, respectively, to the increase or reduction of the capital stock of corporations, and provide as follows: —

Section 42. If an increase in the total amount of the capital stock of any corporation shall have been authorized by vote of its stockholders in accordance with the provisions of section forty, the articles of amendment shall also set forth: (*a*) the total amount of capital stock already authorized; (*b*) the amount of stock already issued for cash payable by instalments and the amount paid thereon; and the amount of full paid stock already issued for cash, property, services or expenses; (*c*) the amount of additional stock authorized; (*d*) the amount of such stock to be issued for cash, property, services or expenses, respectively; (*e*) a description of said property and a statement of the nature of said services or expenses, in the manner required by the provisions of section eleven.

Section 43. If a reduction of the capital stock of any corporation shall have been authorized by its stockholders in accordance with the provisions of section forty, the articles of amendment shall also set forth (*a*) the total amount of capital stock already authorized and issued; (*b*) the amount of the reduction and the manner in which it shall be effected; (*c*) a copy of the vote authorizing the reduction. No reduction of capital stock shall be lawful which renders the corporation bankrupt or insolvent, but the capital stock may be reduced by the surrender by every stockholder of his shares and the issue to him in lieu thereof of a proportional decreased number of shares, if the assets of such corporation are not reduced thereby, without creating any liability of the stockholders of such corporation in case of the subsequent bankruptcy of such corporation.

The fees for filing and recording the certificate required by law for an increase of capital stock are fixed by section 89 of said chapter, as amended by section 2 of chapter 396 of the Acts of 1907, which reads as follows: —

The fee for filing and recording the certificate required by section forty-two providing for an increase of capital stock shall be one twentieth of one per cent. of the amount by which the capital is increased.

Section 90 of said chapter 437 provides as follows: —

The fees for filing all other certificates, statements or reports required by law shall be five dollars for each certificate, statement or report, but no fee shall be paid for filing the annual tax return required by section forty-eight.

The reduction and the increase of the capital stock of this corporation, though made by votes as nearly simultaneous in point of time as it was possible to make them, still constitute two separate and distinct transactions. No question appears to have been raised as to the payment of the filing fee for the certificate showing a reduction of the capital stock, but this was no more a distinct transaction than the act of increasing the stock.

It has been the unvarying practice since the enactment of the present law to charge the statutory fee in every instance of an increase in capital stock whenever made, and the statute makes no provision for exemptions or exceptions under any circumstances.

It has been suggested that $4,000,000 of the $4,300,000 increase is to be exchanged for a like amount of second preferred stock, and that therefore the filing fee should be computed only on the $300,000. It is not apparent how the disposition to be made by the corporation of the capital stock acquired by this increase can affect the statutory requirement in regard to the payment of the fee for filing and recording the certificate of increase.

It is my opinion that in this case a filing fee of one-twentieth of one per cent. of $4,300,000 must be paid by the corporation.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Damages — Liability of Commonwealth to Riparian Proprietors.

A riparian proprietor who is damaged by the construction of a bridge which cuts off his access to the sea has no right of action against the Commonwealth.

APRIL 29, 1914.

Committee on Metropolitan Affairs.

GENTLEMEN: — Upon the petition and statement of facts of John Stuart of Quincy, transmitted to me with House

Bill No. 1172, you have requested my opinion in regard to the following questions: —

1. Has the petitioner suffered any damage for which the Commonwealth is liable?
2. If the Commonwealth is liable, for what should the petitioner be compensated?

The claim of the petitioner against the Commonwealth is well set forth in his petition, which is as follows: —

The undersigned, citizen of Quincy, respectfully represents that he maintains a boat-building plant, with facilities as well for storing boats, located on Sachem Brook, so called, in said Quincy, which is crossed by a drawless bridge constructed by the Metropolitan Park Commission, in accordance with chapter 124 of the Acts of 1904, to connect the Quincy Shore Drive; that for many years prior to the construction of said bridge your petitioner had the unobstructed use of the channel of said Sachem Brook, in connection with his business as aforesaid; that he objected to the construction of said bridge, believing that it would result in an injury to his said business and property; and that he was given assurance that said bridge would be so constructed as not to interfere with the free passage of boats thereunder, but that since the construction of said bridge the tides have washed into said channel sand and material used in the construction of the parkway adjacent to said bridge, so that each year since said bridge was constructed your petitioner has suffered great damage by reason of said inability to use said channel uninterruptedly as heretofore; and that no provision has been made by the Commonwealth for the payment of such damages.

Wherefore, your petitioner prays for the enactment of legislation to recompense him for injury to his business and property, caused as aforesaid.

From the petition and statement of facts it appears that Sachem Brook is a small stream flowing into Quincy Bay, so called, and that the tide ebbs and flows in the channel of this brook for a considerable distance, and that at low tide the channel is almost entirely drained of water. The petitioner's place of business is located on the shore of Sachem Brook, on tidewater, and at some time the Metropolitan Park Commission, by virtue of authority conferred upon it by chapter 124 of the Acts of 1904, built a drawless bridge over Sachem Brook below the plant of the petitioner. That chapter is entitled, "An Act to authorize the Metropolitan Park

Commission to construct a drawless bridge over Sachem Brook, so called, in the Quincy Shore Reservation," and provides as follows: —

Section 1. The metropolitan park commission is hereby authorized to construct a drawless bridge over that part of Sachem brook, so called, in Quincy, lying within the lands acquired by said commission by takings or otherwise for Quincy shore reservation.

Section 2. No action shall be taken relative to the construction of said bridge until the plan therefor has been approved by the board of harbor and land commissioners.

Section 3. This act shall take effect upon its passage. [*Approved February 27, 1904.*

The petitioner's place of business being located on tidewater, and the bridge of which he complains having been constructed by authority of the Legislature, the question arises, has the petitioner, even though he has been injured as he claims to have been, any legal claim against the Commonwealth for damages?

Questions exactly parallel to the one under consideration have been repeatedly passed upon by the Supreme Judicial Court, and have been uniformly decided against the respective claimants. It is said that —

The Legislature may authorize the use of public streams for any public purpose without compensating riparian proprietors thereby injured. It may cut off the access of riparian owners to the sea by authorizing the construction of a bridge, with or without a draw, or across a stream below their lands. Such authorization is the regulation of public rights and an owner has no private right in the stream even if he has enjoyed twenty years' use or if he is the only wharf owner upon it. (Nichols on Land Damages, § 5, at pp. 12–13.)

In a case in which the facts were that the petitioners owned a tidewater mill from which they alleged they had hitherto derived great emolument and advantage, and that their property was damaged by the location and construction of the Boston & Maine Railroad across the mouth of the creek at the head of which the petitioners' mill was situated; that the railroad company had greatly obstructed and impeded the flow of tidewater into the petitioners' milldam; that by the location and construction of the railroad through the petitioners' milldam the respondents had greatly obstructed and

prevented the tidewater, which overflowed the meadow and land above the pond, from flowing back into the pond; that in consequence of these obstructions the petitioners' mills could not be worked as effectually as before; and that the railroad company, by the location and construction of its road, had greatly injured the premises of the petitioners for the purposes of a wharf, — the court, speaking by Chief Justice Shaw, said: —

The question was as to the right of riparian proprietors upon salt water, over an open tract of flats from which the tide wholly ebbs, and lying between upland territory and navigable water, kept open and unobstructed for the free flow and reflow of the tidewater, for their mills or for navigation. This was a question of law, depending on the general laws of property, the colony ordinance in regard to flats, the usages of the country, and judicial decisions, and was proper to be decided as a question of law. And we are of opinion, as matter of law, that the petitioners had no right, as riparian proprietors, to have their flats kept open and unobstructed for the purposes stated, and that the jury should have been so instructed; also, that the petitioners, as tide mill owners, had no right, either as against the public or as against conterminous and adjacent proprietors, to have their flats kept open, but only to the flow of water in the channel below low-water mark, and where the tide does not ebb. The adjoining proprietor, to the extent of one hundred rods, may build solid structures, and thus obstruct the flow and reflow of the tide, without objection, provided he does not wholly cut off his neighbor's access to his house or land; and if the mill owner or conterminous proprietor suffers in consequence, it is *damnum absque injuria*. The public have a right to regulate the use of public navigable waters for purposes of passage; and the erection of a bridge with or without a draw, by the authority of the Legislature, is the regulation of a public right, and not the deprivation of any private right, which can be ground for damages. So far, therefore, as the railroad erected by authority of the Legislature affected the right of the petitioners to pass or repass to and from their lands and wharves with vessels, it was a mere regulation of a public right, and not a taking of private property for a public use, and gave the petitioners no claim for damages. (*Davidson* v. *Boston & Maine R.R.*, 3 Cush. 93.)

In a similar case the court again said: —

The petitioners owned the wharf and land against which the westerly end of said bridge was built, and they claimed damages for the injury to their estate by the said bridge, by impeding the access to their wharf by vessels, and by occupying the space which would have served

the purpose of a vessel's berth, lying at their wharf. The judge decided that they could maintain no such claim, and rejected the evidence offered in support of it, to which the petitioners excepted. This court are of opinion that this decision was right. As we understand the facts, this bridge passes over the channel only, which is part of the public domain; being a navigable channel from which the tide does not ebb, the Legislature had the right to authorize the bridge, and did authorize both the bridge and the continuance of it. If the petitioners sustained any loss by it, it was a damage arising from a partial impediment in the use of a public right, a damage sustained by them in common with all the rest of the community, and for which they could have no claim for damage. They had no right to occupy that part of the channel as a vessel's berth, because it was upon a public navigable stream, and if occupied in fact more extensively by them than by others, it would be by sufferance, and not as of right. (*Boston & Worcester R.R. Corpn.* v. *Old Colony R.R. Corpn.*, 12 Cush. 605.)

In another case of like character the plaintiff alleged that he owned and used a wharf and other property on Monument River, a navigable stream and arm of the sea, in the town of Sandwich, and that the defendant on or about June 6, 1873, "wrongfully, unjustly and unlawfully built, or caused to be built and constructed a bridge, without a draw, across said river, below said land and wharf, and between it and the sea, and so low and near the river as to prevent the plaintiff from navigating said river and using said land and wharf as aforesaid; that the defendant refused and neglected, and still refuses and neglects to provide a draw in and for said bridge, although often requested so to do by the plaintiff; that, by reason of the building and constructing of said bridge, he has been prevented from using his said land and wharf for the purposes of trading and landing and shipping grain, flour, wood and various other kinds of goods, wares and merchandise, and storing the same, and mooring vessels, and for wharfage and wharf purposes generally, and for the purposes for which it was previously used, and has been and is greatly damaged and injured, and particularly has been and is greatly damaged and injured, in his said land and wharf and business." In this case the court, speaking by Chief Justice Gray, said: —

The act of the defendant, for which the plaintiff in various counts seeks compensation, is the building of a bridge across a navigable stream and arm of the sea. The direct injury alleged is to the navi-

gation of the stream, to which the plaintiff is entitled only in common with the whole public; and the remedy for that injury is by indictment, and not by private action. The fact that the plaintiff alone now navigates the stream, or has a wharf thereon at which he carries on business, only shows that the present consequential damage to him may be greater in degree than to others, but does not show that the injury is different in kind, or that other riparian proprietors and the rest of the public may not, whenever they use the stream, suffer in the same way. The case has no analogy to those in which an obstruction in a navigable stream sets back the water upon the plaintiff's land, or, being against the front of his land, entirely cuts off his access to the stream, and thereby causes a direct and peculiar injury to his estate, or in which the carrying on of an offensive trade creates a nuisance to the plaintiff. *Blood* v. *Nashua & Lowell Railroad*, 2 Gray, 137; *Lawrence* v. *Fairhaven*, 5 Gray, 110; *Brightman* v. *Fairhaven*, 7 Gray, 271; *Willard* v. *Cambridge*, 3 Allen, 574; *Wesson* v. *Washburn Iron Co.*, 13 Allen, 95; *Brayton* v. *Fall River*, 113 Mass. 218; *Lyon* v. *Fishmongers' Co.*, 1 App. Cas. 662. (*Blackwell* v. *Old Colony R.R. Co.*, 122 Mass. 1.)

These cases have been followed in later decisions of the Supreme Court: *Stimson* v. *Inhabitants of Brookline*, 197 Mass. 568, 573; *Home for Aged Women* v. *Commonwealth*, 202 Mass. 422, 428; *Dwyer* v. *New York, New Haven & Hartford R.R. Co.*, 209 Mass. 419, 421.

The petitioner states that he objected to the construction of the bridge across Sachem Brook. Even though he did object, that fact is in this case of no legal consequence. His objection was addressed to the sound discretion and judgment of the Legislature, whose decision was final.

It is claimed that the petitioner wrote a letter in which he referred to an agreement made between himself and Mr. Emery and the Metropolitan Park Commission, but it is to be noted that no one had authority to make an agreement with the petitioner on behalf of the Commonwealth; and the petitioner loses no rights by reason of any negotiations with Mr. Emery or any member of the Park Commission for the reason that there was no process of law by which the petitioner could have prevented or even hindered the building of the bridge.

My attention has been directed to certain cases cited by counsel for the petitioner, and I have examined all the cases he has referred to, but I do not find one among them that is parallel to the case under consideration. In each of the cases

cited in behalf of the petitioner the damage suffered was special and peculiar, while the damage alleged by the petitioner in this case is precisely the same in kind and character as that complained of in the cases hereinbefore cited, and this petitioner is subject to the rule of law established by those cases. The damage alleged by the petitioner is caused by the interference with the navigation of Sachem Brook, a thing to which he is entitled only in common with the whole public. The fact, if it be a fact, that he alone now navigates the stream or has a boat-building establishment thereon at which he carries on business, only shows that the present consequential damage to him is greater in degree than to others, but does not show that the injury is different in kind or that other riparian proprietors and the rest of the public may not whenever they use the stream suffer in the same way. In such a case a private action cannot be maintained.

I am therefore of the opinion that the petitioner has not suffered any damage for which the Commonwealth is liable. Your first question being answered in the negative, your second question requires no further consideration.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Legislature — Eligibility of Members to Office.

Members of the Legislature may be appointed, during their term of office, to an office not created by them during said term.

APRIL 30, 1914.

His Excellency DAVID I. WALSH, *Governor of the Commonwealth.*

SIR: — You have requested my opinion upon the following question: —

Can the Governor lawfully appoint a member of the present Legislature to a State board or commission, as, for example, the Commission on Economy and Efficiency?

Section 21 of chapter 3 of the Revised Laws provides as follows: —

No member of the general court shall, during the term for which he is elected, be eligible to any office under the authority of the commonwealth created during such term, except an office to be filled by vote of the people.

Commenting upon this section of the statute, Attorney-General Knowlton said: —

The obvious purpose of the statute is to remove from a member of the Legislature any temptation to be influenced in his vote by reason of the possibility that he may be a candidate for the place created by the Legislature of which he is a member. (I. Op. Atty.-Gen., 347.)

On May 14, 1912, Attorney-General Swift gave an opinion to the Governor on the following question: "Whether a member of the present Legislature would be eligible to appointment on the Industrial Accident Board, so called, created by an act of the Legislature of 1911, which act was amended by the Legislature of 1912." The question was raised that there was no clause in the amending bill which would exempt from its operation the provisions of section 21 of chapter 3 of the Revised Laws. I quote from Attorney-General Swift's opinion: —

The Industrial Accident Board was created by chapter 751 of the Acts of 1911. A member of this year's Legislature is, therefore, not ineligible by reason of section 21 of chapter 3 of the Revised Laws, except for appointment to an office created during the present term of the Legislature. . . . (The amendment to chapter 751 of the Acts of 1911, establishing the Board, does not in terms repeal or strike out the provisions of the act of 1911.)

. . . It, therefore, does not abolish the Board of three members created by said act of 1911, but merely creates a Board of five instead of three members by an addition of two members; nor does the change in salary and in term of office made by the amendment operate to abolish the three commissionerships created under said act of 1911. These are mere changes in detail which cannot affect the existence of the office itself. Familiar illustrations of this rule are various acts passed increasing the number of justices of our courts and increasing their salaries. It has never been contended that such amendments abolished existing offices, nor could it be successfully so contended, in my judgment. There are, therefore, three commissionerships which were created by the act of 1911, to which a member of this year's Legislature would be eligible to appointment so far as the operation of said section 21 of chapter 3 of the Revised Laws is concerned.

As the rule of law seems to me to have been correctly stated by my predecessors, I make no further comment.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Corporations — Rights of Minority Stockholders.

A law requiring foreign corporations doing business in Massachusetts to give minority stockholders representation on their boards of directors would be unconstitutional.

May 11, 1914.

Committee on Bills in the Third Reading.

Gentlemen: — You have requested my opinion as to the constitutionality of House Bill No. 1166, which is entitled "An Act to provide that minority stockholders of corporations doing business in Massachusetts may be represented on boards of directors." Sections 1 and 2 of this act are as follows: —

Section 1. Every corporation created by, or organized under, the laws of this commonwealth, and every corporation established, organized or chartered under the laws of another state or country, and engaging or continuing in any kind of business in this commonwealth, shall be subject to the provisions of this act.

Section 2. At the annual meeting for the election of officers of any corporation mentioned in section one, stockholders who are residents of Massachusetts and who hold stock to an amount equal in the aggregate to twenty-five per cent of the entire outstanding capital stock of the corporation, hereinafter called minority stockholders, shall have the right to nominate one director of such corporation and to have him elected as a director, provided they comply with the requirements of the succeeding sections of this act.

Sections 3 and 4 provide the methods to be pursued by the minority stockholders of a corporation, to secure representation on its board of directors. The fifth and last section of this act provides heavy penalties for its violation, and that any corporation that has violated any of its provisions may be enjoined from the prosecution of its business until it has complied with the provisions of this act.

Corporations are creations of the law. Their organization, control, conduct and dissolution may all be directed by statute. Since the decision of the Dartmouth College case the statutes of the Commonwealth have carefully preserved to the Legislature the right to change the provisions of law in regard to corporate rights. The Business Corporation Act, so called, enacted in 1903, provides that it shall apply —

(*a*) To all corporations having a capital stock and established for the purpose of carrying on business for profit heretofore or hereafter organized under general laws of the commonwealth.

(*b*) To all such corporations heretofore created under special laws of the commonwealth, except so far as its provisions are inconsistent with the provisions of any such special laws enacted before the eleventh day of March in the year eighteen hundred and thirty-one as are not subject to amendment, alteration or repeal by the general court.

Section 2 of this chapter provides that corporations organized under general laws shall be subject to the provisions of all laws hereafter enacted which may affect or alter their corporate rights or duties or which may dissolve them.

The bill before me proposes a very radical innovation in the methods heretofore and now in force in regard to the election of directors of corporations, but the regulation proposed is one that is, in my opinion, within the authority of the Legislature to make as to all domestic corporations except such as were organized under the provisions of special laws enacted before the eleventh day of March in the year 1831, and whose charters are not subject to amendment, alteration or repeal by the General Court.

Taking up the question of applying the proposed legislation to foreign corporations doing business in this Commonwealth, it may be noted that a corporation can exist only by force of the statute or other law of the state or country in which it is created; that the laws of a state or country have no extraterritorial force, and operate in another state or country only on the principle of comity; and that a corporation is conclusively presumed to be a resident of the state or country under whose law it was created. *Bank of Augusta* v. *Earle*, 13 Pet. 519; 19 Cyc. 1218; Thompson on Corporations, §§ 7875 and 7876.

A corporation organized under the laws of one state or country is not a citizen within that provision of section 2 of Article IV. of the Constitution of the United States which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," nor is it within that clause of the Fourteenth Amendment to the Federal Constitution which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." A corporation, therefore, can exercise none of its functions, franchises or

privileges in any State other than that in which it is organized except by the comity and consent of that other state. *Bank of Augusta* v. *Earle*, 13 Pet. 519; *Paul* v. *Virginia*, 8 Wall. 168; Clark on Corporations, 2d ed., 604.

It follows that with the exception of those foreign corporations whose business transactions in this Commonwealth are within the interstate commerce clause of the Federal Constitution the Legislature may prescribe the terms and conditions upon which they may do business here. It is within the power of a state in its discretion to exclude from its territory all foreign corporations except those whose transactions within its borders fall within the commerce clause, so called, of the Federal Constitution. Clark on Corporations, 2d ed. 605; *Myers* v. *Manhattan Bank*, 20 Ohio 301; *Runyan* v. *Coster's Lessee*, 14 Pet. 122; *Starkweather* v. *American Bible Society*, 72 Ill. 50.

It may be thought that a different rule should prevail as to foreign corporations that have already complied with the law of this Commonwealth, and, having received permission to do business here, have invested their capital and established themselves in business here. There is a large number of corporations of this class. In cases that have arisen where corporations have been similarly situated it has been argued that having complied with the laws in force at the time they entered the state, and having established themselves in business, the state in which they have thus lawfully established themselves cannot without just cause revoke the permission granted them to carry on their business within its borders. But the rule of law seems to be that a state has the absolute right to entirely exclude a foreign corporation from its territory or, having given it a license to do business within the state, to revoke it in its discretion for good cause or without any cause at all, and its motive in so doing is not open to inquiry.

Subject to the exception already noted as to interstate commerce, the corporation has no constitutional right to transact its business in any other state than that of its creation, and hence its exclusion therefrom violates no constitutional right. *Waters-Pierce Oil Co.* v. *Texas*, 177 U. S. 28; *State* v. *Standard Oil Co.*, 61 Neb. 28; *Doyle* v. *Continental Ins. Co.*, 94 U. S. 535.

A state cannot interfere with the internal affairs of a foreign corporation. It cannot direct how the officers of a foreign corporation shall be chosen; and I have discussed thus at length the right of a state to exclude foreign corporations

because the conditions imposed by this proposed measure of legislation, while in form directing the manner in which directors of corporations organized in other states or countries doing business here shall be elected, are in truth and in fact terms of exclusion from the Commonwealth. The terms imposed by this bill are impossible of performance by foreign corporations for the reason that such corporations must elect their directors in the manner provided by the laws of the state in which they are organized, and cannot do otherwise, for the law of that state is the very law of their being.

It has been suggested that the enactment of such a statute as is here proposed is likely to provoke retaliatory legislation by other states. While this is probably true, it does not present a constitutional objection to the bill. The provisions of this bill are broad enough to include corporations organized and located outside the Commonwealth and whose transactions within it are those of interstate commerce. In its present form this bill, so far as it relates to corporations organized prior to March 11, 1831, under special laws, and whose charters are not subject to alteration or repeal by the Legislature, is obnoxious to the provision of the Federal Constitution that "no state shall pass any law impairing the obligation of contracts." *Dartmouth College* v. *Woodward*, 4 Wheat. 636. And so far as its terms apply to corporations organized outside the Commonwealth, and whose transactions within it are solely those of interstate commerce, it is obnoxious to the commerce clause of the Federal Constitution.

It is my opinion that this bill, if enacted, will be unconstitutional.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Eminent Domain — Interstate Streams.

A law authorizing a city in this Commonwealth to take water from an interstate stream, and providing compensation for damages to non-residents, is constitutional.

MAY 18, 1914.

Committee on Water Supply.

GENTLEMEN: — You have requested my opinion as to the constitutionality of House Bill No. 2279, as amended, being an act to authorize the city of Fitchburg to increase its water

supply. This bill is drawn in all essential particulars in conformity with other similar measures that have been enacted from time to time in this Commonwealth, and makes provision for the compensation of all persons whose property may be taken under its provisions or injured by acts done under its authority.

Upon its face the bill is entirely free from any constitutional objection, but the remonstrants against this bill raise the point that it provides for a taking by right of eminent domain of the waters of an unnavigable, interstate stream, the Souhegan River, a stream that has its source in Massachusetts and flows into New Hampshire; and that as the flow of water in that river will be greatly diminished if the proposed taking is made, and the property of riparian owners, citizens of New Hampshire, along the course of the stream in that state will be damaged thereby, therefore the bill, if enacted, will be unconstitutional.

The bill is not obnoxious to any provision of the Constitution of this Commonwealth. It provides for compensation in damages to any person or corporation, whether within or without the Commonwealth, entitled to damages under its provisions if they fail to agree with said city as to the amount of damages sustained, and makes further specific provision for damages to parties outside the Commonwealth in the following language: —

> Owners of property situated without the commonwealth which is damaged by anything done by the city under the authority of this act may file their petitions for damages in the office of the clerk of the superior court for the county of Middlesex or for the county of Worcester.

So that a remedy is provided for every one whose property is injured by the operations that may be carried on under authority of this act.

In the consideration of this question my attention has been directed to two cases, — first, that of *Pine et als.* v. *New York City*, 112 Fed. Rep. 98 (185 U. S. 93); and second, that of *Kansas* v. *Colorado*, 206 U. S. 46.

In the case of *Pine et als.* v. *New York City* the facts were that the Legislature of the State of New York passed an act authorizing New York City to take the waters of Byram River, a non-navigable stream which has its source in the State of New York, and at some distance from its source

flows into and across the State of Connecticut and empties into Long Island Sound. New York City, proceeding under the act, built a dam across Byram River in the State of New York and diverted so much of the water as to greatly diminish the flow of the stream in Connecticut, whereby the property of the plaintiffs was damaged; and as the city failed to agree with the plaintiffs as to the amount of damages they had suffered, the plaintiffs brought suit in equity in the Circuit Court of the United States, praying for an injunction to restrain the city from diverting the waters of that stream. The Circuit Court granted the injunction as prayed for, and the case was taken to the Circuit Court of Appeals.

The question of the constitutionality of the New York statute, while not discussed at length in the opinion rendered in the Circuit Court of Appeals, was evidently considered, for the majority opinion sustaining the decision of the Circuit Court contains the statement that "the diversion of water at one point is a taking of the property of riparian owners below the point of diversion, and falls within the constitutional protection." As above indicated, the opinion of the Circuit Court of Appeals in this case was rendered by a divided court, one of the three judges who heard the case dissenting. Judge Wheeler, who wrote the dissenting opinion, said: —

> The defendant has done nothing in question here outside of the State of New York; the deprivation of water complained of was wholly within that state; and, if the plaintiffs have any rights in the water taken, they exist within that state, and were subject to and taken under the eminent domain of that state. The plaintiffs have come into this court because they are citizens of another State, and not because their land through which they derive their rights to the water taken is situated in another state. . . .
>
> Thus these parties have a common interest in the water in question, which the defendant has taken under the law of the State, and not as a trespasser. It seems to be familiar law that, when an injunction is applied for to restrain such a taking, the damages will be ascertained, and the injunction withheld on making payment.

This case was then taken to the Supreme Court of the United States. That court did not take up the question of the constitutionality of the New York statute, but ruled that the plaintiffs had been guilty of laches in bringing their suit, and because of this reversed the decision of the lower court

and made a decree leaving to New York City the right to continue the diversion of the water of the river, the plaintiffs to have compensation in damages. In this case it is to be remarked that the question of the constitutionality of the act authorizing New York City to take the waters of Byram River was undoubtedly before the Supreme Court. If unconstitutional, no degree of negligence by the plaintiffs in bringing their suit could have cured the defect. If the act was unconstitutional it was void from the beginning, yet the court, having the question before it, decided the case, not in entire accordance with the grounds of either the majority or the dissenting opinion rendered in the Circuit Court of Appeals, but upon a principle of equity that left the parties in the same position they would have occupied had the dissenting opinion of Judge Wheeler prevailed.

In the second case above mentioned the State of Kansas filed in the Supreme Court of the United States a bill in equity against the State of Colorado, alleging therein that the State of Colorado, acting directly by herself as well as indirectly through private persons and corporations thereto licensed by the State of Colorado, was depriving and threatening to deprive the State of Kansas of all the water heretofore accustomed to flow in the Arkansas River; that this was threatened not only by the impounding and the use of the water at the river's source, but as it flows after reaching the river. It was alleged that injury was being, and would be, thereby inflicted on the State of Kansas as an individual owner of land in the Arkansas River valley, and on all the inhabitants of the State, and especially on the inhabitants of that part of the State lying in the Arkansas River valley. After disposing of certain preliminary matters the Supreme Court, speaking by Mr. Justice Brewer, said: —

Turning now to the controversy as here presented, it is whether Kansas has a right to the continuous flow of the waters of the Arkansas River, as that flow existed before any human interference therewith, or Colorado the right to appropriate the waters of that stream so as to prevent that continuous flow, or that the amount of the flow is subject to the superior authority and supervisory control of the United States. While several of the defendant corporations have answered, it is unnecessary to specially consider their defences, for if the case against Colorado fails it fails also as against them. Colorado denies that it is in any substantial manner diminishing the flow of the Arkansas River into Kansas. If that be true, then it is in no way infringing

upon the rights of Kansas. If it is diminishing that flow has it an absolute right to determine for itself the extent to which it will diminish it, even to the entire appropriation of the water? And if it has not that absolute right is the amount of appropriation that it is now making such an infringement upon the rights of Kansas as to call for judicial interference? Is the question one solely between the States or is the matter subject to national legislative regulation, and, if the latter, to what extent has that regulation been carried? Clearly this controversy is one of a justiciable nature. The right to the flow of a stream was one recognized at common law, for a trespass upon which a cause of action existed.

The court further said: —

The question of the extent and the limitations of the rights of the two States becomes a matter of justiciable dispute between them, and this court is called upon to settle that dispute in such a way as will recognize the equal rights of both and at the same time establish justice between them.

Again, the court said: —

Now the question arises between two States, one recognizing generally the common-law rule of riparian rights and the other prescribing the doctrine of the public ownership of flowing water. Neither State can legislate for or impose its own policy upon the other. A stream flows through the two and a controversy is presented as to the flow of that stream. It does not follow, however, that because Congress cannot determine the rule which shall control between the two States or because neither State can enforce its own policy upon the other, that the controversy ceases to be one of a justiciable nature, or that there is no power which can take cognizance of the controversy and determine the relative rights of the two States. Indeed, the disagreement, coupled with its effect upon a stream passing through the two States, makes a matter for investigation and determination by this court.

Referring to the principles of common law applicable to this case the court said: —

For after all, the common law is but the accumulated expressions of the various judicial tribunals in their efforts to ascertain what is right and just between individuals in respect to private disputes. As Congress cannot make compacts between the States, as it cannot, in respect to certain matters, by legislation compel their separate action, disputes between them must be settled either by force or else by appeal to tribunals empowered to determine the right and wrong

thereof. Force under our system of government is eliminated. The clear language of the Constitution vests in this court the power to settle those disputes. We have exercised that power in a variety of instances, determining in the several instances the justice of the dispute. Nor is our jurisdiction ousted, even if, because Kansas and Colorado are States sovereign and independent in local matters, the relations between them depend in any respect upon principles of international law. International law is no alien in this tribunal. In *The Paquete Habana*, 175 U. S. 677, Mr. Justice Gray declared: —

> International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.

And in delivering the opinion on the demurrer in this case Chief Justice Fuller said: —

> Sitting, as it were, as an international, as well as a domestic tribunal, we apply Federal law, State law, and international law, as the exigencies of the particular case may demand.

In the further discussion of the case and of the evidence submitted the court said: —

> It cannot be denied in view of all the testimony . . . that the diminution of the flow of water in the river by the irrigation of Colorado has worked some detriment to the southwestern part of Kansas, and yet when we compare the amount of this detriment with the great benefit which has obviously resulted to the counties in Colorado, it would seem that equality of right and equity between the two States forbids any interference with the present withdrawal of water in Colorado for purposes of irrigation.

In finally disposing of this case the court said: —

> The decree will also dismiss the bill of the State of Kansas as against all the defendants, without prejudice to the right of the plaintiff to institute new proceedings whenever it shall appear that through a material increase in the depletion of the waters of the Arkansas by Colorado, its corporations or citizens, the substantial interests of Kansas are being injured to the extent of destroying the equitable apportionment of benefits between the two States resulting from the flow of the river.

The case of *Brickett* v. *Haverhill Aqueduct Co.*, 142 Mass. 394, was an action of tort for diverting and obstructing a watercourse, thereby preventing water from flowing through

the plaintiff's land. The diversion of the water occurred in Massachusetts. The plaintiff was a citizen of Massachusetts, but the property, the injury of which he complained, was located in New Hampshire. The court in that case, speaking by Chief Justice Morton, said: —

> We do not deem it important that the land of the plaintiff which was injured was outside of the limits of this State. The language of the act is general, and puts all water rights upon the same footing, and applies to a proprietor outside the State. Such proprietor certainly has no greater rights than the citizen whose lands or water rights within the State are injured by the acts of the defendant under the authority of the Legislature.

The rule of the common law as to the rights of riparian owners has been frequently stated, and may be expressed in the following language: —

> The primary right of every riparian proprietor is to have the natural and customary flow of the stream without obstruction or change.

This primary right is subject to the modification that —

> The right to flowing water is now well settled to be a right incident to property in the land; it is a right *publici juris*, of such a character that whilst it is common and equal to all through whose land it runs, and no one can obstruct or divert it, yet, as one of the beneficial gifts of Providence, each proprietor has a right to a just and reasonable use of it as it passes through his land; and so long as it is not wholly obstructed or diverted, or no larger appropriation of the water running through it is made than a just and reasonable use, it cannot be said to be wrongful or injurious to a proprietor lower down.

This is the rule between persons who are riparian proprietors on the same stream, and prevails until a public necessity arises, when, like every other individual right of property, it gives way to the public need. In some of the western States, as shown by the case of *Kansas* v. *Colorado*, the common-law rule, even as applied to interstate streams, yields and is modified by the great necessity of irrigating vast tracts of arid and desert land; and even though the public necessity arises in another State, the rule as to private ownership yields to it. The irrigation of waste and desert lands in Colorado may be and undoubtedly is a matter of transcendent importance, but who can measure or estimate the importance

of an adequate supply of pure water for the use of the crowded, evergrowing industrial centers of the east? If the common-law rule yields as to interstate streams in the one case, it certainly ought to yield in the other. In each case the rule as to individual owners should yield to public necessity.

It has been suggested that the city of Fitchburg does not need this supply. Of this question the Legislature must be the judge. In passing upon the question submitted to me I assume that the need exists.

It has been further suggested that in the case of *Kansas* v. *Colorado,* above cited, the State of Kansas was not an individual owner, and that the case did not therefore decide the issues that would be involved in a suit by a citizen of Kansas against the State of Colorado; but, as I have stated above, Kansas in its bill of complaint set up the fact that it was an owner of land in the Arkansas valley which was damaged by the operations of Colorado. The court itself noted the fact that "Kansas asserts a pecuniary interest as owner of certain tracts along the banks of the Arkansas River, and as the owner of the bed of the stream." *Kansas* v. *Colorado,* 206 U. S. at p. 98. But the court, in view of the fact that the jurisdiction of the court might be invoked by the State, as *parens patriæ,* trustee, guardian or representative of all or a considerable portion of its citizens, deemed it unnecessary to stop to consider especially the rights of private ownership.

The objection to this bill seems to grow out of the idea that each State is a sovereign power. To a limited extent this is true; but however complete the rights and attributes of sovereignty of the States may have been before they entered the Union, there can be no question that when they entered the Union large and important attributes of sovereignty were surrendered by the States. The States may not lay any imposts or duties on imports or exports; may not make war upon each other or upon a foreign country; may not make treaties with each other or with foreign countries; and in cases of differences of a justiciable nature arising between them the Supreme Court of the United States is empowered to adjudicate between them. *Rhode Island* v. *Massachusetts,* 12 Pet. 657; *Missouri* v. *Illinois,* 180 U. S. 208; *Kansas* v. *Colorado,* 206 U. S. 46.

In a word, the States of this Union form a nation.

If this bill passes, and the waters of the Souhegan River are taken by the city of Fitchburg, citizens of New Hampshire whose property is injured by the taking, by reason of diverse citizenship, may at their election bring action under the provisions of this bill in the courts of the Commonwealth, or may bring suit in the District Court of the United States against the city, or may induce the State of New Hampshire to bring suit in the Supreme Court of the United States against this Commonwealth. I repeat that this bill does not present the case of taking or injuring the property of any person and leaving him without a remedy. This measure is in harmony with other legislation of this Commonwealth in regard to securing a water supply for cities, notably, with the legislation providing for the taking of the south branch of the Nashua River, an interstate stream, as a supply for the metropolitan water district. If this bill is unconstitutional, then the metropolitan water act, being chapter 488 of the Acts of 1895, was and is unconstitutional, and the acts done under its provisions were without authority.

In view of the trend of judicial decisions, and of the course of legislation in this Commonwealth, which has stood for years unchallenged, I am of the opinion that this bill, if enacted, will be constitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Freedom of Contract — Plumbers.

A law providing that permits to perform plumbing work shall be issued only to master plumbers, and that all work done under such permits shall be performed only by master plumbers or their designated journeymen plumbers, would be unconstitutional.

MAY 21, 1914.

To the Honorable Senate.

GENTLEMEN: — You have requested my opinion upon the following question of law: —

Is it within the constitutional power of the General Court to enact a law providing that permits to perform plumbing work shall be issued only to master plumbers, and that all work done under such permits shall be performed only by the master plumber himself or by such journeymen plumbers as he may directly employ and supervise?

You have submitted with your inquiry a copy of House Bill No. 1347, entitled "An Act relative to the supervision of plumbing."

The question of constitutionality arises in regard to the first and second sections of the bill, which read as follows: —

Section 1. The words "master plumber," as used in chapter one hundred and three of the Revised Laws, shall be deemed to mean a person who holds a Massachusetts state master plumber's license or certificate, and who has a regular established place of business conveniently situated and open for business during regular business hours, and who himself or by journeymen in his employ performs plumbing work for property owners, agents or tenants.

Section 2. Permits to perform plumbing work shall be issued only to master plumbers as herein defined, and all work done under such permit shall be performed by the master plumber himself or by such journeymen plumbers as he may directly employ and supervise.

A "journeyman" is defined to be a workman or mechanic who has served his apprenticeship, — specifically, a qualified mechanic employed in the exercise of his trade as distinguished from a master mechanic or foreman.

This bill, if enacted, would prevent a journeyman plumber from making a contract to put the plumbing into a building or to take any other job of plumbing whatever, for the reason that no permit to do the work could lawfully be issued to him. And the bill goes further and would prevent a master plumber who was so unfortunate as not to have a regular established place of business, kept open for business during regular business hours, from making contracts for plumbing; and master plumbers who have regular places of business kept open for business during regular business hours, and whose places of business are not conveniently situated, are not to be regarded as master plumbers under the provisions of this bill, and would also fall within its prohibition. Thus this bill is not for a whole class, but its evident aim and object is to create a class within a class; that is, out of those who hold licenses as master plumbers it proposes to create a class of master plumbers.

Article I. of Part the First of the Constitution of this Commonwealth declares: —

All men are born free and equal, and have certain natural, essential and unalienable rights; among which may be reckoned the right of

enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.

Now there are certain fundamental rights of every citizen which are recognized in the organic law of all our free American States. A statute which violates any of these rights is unconstitutional and void, even though the enactment of it is not expressly forbidden. *Commonwealth* v. *Perry*, 155 Mass. 117.

Under the police power, legislation to protect the health, morals or safety of the community may be enacted, but that power does not extend beyond these limits, and legislation under the police power must bear a genuine relation to some one of the three subjects named. It necessarily follows that only such regulations will be sustained as are in fact necessary to the preservation of the public health, morals or safety, and the courts will declare arbitrary provisions invalid. *Cotter* v. *Doty*, 5 Ohio, 393.

If, then, it be admitted that for the preservation of the public health men who seek to work at the business of plumbing should be required to pass an examination and procure a license, that comes far short of justifying an interference with the way in which a man who has passed the examination and obtained a license shall conduct his business. Nor does such an admission afford a reason for prohibiting such a man from carrying on his business as he sees fit in regard to location, and in every other particular, so long as he is within the law.

This proposed bill, if enacted, will interfere with the freedom of contract of journeymen plumbers, and, as above indicated, of certain master plumbers and of such property owners as may desire to make a contract for plumbing with a journeyman plumber or with a master plumber who has no regular place of business or whose place of business may, in the judgment of some one whose personality is not disclosed by the bill, be inconveniently located.

Freedom of contract is not expressly mentioned in the Constitution, but the Supreme Judicial Court has declared that the right to acquire, possess and protect property, as set forth in Article I. of the Constitution, above quoted, includes the right to make reasonable contracts which shall be under the protection of the law. *Commonwealth* v. *Perry*, 155 Mass. 117. The Constitution declares that all men have an unalienable right of seeking and obtaining their safety and

happiness. Included in this right is the right to liberty in the choice of occupation, and to conduct and advertise it in any legitimate manner and subject only to such restraints as are necessary to the health, morals and safety of the community. *Slaughter-House Cases*, 16 Wall. 36; *Dexter* v. *Blackden*, 93 Me. 473; *People* v. *Coldwell*, 168 N. Y. 671; *Allgeyer* v. *Louisiana*, 165 U. S. 578.

"Liberty," as that term is used in the Constitution, means not only freedom of the citizen from servitude and restraint, but is deemed to embrace the right of every man to be free in the use of his powers and faculties and to adopt and pursue such avocation or calling as he may choose, subject only to the restraints necessary to secure the common welfare. *Frorer* v. *People*, 141, Ill. 171; *Commonwealth* v. *Perry*, *supra*; *People* v. *Gillson*, 109 N. Y. 389; *Ruhstrat* v. *People*, 49 L. R. A. 181.

Our Supreme Judicial Court has said: —

> Constitutional liberty means "the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." (*O'Keeffe* v. *Somerville*, 190 Mass. 110.)

For one to be a master plumber within the provisions of this proposed measure he must have a regular established place of business conveniently situated. To whom must it be conveniently situated? Whose convenience is referred to in the bill? Whose convenience must a man consult in setting up his plumber's shop, and whose judgment is to prevail as to whether the business is conveniently situated or not? This provision, if enacted, will constitute a gross violation of the constitutional guaranty of personal liberty.

Article IV. of Section I. of Chapter I. of Part the Second of the Constitution confers authority on the General Court to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes and ordinances. The provision of this bill last referred to is so clearly unreasonable as, in my opinion, to be inimical to this provision of the Constitution.

It is my opinion that your question must be answered in the negative, and that this bill, if passed, will be unconstitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Workmen's Compensation Act — Cities and Towns — Gypsy and Brown-tail Moth Suppression.

The Commonwealth is not required to reimburse cities and towns which have adopted the workmen's compensation act and have incurred expenses on account of injuries sustained by employees while employed in suppression of gypsy and brown-tail moths.

May 25, 1914.

Hon. Frank H. Pope, *Auditor of the Commonwealth.*

Dear Sir: — You have requested my opinion on the following question: —

Are cities and towns that have adopted the workmen's compensation act entitled to be reimbursed for expenses incurred by them on account of injuries sustained by their employees while employed in the suppression of gypsy and brown-tail moths?

Section 1 of chapter 521 of the Acts of 1907 provides that —

When any city or town shall have expended within its limits city or town funds to an amount in excess of five thousand dollars in any one fiscal year, in suppressing gypsy or brown-tail moths, the commonwealth shall reimburse such city or town to the extent of fifty per cent of such excess above said five thousand dollars.

A more liberal rule is established by statute as to small towns.

By section 6 of chapter 807 of the Acts of 1913, which provides for the adoption of the workmen's compensation act by certain cities and towns, the following provision is made in regard to employees of the Commonwealth: —

For the purposes of this act all laborers, workmen and mechanics paid by the commonwealth, but serving under boards or commissions exercising powers within defined districts, shall be deemed to be in the service of the commonwealth.

In the case presented by your inquiry it appears that the laborers or workmen engaged in the suppression of gypsy or brown-tail moths in cities and towns are employed by such cities and towns, and are neither employed nor paid by the Commonwealth. The State is therefore under no obligation to pay for injuries sustained by such laborers unless such expense is authorized by chapter 521 of the Acts of 1907, and that act, in my opinion, does not contain such a provision.

The Commonwealth is required under the law to reimburse cities and towns to the extent of 50 per cent. of the excess above $5,000 expended by them for suppressing gypsy or brown-tail moths, not for expenses incurred by reason of injury to an employee. It is my opinion that your question must be answered in the negative.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Minors — Hours of Labor — Liability of Employers and Parents.

Under St. 1913, c. 831, an employer of a minor, who has been duly notified that such employee is being employed for a greater number of hours per week than is authorized by statute, is criminally liable.

Under St. 1913, c. 831, a parent, guardian or custodian of a minor employed for a greater number of hours per week than is authorized by statute is criminally liable without notice.

MAY 25, 1914.

State Board of Labor and Industries.

GENTLEMEN: — You request my opinion upon the following question: —

May a minor, under sections 8 and 9 of chapter 831 of the Acts of 1913, work six days in one establishment and on the seventh day work for another employer in connection with another mercantile establishment? For example, may a minor fifteen years of age work six days a week, with a total of forty-eight hours, for a department store, and on the seventh day work six hours in connection with a mercantile establishment at a summer resort?

I assume from the wording of your question that the two employers are entirely independent of each other, that neither has any interest whatever in the business of the other, and that there is no collusion between them. You do not state (and I therefore assume) that the employer for whom the boy works on Sunday has not had any notice that the boy has been employed regularly during the six working days of the week.

Under such circumstances there can hardly be any criminal liability on the part of either employer.

You do not state whether the boy in question has any parent, guardian or custodian. Under the circumstances I beg to direct your attention to sections 20 and 23 of chapter 831 of the Acts of 1913, which provide as follows: —

Section 20. Any person who, whether by himself or for others, or through agents, servants or foremen employs, induces or permits any minor to work contrary to any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall, for a first offence, be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; and for a second or subsequent offence, by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

The employment of any minor in violation of any provision of this act after the person employing such minor has been notified thereof in writing by any authorized inspector, school attendance officer or truant officer, shall constitute a separate offence for every day during which the employment continues.

Section 23. Any parent, guardian or custodian having a minor under his control, who compels or permits such minor to work in violation of any provision of this act, or who knowingly certifies to any materially false statement for the purpose of obtaining the illegal employment of such minor, shall be deemed guilty of a misdemeanor, and, upon conviction, shall for the first offence be punished by a fine of not less than two dollars nor more than ten dollars, or by imprisonment for not more than five days, or by both such fine and imprisonment; and for a second or subsequent offence he shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or by imprisonment for not more than ten days, or by both such fine and imprisonment.

By causing the proper notice to be given under section 20 to the employer for whom the boy works on Sunday it seems clear that you would make that employer liable if he did not cease to employ the boy on that day. The parent, guardian or custodian of the boy would seem to be liable without any notice from an inspector or other official.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Constitutional Law — Boston Transit Commission — Extension of Term of Office by Legislature.

It is within the constitutional authority of the Legislature to extend the term of office of officers created by an act of the Legislature.

May 26, 1914.

To the House of Representatives.

Gentlemen: — You have requested my opinion as to the constitutionality of Senate Bill No. 102, entitled "An Act to extend the term of office and to define the duties of the members of the Boston Transit Commission." Its provisions are as follows: —

Section 1. The term of office of the members of the Boston transit commission is hereby extended for three years from the first day of July in the year nineteen hundred and fourteen.

Section 2. The powers, duties and compensation of said commission during said term of three years shall be the same as are specified in chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four and in acts in amendment thereof or in addition thereto, except as hereinafter provided. Any vacancy in said commission shall be filled in the manner provided in said chapter five hundred and forty-eight.

It is suggested that the provisions of this bill, if enacted, may interfere with the executive functions of the Governor.

The Governor is the supreme executive magistrate of the Commonwealth. Mass. Const., c. II., § I., art. I. But the power to make appointments is not necessarily a function of or an appurtenance to the executive office. In the Constitutions of the States of the Union there appears to be no distinct rule as to the distribution of authority to make appointments to office. Some States confer upon the Executive a much larger measure of power in this respect than others. The Constitution of this Commonwealth provides that all judicial officers shall be nominated and appointed by the Governor by and with the advice and consent of the Council. Mass. Const., c. II., § I., art. IX. The fourth amendment to the Constitution provides that notaries public shall be appointed by the Governor in the same manner as judicial officers are appointed. The Governor is also given power under certain circumstances to make appointments to fill vacancies in certain executive offices.

The Constitution confers upon the Legislature large powers in the matter of appointments to civil office. By Article IV. of Section I. of Chapter I. of the Constitution full power and authority are given and granted to the General Court —

. . . to name and settle annually, or provide by fixed laws for the naming and settling, all civil officers within the said commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for.

Since the adoption of the Constitution the Legislature has in repeated instances enacted laws changing the term or tenure of a civil office. Several of these acts in litigation have been carried to the Supreme Judicial Court, and the constitutionality of legislation of this kind has always been sustained.

In the case of *Taft* v. *Adams*, 3 Gray, 126, Chief Justice Shaw said: —

Where an office is created by law, and one not contemplated, nor its tenure declared by the Constitution, but created by law solely for the public benefit, it may be regulated, limited, enlarged or terminated by law, as public exigency or policy may require.

See, also, *Opinion of the Justices*, 117 Mass. 603, 604; *Donaghy* v. *Macy*, 167 Mass. 178; *Opinion of the Justices*, 165 Mass. 599.

In the case of *Barnes* v. *Mayor of Chicopee*, a case in which the plaintiff Barnes sought to be reinstated in the office of chief of police of the city of Chicopee, from which office he claimed to have been wrongfully removed, Chief Justice Rugg said: —

It is within the power of the Legislature to lengthen or shorten the tenure of such an office or to place its incumbents under operation of the civil service law. (*Barnes* v. *Mayor of Chicopee*, 213 Mass. 1.)

In a New York case it was said that —

Where an office is created by statute it is wholly within the control of the Legislature. The term, the mode of appointment and the compensation may be altered at pleasure. (*Connor* v. *City of New York*, 2 Sandford, 355.)

This case was affirmed by the Court of Appeals of the State of New York. (1 Selden, 285.)

While these cases may not be precisely in point, they indicate the trend of judicial opinion upon questions very similar in character to the one presented by this bill.

The offices of the members of the Boston Transit Commission are not among those named in the Constitution but fall within the class of civil officers specified in Article IV. of Section I. of Chapter I. of the Constitution, above quoted. This commission was created, not by the Constitution itself but by act of the Legislature.

The result of my examination of this question and of the authorities is that this bill, if enacted, will not, in my opinion, interfere with any constitutional right or function of the Governor.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Cities and Towns — Municipal Debts — Bonds and Notes.

A town or city has no authority to issue notes or bonds for the purpose of refunding sums of money previously raised and expended for municipal purposes.

JUNE 10, 1914.

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

DEAR SIR: — You have submitted copies of the records of certain votes passed by town meetings of the town of Swampscott, among others, of a vote adopted at the last annual town meeting of that town, and have asked to be advised whether the statute may properly be construed by you as permitting the town of Swampscott to incur indebtedness under the vote passed at the annual town meeting held Feb. 16, 1914. The warrant for that meeting contained the following article: —

Article 41. — To see if the town will vote to refund to the treasury the sum of $4,200 expended for laying water pipes in Crosman Avenue and for replacing water pipes on Galloupe's Point, and making appropriations therefor.

Under this article the town voted as follows: —

To adopt the report of the ways and means committee appropriating the sum of $4,200 for the purpose of refunding to the treasury the amount expended in laying water pipes in Crosman Avenue and replacing the water pipes at Galloupe's Point, and that this sum be raised by the issuance of notes or bonds of the town.

Sections 5 and 6 of chapter 719 of the Acts of 1913 and chapter 634 of the Acts of 1913 specify the purposes for which cities and towns may incur debt other than temporary loans; and section 7 of chapter 719 prohibits the incurrence of debt by cities and towns for purposes other than those specified by statute, and reads as follows: —

> Cities and towns shall not incur debt for any purpose or for any period of time other than as specified in this act or in chapter six hundred and thirty-four of the acts of the year nineteen hundred and thirteen, and the proceeds of any sale of bonds or notes, except premiums, shall be used only for the purposes specified in the authorization of the loan: *provided, however,* that transfers of unexpended amounts may be made to other accounts to be used for similar purposes.

The purpose for which it is proposed to incur this indebtedness is not one specified or permitted by the statute, and falls clearly within the prohibition of section 7 last above quoted.

The case presented by your inquiry seems to afford a very close parallel to the case of *Chapin et al.* v. *Town of Lincoln,* recently decided by the Supreme Judicial Court. It appeared in that case that the tenth article of the warrant for the town meeting held by adjournment in the town of Lincoln on March 8, 1913, was as follows: —

> To see if the town will issue water bonds pursuant to the Acts of 1907, chapter 476, and reimburse the treasury on account of money paid from the treasury pending an issue of bonds on account of payments for water construction purposes.

Under this article it was voted —

> That the town treasurer be authorized and directed to issue the bonds of the town for the sum of $6,000, each bond to be for $500.

In its opinion in this case the court said: —

> The single justice has made a finding that the purpose of issuing bonds under this vote was to reimburse the town for sums that had been appropriated in earlier years for three extensions of the water works of the town: one of the extensions having been made under an article of the annual meeting of March, 1911, and the other two under articles of the annual meeting of March, 1912. And he has expressly found that all of these extensions "had been made and paid for before the vote of March 8, 1913, from money raised by taxation."

In neither of these three instances did the town express any intention to provide funds for the proposed municipal improvement by borrowing money under its water acts. Sts. 1872, c. 188; 1907, c. 476. It did not even undertake to vote that the money in the town treasury should be used temporarily for water purposes "pending an issue of bonds," as it appears to have done on some other occasions. In fact, in the second and most important case, when it appropriated $4,267, specific provision was made for the payment of this sum without an issue of bonds, namely, by using the special water works sinking fund and the receipts from the water works.

There is no indebtedness incurred or contemplated by the town to warrant the proposed loan. There is no unfunded debt on account of the extensions referred to. It does not follow that because the town might have borrowed money for these extensions at the time they were voted, it can do so now after they are paid for. See St. 1913, c. 719, as amended by St. 1914, c. 143. . . .

We are in accord with the opinion of the single justice, that an injunction should issue as prayed for, restraining the respondents from issuing bonds under the vote passed March 8, 1913.

This statement of the law covers very fully your inquiry. So far as appears from the statement of facts with which you accompany your inquiry the town of Swampscott, like the town of Lincoln in the case above referred to, has incurred no indebtedness nor is any contemplated to justify the proposed loan. In the Swampscott case, as in the Lincoln case, the purpose is to refund or reimburse the treasury for money already expended, which, as above stated, is not one of the purposes for which the statute permits indebtedness to be incurred.

In matters of this kind the only safe rule is the rule of strict construction. Municipal corporations are simply agencies of government for certain well-defined purposes, and discharge such functions only as are conferred upon them by law. To permit the issue of commercial paper by towns and cities for purposes not authorized by statute would expose investors to loss and taxpayers to the expense of tedious and vexatious litigation.

It is my opinion that your question must be answered in the negative.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

State Board of Education — Textile Schools.

The Commissioner of Education has statutory powers over all educational work supported in whole or in part by the Commonwealth, including textile schools.

June 10 1914.

Commission on Economy and Efficiency.

Gentlemen: — You have requested my opinion as to the nature and scope of the supervisory powers possessed by the State Board of Education, with special reference to State aided or supported textile schools, and as to the need of further legislative definition of such supervisory powers.

The supervisory powers of the Board of Education over textile schools seem to be vested in the Commissioner of Education and his deputies. Chapter 421 of the Acts of 1913 provides as follows: —

> The board shall appoint a commissioner of education whose term of office shall be five years, and may fix his salary at such sum as the governor and council shall approve. Said commissioner may at any time be removed from office by a vote of six members of the board. He shall exercise the powers and perform the duties now conferred or imposed by law on the secretary of the board of education. He shall be the executive officer of the board, shall have supervision of all educational work supported in whole or in part by the commonwealth, and shall report thereon to the board, and, when so authorized by the board, may approve bills for expenditures from appropriations and funds placed under the direction of the board. The board shall also appoint two deputy commissioners, one of whom shall be especially qualified to deal with industrial education. The powers, duties, salaries and terms of office of said deputy commissioners shall be such as may be established from time to time by the board, but the board may, by a vote of six members thereof, remove from office at any time either of said deputy commissioners. The board may be allowed for rent, salaries of the commissioner, the deputies, agents, assistants and clerical service, and for travelling and other necessary expenses of the commissioner, the deputies, agents, and of the board incurred in the performance of their official duties, such sum as shall be appropriated by the general court annually, payable out of the treasury of the commonwealth.

This statute gives the Commissioner of Education ample supervisory powers over all educational work supported in whole or in part by the State, which certainly includes textile schools, whether supported wholly by the State or receiving aid from the Commonwealth, and by this statute it is made a

part of the duty of the Commissioner of Education to report to the State Board as to all educational work under his supervision.

The statute provides for two deputy commissioners of education, and requires that one of them shall be especially qualified to deal with industrial education. While this phrase undoubtedly applies to those schools devoted to vocational education, so called, in the various cities and towns, it also includes textile schools.

There is certainly sufficient statutory authority now to warrant the Commissioner of Education in supervising and making report upon textile schools. The question of the need of further legislation in regard to this matter is for the legislative branch of the State government to determine, and not for this department.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Great Ponds — Regulation of the Price of Ice.

A law authorizing a commission to fix the price at which ice shall be sold when such ice has been taken from great ponds of the Commonwealth, or from bodies of water under the control of such commission, would be constitutional.

JUNE 12, 1914.

To the Honorable Senate.

GENTLEMEN: — You have requested my opinion upon the following question: —

Is it within the constitutional power of the General Court to enact a law authorizing a board or commission of the Commonwealth to fix the price at which ice shall be sold to families by individuals or corporations, when such ice has been taken from ponds or other bodies of water under the supervision and control of said board or commission?

In making answer to your inquiry two questions are presented for examination: First, as to rights of individual ownership, if any, in the public waters, chiefly and perhaps entirely for the purposes of your inquiry in great ponds of the Commonwealth; and second, as to the extent of the authority of the Legislature over these bodies of water.

The title to the great ponds was taken by the sovereign power, and their use granted to the people by a very early colonial ordinance, and except for certain special grants has remained to this day as it was fixed by the colonial ordinance.

By section 16 of the Bodie of Liberties, supposed to have been enacted in 1641, it was provided that —

Every Inhabitant that is an howse holder shall have free fishing and fowling in any great ponds and Bayes, Coves and Rivers, so farre as the sea ebbes and flowes within the presincts of the towne where they dwell, unlesse the free men of the same Towne or the Generall Court have otherwise appropriated them, provided that this shall not be extended to give leave to any man to come upon others proprietie without there leave.

This ordinance was at some time between 1641 and 1647 amended so as to provide: —

Every Inhabitant who is an householder shall have free fishing and fowling in any great ponds, bayes Coves and Rivers, so farr as the Sea ebbs and flowes, within the precincts of the towne where they dwell, unles the freemen of the same Town or the General Court have otherwise appropriated them. Provided that no Town shall appropriate to any particular person or persons, any great Pond containing more than ten acres of land, and that no man shall come upon anothers propriety without their leave otherwise then as hereafter expressed. The which clearly to determine, It is Declared, That in all *Creeks*, *Coves* and other places, about and upon *Salt-water*, where the Sea ebbs and flowes, the proprietor of the land adjoining, shall have propriety to the low-water-mark, where the Sea doth not ebb above a hundred Rods, and not more wheresoever it ebbs further. Provided that such proprietor shall not by this liberty, have power to stop or hinder the passage of boates or other vessels, in or through any Sea, Creeks or Coves, to other mens houses or lands. And for great Ponds lying in common, though within the bounds of some Town, it shall be free for any man to fish and fowle there, and may pass and repass on foot through any mans propriety for that end, so they trespass not upon any mans Corn or Meddow.

From the time of this later enactment great ponds in this Commonwealth have been and still are public property. Efforts have been made from time to time by individuals to establish rights of private ownership in great ponds, and cases involving claims of private ownership have in repeated instances been carried to the Supreme Judicial Court.

In the case of *Fay* v. *Salem & Danvers Aqueduct Co.,* 111 Mass. 27, the petitioner sought to recover damages for the taking of water from Spring Pond, a pond having an area of about sixty acres, for its aqueduct, whereby the dwelling house of the petitioner situated on the shore of said pond would become uncomfortable and unfit for habitation. The court held that "by the law of Massachusetts great ponds are public property," and further said that the petitioners had no title "except that derived from deeds of lands partly surrounding the pond on the side opposite the outlet, and bounded 'by the pond.' The title acquired by such deeds extended only to low-water mark, and did not affect the rights of the public in the pond," and dismissed the petition. *Fay* v. *Salem & Danvers Aqueduct Co.,* 111 Mass. 27.

In another case action was brought by certain private parties seeking to restrain another individual from cutting and harvesting ice in Fresh Pond, which has an area of about one hundred and eighty-three acres. It appeared that the riparian owners of the entire shore of Fresh Pond had by agreement between themselves apportioned to each a certain part of the area of the pond; that these proprietors generally cut ice to be shipped and also to supply the local demand; and that the business was very large, employing at times more than a thousand men. The Supreme Judicial Court declared that —

> By the law of Massachusetts, great ponds, not appropriated before the colony ordinance of 1647 to private persons, are public property, the right of reasonably using and enjoying which, for taking ice for use or sale, as well as for fishing and fowling, boating, skating, and other lawful purposes, is common to all, and in the water or ice of which, or in the land under them, the owners of the shores have no peculiar right, except by grant from the Legislature, or by prescription, which implies a grant. Anc. Chart. 148. *Cummings* v. *Barrett,* 10 Cush. 186; *West Roxbury* v. *Stoddard,* 7 Allen, 158; *Paine* v. *Woods,* 108 Mass. 160; . . . *Fay* v. *Salem & Danvers Aqueduct Co.* 111 Mass. 27. (*Hittinger* v. *Eames,* 121 Mass. 539.)

In the case of *Rockport* v. *Webster,* 174 Mass. 385, the town of Rockport, having taken the waters of Cape Pond for a water supply, sought to prevent the defendant from taking ice therefrom. The defendant replied that he had been for years a riparian owner of land upon the shore of said pond, with an established ice business thereon consisting in the

cutting and preparing of ice for sale. In the discussion of this phase of the case the Supreme Court said: —

> While it is true that the defendant is a riparian owner of lands upon the shores of the pond, with an established business of cutting and storing ice for sale, still, in the absence of any grant from the Legislature, or by prescription, he has no peculiar right thus to cut ice, and he must stand or fall in that respect with the general public. *Hittinger* v. *Eames,* 121 Mass. 539. (*Rockport* v. *Webster,* 174 Mass. 385, 390.)

To the effect that there are no private rights of property in great ponds is the case of *Sprague* v. *Minon,* 195 Mass. 581.

The authorities are uniform and entirely conclusive against the assertion of rights of private ownership in any of the great ponds; and there is therefore no constitutional objection to the proposed regulation upon the ground that it may interfere with private ownership.

Taking up the question as to the authority of the Legislature to enact the proposed legislation, it again appears that a considerable number of cases involving this right of the Legislature have been passed upon by the Supreme Judicial Court.

In the case of *Fay* v. *Salem & Danvers Aqueduct Co.,* above cited, the court declared not only that great ponds are public property, but that their use for "taking water or ice, as well as for fishing, fowling, bathing, boating or skating, may be regulated or granted by the Legislature at its discretion."

In repeated instances the Commonwealth has leased the fishing rights in great ponds to certain individuals to the exclusion of all others. In passing upon a case in which the defendant set up his right to fish in a great pond in disregard of such a lease executed by the Commonwealth, the Supreme Court, referring to the ordinance hereinbefore quoted, said: —

> This ancient ordinance, in its amended form, is the foundation of our law upon this subject. While it prohibits the towns from granting away great ponds, it expressly affirms their power to regulate the fisheries, both in such ponds and in tidewaters, and that of the Legislature to dispose either of great ponds (as well of bays, coves and rivers within the ebb and flow of the tide), or of the common rights of fishing and fowling in them. It has ever since been held that the right of fishing, both in the tidewaters and in the great ponds, belongs to the public, unless otherwise appropriated by the Legislature, or by the towns acting under its authority.

In the further discussion of this question the court said: —

The power of the Legislature of the Commonwealth over the public rights of navigation and fishing in any waters within its boundaries is unrestricted, provided it does not interfere with the power to regulate commerce, conferred upon the general government by the Constitution of the United States. *Cooley* v. *Philadelphia Board of Wardens*, 12 How. 299; *Gilman* v. *Philadelphia*, 3 Wallace, 713. The Legislature of a State has the power to regulate the time and manner of fishing in the sea within its limits; and, according to the opinions of most respectable judges, may even grant exclusive rights of fishing at particular places in tidewater. *Burnham* v. *Webster*, 5 Mass. 266; *Dunham* v. *Lamphere*, 3 Gray, 268; *Smith* v. *Maryland*, 18 How. 71. . . . In those waters, whether within or beyond the ebb and flow of the tide, which are not navigable from the sea for any useful purpose, there can be no restriction upon its authority to regulate the public right of fishing, or to make any grants of exclusive rights which do not impair other private rights already vested. *Nickerson* v. *Brackett*, 10 Mass. 212; *Cleaveland* v. *Norton*, 6 Cush. 380; *Russell* v. *Russell*, 15 Gray, 159. (*Commonwealth* v. *Vincent*, 108 Mass. 441.)

In many instances the Legislature has granted the control of the waters of great ponds to corporations, with authority to sell the water for domestic use. The right of the Legislature to regulate the price at which water from a great pond may be sold by such a corporation appears to be fully recognized in the case of *Gardner Water Co.* v. *Inhabitants of Gardner*, 185 Mass. 190. The facts in that case, briefly stated, were that the Gardner Water Company, having established itself in the business of taking water from Crystal Lake and selling it to the residents of Gardner, and the town desiring to take over the corporate property of the water company, a board of commissioners was appointed to ascertain and determine the value of the corporate property. The commissioners reported that the corporation —

was entitled, whenever the town of Gardner should take advantage of the option of purchase granted to it by section 9, to the fair value at that time of the right to use and sell the waters of Crystal Lake (and any other waters that may have been acquired by the company under the provisions of sections 2 and 3) for the purpose of furnishing the inhabitants of the town of Gardner with water for the purposes enumerated in section 1; subject to the right of the State to regulate the rates charged by the company (but not to establish rates so low as to be obnoxious to the provisions of the State or Federal Constitutions), to authorize competition (either public or private) from

water sources other than those held by the company, to revoke the company's right to use the public ways of Gardner for its pipes and hydrants (thus leaving the company with the right only to sell its waters wholesale to a distributing company or the town, or to distribute through pipes laid exclusively on private land), to revoke the company's charter, to dispose of any part of the waters of the lake not required for the supply of the inhabitants of Gardner, to control, lease, or sell the use of the lake for fishing, boating, ice cutting, and other purposes not interfering with its use for a water supply in Gardner, to control the operations of the company and its use of the water of the lake to the extent reasonably necessary to protect the purity of the water, and otherwise to exercise over the company the police power of the State within the limits set by the State and Federal Constitutions. . . .

In adopting this basis of valuation we assume that the Legislature contemplated that the town, in purchasing the property, rights and privileges of the company, would act in its private or proprietary capacity as a business corporation, and that the price should be fixed as if the purchase authorized by section 9 was to be made by a private corporation.

We include in the expression "water rights," as used in this ruling, all the rights, privileges and franchises obtained by the company under its charter to sell and distribute the waters of Crystal Lake in the town of Gardner, except the right to lay and maintain pipes, etc., in the public streets, the right to take property by eminent domain, and the other rights considered separately below in 7.

In valuing the company's water sources as defined above, the control and rights of the State in or over the same as therein set forth are to be borne in mind, as also the probability or improbability that these powers will in fact be exercised.

To that part of the report above quoted the town objected, upon the ground that "a grant by the State of rights in or to the lake or the waters thereof which entitled the company to a valuation on the basis set forth in the report would deprive the public of that beneficial use to which it is entitled." It should be noted that one element in the basis of valuation was the right of the State to regulate the rates charged by the company, but not to establish rates so low as to be obnoxious to the provisions of the State and Federal Constitutions. The Supreme Judicial Court held that there was no error in the part of the report of the commissioners that was objected to.

There is no doubt that control of the great ponds in the public interest is in the Legislature that represents the public.

It may regulate and change these public rights or take them away altogether to serve some paramount interest. *Sprague* v. *Minon*, 195 Mass. 581.

Such legislation may be enacted under the sovereign power of the State to control and regulate our public rights. *Sprague* v. *Minon*, *supra*.

The right of the individual citizen to the use of the great ponds for the purpose of cutting and harvesting ice is a right that exists by virtue of the grant contained in the ancient ordinance above set forth. It is a public grant, and it is the settled law of this Commonwealth that in making any public grant the State may impose such terms as it sees fit, and where no contractual relations are established between the grantee and the Commonwealth it may impose such regulations upon the grant after it is made as it sees fit. It may relieve the grantee from the payment of any damages for the taking of public property, or it may require compensation to be made to private persons where no legal right has been interfered with, as in the case where land is taken for railroads and other public works. *Rockport* v. *Webster*, 174 Mass. 385; *Parker* v. *Boston & Maine R.R.*, 3 Cush. 107; *Trowbridge* v. *Brookline*, 144 Mass. 139.

This statement might be further elaborated by reference to familiar instances of the imposition of terms and regulations upon a public grant or franchise.

The enactment of such a regulation does not involve the Commonwealth nor any municipality within it in the business of harvesting and selling ice.

It is my opinion that the enactment of such a law as is suggested by your inquiry would be simply the regulation of a public right by the imposition of terms upon the grant of the right to take ice from great ponds to be sold to consumers, and that such a statute, if enacted, would not be obnoxious to any provision of the Constitution.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Contracts — Boston Consolidated Gas Company.

St. 1906, c. 422, does not constitute a contract between the Commonwealth and the Boston Consolidated Gas Company, and the Legislature has authority to alter the provisions regulating the price of gas.

June 22, 1914.

To the House of Representatives.

Gentlemen: — You have requested my opinion upon the following question: —

Whether or not the provisions of chapter 422 of the Acts of the year 1906 constitute a contract between the Commonwealth and the Boston Consolidated Gas Company; and whether the provisions of the said chapter relating to the price of gas may lawfully be changed by the General Court without the assent of said company.

In connection with your request for an opinion you have submitted a copy of House Bill No. 1674, amending chapter 422 of the Acts of 1906. That part of said chapter that would be affected by the passage of House Bill No. 1674 is as follows: —

Section 1. From and after the thirtieth day of June in the year nineteen hundred and six, the standard price to be charged by the Boston Consolidated Gas Company for gas supplied to its customers shall be ninety cents per one thousand cubic feet, which price shall not thereafter be increased except as hereinafter provided. From and after the said date the standard rate of dividends to be paid by said company to its stockholders shall be seven per cent per annum on the par value of its capital stock, which rate shall not thereafter be increased except as hereinafter provided.

Section 2. If during any year ending on the thirtieth day of June the maximum net price per thousand cubic feet charged by the company has been less than the standard price, the company may during the following year declare and pay dividends exceeding the standard rate in the ratio of one fifth of one per cent. for every one cent of reduction of said maximum net price below the standard price.

Chapter 422 of the Acts of 1906 operated as an amendment of the original charter granted to the Boston Consolidated Gas Company.

The answer to your entire inquiry, therefore, will be settled by the determination of the single question, Did the enact-

ment of chapter 422 of the Acts of 1906 and its acceptance by the Boston Consolidated Gas Company constitute a contract between the Commonwealth and that company?

Beyond any question, if a contract was made the proposed bill, if enacted, would be unconstitutional; and also beyond any question, if a contract was not created between the two parties the rates to be charged by the company may be further regulated by the Legislature, subject only to the provision that they must not be fixed at so low a rate as to be really confiscatory. A contract between the State and a public service corporation is a very different thing from the enactment of a statute by the State regulating the conduct and management of, and fixing maximum rates to be charged to the public by, the corporation.

Your question arises under the Federal Constitution. It has been said that —

> The term "contract" is used in the (Federal) Constitution in its ordinary sense, as signifying the agreement of two or more minds, for considerations proceeding from one to the other, to do, or not to do, certain acts. Mutual assent to its terms is of its very essence. (*Louisiana* v. *Pilsbury*, 105 U. S. 278.)

The charter of a corporation created by the State is a contract, and is in all particulars inviolable, unless in the charter itself, or in some general or special law subject to which it was taken, there is a power reserved to the Legislature to alter, amend or repeal. *Commonwealth* v. *New Bedford Bridge*, 2 Gray, 339; *Charles River Bridge* v. *Warren Bridge*, 7 Pick. 344.

The original charter of the Boston Consolidated Gas Company, St. 1903, c. 417, contains no provision for its alteration, amendment or repeal by the Legislature, nor does chapter 422 of the Acts of 1906, referred to in your inquiry, contain such a provision; but when those acts were passed it was the general law of the Commonwealth that every act of incorporation should be subject to amendment. Section 3 of chapter 109 of the Revised Laws provides that "every act of incorporation passed since the eleventh day of March in the year eighteen hundred and thirty-one shall be subject to amendment."

This statute, first introduced into the general legislation of the Commonwealth by St. 1830, c. 81, and re-enacted in the Rev. Sts., c. 44,

par. 23, and the Gen. Sts., c. 68, par. 41, has been as much a part of all charters since granted as if inserted therein; and was manifestly adopted with the intention of reserving for the future a fuller parliamentary or legislative power than would otherwise be consistent with the effect to be allowed to the special terms of particular charters, under the judicial construction of the constitutional prohibition against impairing the obligation of contracts. The extent of the power reserved by such an enactment has been the subject of some diversity of judicial opinion, and a definition of its extreme limit is not necessary to this case. It is sufficient now to say that it is established by adjudications which we cannot disregard, and the principles of which we fully approve, that it at least reserves to the Legislature the authority to make any alteration or amendment in a charter granted subject to it, that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, and that the Legislature may deem necessary to secure either that object or other public or private rights. (*Commissioners on Inland Fisheries* v. *Holyoke Water Power Co.*, 104 Mass. 446, 451.)

It is a familiar rule that public grants will be strictly construed against the grantee, and rights conferred by a public grant will not be extended beyond the clear meaning of the language in which they are made. Grants of franchises are usually prepared by those interested in them and submitted to the Legislatures with a view to obtain the most liberal grant obtainable; and for this and other reasons such grants should be in plain language, certain, definite in nature and contain no ambiguity in their terms, and will be strictly construed against the grantee. (*Blair* v. *Chicago*, 201 U. S. 400.)

Referring to the strictness with which charters granted are to be construed, the courts have laid down the doctrine that the State is to be held to have granted only such powers or immunities as are specifically or unequivocally stated, or as are unavoidably implied therein. Willoughby on the Constitution, Vol. II, p. 898.

The Supreme Court of the United States has said of this class of cases: —

> The rule of construction is that it shall be construed most strongly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be conceded but what is given in unmistakable terms or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is fatal to the claim. (*Northwestern Fertilizing Co.* v. *Hyde Park*, 97 U. S. 659.)

Coosaw Mining Co. v. *South Carolina*, 144 U. S. 550; *Knoxville Water Co.* v. *Knoxville*, 200 U. S. 22.

It has been further decided that a grant of power to fix its charges, provided they be not in excess of a specified rate in the charter of a corporation, does not prevent the State from afterward fixing lower rates than those established by the corporation. *Georgia Railroad & Banking Co.* v. *Smith*, 128 U. S. 174. And that generally the reservation by the State of a power to amend or revoke the charter carries with it a power to regulate the charges that may be made. *Peik* v. *Chicago, etc., Ry. Co.*, 94 U. S. 164.

Applying the rules above stated to the construction of chapter 422 of the Acts of 1906, it becomes instantly apparent that the Commonwealth did not enter into any agreement that it would not further regulate the rates to be charged by the Boston Consolidated Gas Company. Such a contract is neither clearly expressed in nor fairly to be implied from the language of that chapter. That the State did not make a contract not to further regulate the charges and rates of the Gas Company is conclusively shown by section 9 of chapter 422 of the Acts of 1906, which provides that the rates charged by the company may be either raised or lowered upon certain applications, therein provided for, to the Board of Gas and Electric Light Commissioners.

Without further discussion of this matter I have to say that it is my opinion that the provisions of chapter 422 of the Acts of 1906 did not and do not constitute a contract between the Commonwealth and the Boston Consolidated Gas Company; and that, subject to the rule above stated, the provisions of that chapter relating to the price of gas may lawfully be changed by the General Court without the assent of that company.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

State Forester — Sales of Wood and Lumber.

Under St. 1908, c. 478, moneys received by the State Forester for the Commonwealth, on account of wood and lumber sold by him, must be paid to the State Treasurer, and cannot be credited to the Forester's department.

JUNE 24, 1914.

Mr. H. O. COOK, *Assistant Forester.*

DEAR SIR: — You ask in your letter of June 22 if money turned into the State treasury by the State Forester, which

had been received by your department from sales of cordwood and lumber, may be credited by the State Treasurer to the State Forester's appropriation. You suggest that this in part would compensate for the expense of removing this material, which is now borne by the department and met by the annual appropriation.

Chapter 478 of the Acts of 1908 provides for the purchase and acceptance of gifts of land for reforestation. Sections 4 and 5 of that chapter are as follows: —

Section 4. Land acquired under the provisions of this act shall be under the control and management of the state forester who may, subject to the approval of the governor and council, cut and sell trees, wood and other produce therefrom.

Section 5. All moneys received by or payable to the commonwealth or any one acting on its behalf under the provisions of this act shall be paid into the treasury of the commonwealth.

The language of the statute warrants but one construction, namely, that all money received from sales of trees, wood and other produce must be accounted for and turned over to the State Treasurer. The only way by which these moneys could be credited to your department, and thereby added to your available funds, would be by an extra appropriation.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Constitutional Law — Railroads — Guaranty of Bonds.

It is within the constitutional authority of the Legislature to provide that the Commonwealth shall guarantee bonds of a railroad company.

June 22, 1914.

Committee on Bills in the Third Reading.

Gentlemen: — You have requested my opinion as to the constitutionality of House Bill No. 745, and your inquiry contains the statement that the bill appears to be one which provides that the Commonwealth shall guarantee the bonds of a private enterprise. I assume, therefore, that the source of the doubt arising in your minds as to the constitutionality of the bill is indicated by this statement.

No principle of law is better settled in this Commonwealth than that which forbids the use of money raised by taxation for a private purpose.

But the preamble to this bill states that the purpose of the bill is to secure the building of the railroad described in chapter 556 of the Acts of the year 1907, as amended and extended by chapter 707 of the Acts of the year 1912, and in order to furnish new freight and passenger railroad lines for the State of Massachusetts and the city of Boston, to be operated in the interests of the people of said State and city, and to connect with existing lines at Providence, Fall River and other points. The bill itself, when read in connection with the statutes referred to, bears out the recital of the preamble.

Railroads are held to be built for the public use, whether the right to take land or the right to grant pecuniary aid to them is considered. The Legislature of this Commonwealth has granted aid to railroad corporations from the treasury of the Commonwealth. *Prince* v. *Crocker*, 166 Mass. 347.

Repeated instances of this are found in our legislation. For example, aid was extended to the Western Railroad Corporation (St. 1836, c. 131), to the Troy & Greenfield Railroad Corporation (St. 1854, c. 226), to the Williamsburg & North Adams (St. 1867, c. 321), and to the Lee & New Haven (St. 1868, c. 313). The Legislature has also in a number of instances authorized cities and towns to furnish aid to railroad companies by subscribing to stock or otherwise. The constitutionality of such legislation has not been brought into direct controversy before the Supreme Court, but indirectly has been recognized. *Kittredge* v. *North Brookfield*, 138 Mass. 286; *Commonwealth* v. *Williamstown*, 156 Mass. 70. And elsewhere it has been established by such a weight of judicial authority that it must be regarded as settled. *Prince* v. *Crocker*, 166 Mass. 347, 361. See, also, *Olcott* v. *Supervisors*, 16 Wall. 678; *Railroad Co.* v. *Otoe*, 16 Wall. 667; *Pine Grove Township* v. *Talcott*, 19 Wall. 666; Dillon on Municipal Corporations, 4th ed., §§ 153, 158, 508.

Thus the building of the subway in the city of Boston for the carriage of such passengers as paid the regular fare was held to be for a public use; and it was further held to be within the constitutional power of the Legislature to order or sanction taxation for it. *Prince* v. *Crocker*, 166 Mass. 347, 361.

It is my opinion that the railroad described in this bill, if built, must, like all other railroads, be regarded as constructed

for public use; that the Legislature has the right to extend to it the direct financial aid of the Commonwealth; and that the proposed bill, if enacted, will be constitutional.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Contracts — Public Works — Labor.

The provisions of St. 1914, c. 474, regulating wages of employees on public works, do not apply to contracts made prior to the taking effect of the statute.

JUNE 25, 1914.

State Board of Labor and Industries.

GENTLEMEN: — You have requested my opinion upon the following question: —

Do the provisions of chapter 474 of the Acts of 1914 apply to contracts made before the fifth day of June, 1914, that being the date upon which that chapter went into effect?

This chapter reads as follows: —

SECTION 1. Section twenty-one of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine is hereby amended by inserting after the word "effect", in the eighth line, the words: — The wages for a day's work paid to mechanics employed in such construction of public works shall be not less than the customary and prevailing rate of wages for a day's work in the same trade or occupation in the locality, city or town where such public works are constructed, — so as to read as follows: — *Section 21.* In the employment of mechanics and laborers in the construction of public works by the commonwealth, or by a county, city or town, or by persons contracting therewith, preference shall be given to citizens of the commonwealth, and, if they cannot be obtained in sufficient numbers, then to citizens of the United States; and every contract for such works shall contain a provision to this effect. The wages for a day's work paid to mechanics employed in such construction of public works shall be not less than the customary and prevailing rate of wages for a day's work in the same trade or occupation in the locality, city or town where such public works are constructed. Any contractor who knowingly and wilfully violates the provisions of this section shall be punished by a fine of not more than one hundred dollars for each offence.

SECTION 2. The board of labor and industries shall enforce the provisions of this act, and in case of any dispute that may arise upon

public works as to the customary and prevailing rate of wages the board of labor and industries shall investigate the wages in the trade or occupation in the locality, city or town where such public works are under construction and decide what rate of wages shall be paid upon such works.

This statute relates to the employment of mechanics and laborers in the construction of public works by the Commonwealth, and to the rate of wages to be paid by contractors doing such work.

The contracts of a State with individuals are to be construed in the same manner and have the same binding effect upon the parties thereto as the contracts of private parties. 36 Cyc. 880, par. G.

A State has no more right than an individual to modify or rescind a contract entered into by it unless such right has been reserved. 36 Cyc. 880, par. H.

In *Boston Molasses Co.* v. *Commonwealth,* 193 Mass. 389, Sheldon, J., says as follows: —

> The State, in all its contracts and dealings with individuals, must be adjudged and abide by the rules which govern in determining the rights of private citizens contracting and dealing with each other. There is not one law for the sovereign and another for the subject; but, when the sovereign engages in business and the conduct of business enterprises, and contracts with individuals, although an action may not lie against the sovereign for a breach of the contract, whenever the contract, in any form, comes before the courts, the rights and obligations of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the dealer, contractor and suitor.

In an opinion by the Attorney-General, given June 28, 1911, to the Metropolitan Water and Sewerage Board, where a contract was made prior to the act of the Legislature limiting the employment of men to eight hours a day, it was held by the Attorney-General that the contractor had the right to employ men according to the terms of the contract, and that the terms of this contract will not be changed by the passage of the act in question. The statute would be unconstitutional if construed to abrogate or interfere with the terms of this contract.

There is nothing in chapter 474 of the Acts of 1914 indicating any intention that it should apply to contracts made

before that chapter would take effect, and such a provision, if made, would undoubtedly constitute a violation of that provision of the Federal Constitution which prohibits any State from enacting a law impairing the obligation of contracts.

It is my opinion that this chapter does not apply to the class of contracts referred to in your inquiry.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Contracts — Bids — Right of Rejection.

Where a public commission, in advertising for bids on a proposed contract, reserves the right to reject any and all bids, no liability attaches in case any of the lowest bids are rejected.

JUNE 26, 1914.

State House Building Commission.

GENTLEMEN: — In your communication of recent date, you state in substance that in advertising for bids for contracts for the State House extension you reserved the right to reject any and all bids, and you request my opinion upon the following question: "If the Board shall now reject any of the lowest bidders will such rejected bidders have any recourse at law?"

This question received judicial consideration in the case of *Colorado Paving Co.* v. *Murphy,* 37 L. R. A. 630. In this case Murphy brought a bill in equity seeking to enjoin the Colorado Paving Company and the mayor and certain other officials of the city of Denver from entering into a contract for the paving of a certain street in Denver. The city authorities had advertised for bids for a contract for this work, and had reserved the right to reject any and all bids. Murphy was the lowest bidder and his bid was rejected. The court said: —

"Wherever an action is brought for a breach of duty imposed by statute, the party bringing it must show that he had an interest in the performance of the duty, and that the duty was imposed for his benefit. But where the duty was created or imposed for the benefit of another, and the advantage to be derived to the party prosecuting, by its performance, is merely incidental and no part of the design of the statute, no such right is created as forms the subject of an action."

It is upon this principle that it is now settled by the great weight of authority that the lowest bidder cannot compel the issue of a writ of mandamus to force the officers of a municipality to enter into a

contract with him. (Citing High, Extr. Legal Rem. § 92, and other authorities.) And the courts hold that he cannot maintain an action at law for damages for their refusal to enter into the contract. *Talbot Paving Co.* v. *Detroit* (Mich.), 3 Det. L. N. 268; *East River Gaslight Co.* v. *Donnelly*, 93 N. Y. 557. This principle is as fatal to a suit in equity as to an action at law. It goes not to defeat any particular cause of action, but to defeat the right to any relief. Nor is this an unjust or inequitable result. One who offers to contract to do work for a city which he knows has the right to reject his bid ought not to have the power to compel that city to enter into a contract with him simply because it decides to make a contract for the same work with his rival. He knowingly puts the labor and expense of preparing his bid at the hazard of the city's action. It is admitted that, if the city rejects all bids, he has no rights, no equities; and we fail to see how its acceptance of another's bid can give to the unsuccessful bidder any greater right than he would have had if all bids had been rejected. (*Colorado Paving Co.* v. *Murphy*, 37 L. R. A. 630, 635.)

In a case involving the same principle the Supreme Court of Missouri said: —

In the case in hand the advertisement has the following caption: "Proposals for the erection of the new high school building on Grand Avenue." But the opening lines of the official statement, which follows, show that the caption refers to the proposals to be received, and is not intended to describe the effect of the advertisement as a whole. If there was otherwise any doubt on this point, it is set at rest by the last sentence, viz., "The board reserves the right to reject any or all bids." That language demonstrates the nature of the advertisement as a mere invitation for offers for a contract. As such it did not lay the foundation of a completed contract. It was merely the opening of negotiations for a contract. . . . No claim is advanced in the petition looking to a recovery for fraud or deceit in making the proposals for bids. It is, indeed, asserted that the defendant rejected the plaintiffs' bid "without cause, arbitrarily and capriciously, through favoritism and bias." But, if the defendant had the absolute right to reject any and all bids, no cause of action would arise to plaintiffs because of the motive which led to the rejection of their bid. The right to reject the bids was unconditional. Defendant was entitled to exercise that right for any cause it might deem satisfactory, or even without any assignable cause. Whatever its rules or practice as to the acceptance of bids may have been, plaintiffs' rights cannot be justly held to be greater than those conferred by the published advertisement on which their bid was made. (*Anderson* v. *Board of President and Directors of Public Schools*, 26 L. R. A. 707, 712.)

It is my opinion that under the circumstances described in your letter the rejection of any bid would not give the bidder whose offer was rejected any right of action against the Commonwealth nor against the members of your Board, either in their official capacity or as individuals.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Railroads — Regulation of Compensation of Employees.

It is not within the constitutional powers of the Legislature to compel railroads to give certain employees two days' rest in a month with full compensation.

JUNE 29, 1914.

His Excellency DAVID I. WALSH, *Governor of the Commonwealth.*

SIR: — In response to your oral inquiry in reference to the bill now before you providing for two days' rest in a month for certain employees with full compensation, I refer you to an opinion rendered March 25, 1914, to the committee on railroads on a similar measure, House Bill No. 453.

The leading case in this Commonwealth upon that principle that relates to freedom of contract is *Commonwealth* v. *Perry*, 155 Mass. 117. A statute had been enacted which provided that no employer should impose a fine upon, or withhold the wages or any part of the wages of, an employee engaged in weaving, for imperfections that may arise during the process of weaving. The court, speaking by Chief Justice Knowlton, say: —

> The act recognizes the fact that imperfections may arise in weaving cloth, and it is evident that a common cause of such imperfections may be the negligence or want of skill of the weaver. When an employer has contracted with his employee for the exercise of skill and care in tending looms, it forbids the withholding of any part of the contract price for non-performance of the contract, and seeks to compel the payment of the same price for work which in quality falls far short of the requirements of the contract as for that which is properly done. . . .
>
> . . . It might well be held that, if the Legislature should determine it to be for the best interests of the people that a certain class of employees should not be permitted to subject themselves to an arbitrary imposition of a fine or penalty by their employer, it might pass a law

to that effect. But when the attempt is to compel payment under a contract of the price for good work when only inferior work is done, a different question is presented.

There are certain fundamental rights of every citizen which are recognized in the organic law of all our free American States. A statute which violates any of these rights is unconstitutional and void, even though the enactment of it is not expressly forbidden. Article I. of the Declaration of Rights in the Constitution of Massachusetts enumerates among the natural, unalienable rights of men the right "of acquiring, possessing, and protecting property." Article I., § 10, of the Constitution of the United States provides, among other things, that no State shall pass any "law impairing the obligation of contracts." The right to acquire, possess and protect property includes the right to make reasonable contracts, which shall be under the protection of the law.

. . . If the statute is held to permit a manufacturer to hire weavers, and agree to pay them a certain price per yard for weaving cloth with a proper skill and care, it renders the contract of no effect when it requires him, under a penalty, to pay the contract price if the employee does his work negligently and fails to perform his contract. For it is an essential element of such a contract that full payment is to be made only when the contract is performed. If it be held to forbid the making of such contracts, and to permit the hiring of weavers only upon terms that prompt payment shall be made of the price for good work, however badly their work may be done, and that the remedy of the employer for their derelictions shall be only by suits against them for damages, it is an interference with the right to make reasonable and proper contracts in conducting a legitimate business, which the Constitution guarantees to every one when it declares that he has a "natural, essential, and unalienable" right of "acquiring, possessing, and protecting property." (*Commonwealth* v. *Perry*, 155 Mass. 117.)

A statute attempting to fix the price and hours of labor as between certain private contractors and their employees could not in my judgment be sustained as a legitimate exercise of the police power contained in the Constitution. It would tend to promote the pecuniary welfare of one class of citizens at the expense of another class. (II. Op. Atty.-Gen. 267.)

The case of *Commonwealth* v. *Perry* has been cited with approval in our own Commonwealth and by the Supreme Court of Missouri in the case of *State* v. *Loomis*, 115 Mo. 307, and by the Supreme Court of Illinois in the case of *Braceville Coal Co.* v. *The People of the State of Illinois*, 147 Ill. 66. In the last-mentioned case it is said: —

The privilege of contracting is both a liberty and a property right, and if A is denied the right to contract and acquire property in the manner which he has hitherto enjoyed under the law, and which B, C and D are still allowed by the law to enjoy, it is clear that he is deprived of both liberty and property to the extent that he is thus denied the right to contract. The man or the class forbidden the acquisition or enjoyment of property in the manner permitted the community at large would be deprived of liberty in particulars of primary importance to his or their pursuit of happiness.

It is evident that if the Legislature may constitutionally enact a law that an employer must pay an employee for two days' labor in every month that is not performed, it may also enact a statute providing that employees must work two days in a month without pay, the unconstitutionality of which would be very readily apparent to every thinking individual. Such an enactment as is proposed interferes, both with the personal liberty of the citizen and with the right of freedom of contract. In my opinion such an act would also be obnoxious to that provision of the Fourteenth Amendment of the Constitution of the United States, to the effect that "no state shall deprive any person of life, liberty or property without due process of law."

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Boston, Cape Cod & New York Canal Company — Deposit with State Treasurer.

Under St. 1899, c. 448, the deposit of $200,000 with the State Treasurer as security for land damages cannot be applied for any other purpose or taken by virtue of an execution.

JUNE 30, 1914.

Hon. FREDERICK W. MANSFIELD, *Treasurer and Receiver-General.*

DEAR SIR: — You have requested my opinion as to whether the moneys deposited with the Treasurer and Receiver-General of the Commonwealth by the Boston, Cape Cod & New York Canal Company, under the provisions of chapter 448 of the Acts of 1899, are a proper fund out of which to pay an execution issued by the Superior Court in and for the county of Barnstable in favor of Valina T. Bassett, judgment creditor, and against the Boston, Cape Cod & New York Canal Company, judgment debtor.

Sections 23, 24 and 25 of the chapter referred to provide as follows: —

Section 23. This act shall be null and void unless said canal company shall, within four months from the passage of this act, and before the filing of the plan of the proposed location as provided in section four, deposit with the treasurer of the commonwealth the sum of two hundred thousand dollars in cash or in United States government bonds, as security for all damages for the taking of land by said company; which money or bonds shall be subject to attachment or levy upon any legal process issued in behalf of any person against said company for the recovery of damages for taking such land. . . .

Section 24. All persons whose lands shall be taken by condemnation for the location of said canal as filed by said canal company under the provisions of section four of this act shall, within six months after the filing of such location in the registry of deeds for the county of Barnstable, file with the county commissioners of the county of Barnstable a written statement, setting forth substantially the quantity of land so taken, and the amount of damages so claimed by them, respectively, for the taking thereof, and the county commissioners shall thereupon, after giving to all parties interested such notice as they shall deem sufficient, determine and award the amount of damages to which such persons are entitled.

Section 25. Any party dissatisfied with the award of the county commissioners may, at any time within one year after the date of such award, apply by petition to the superior court of the county of Barnstable for a jury to assess the damages, and like proceedings shall be had therein as in proceedings for damages for laying out railroads. The treasurer of the commonwealth is hereby empowered and directed, upon the filing with him of a certified copy of the final decree as appears of record in any such proceeding, to pay to the parties appearing by such decree to be entitled thereto, or their legal representatives, the sum of money set forth in said decree.

The funds deposited with the Treasurer and Receiver-General by the canal company are subject to attachment or levy upon legal process for one purpose only; that is, to satisfy claims for land damages. The funds above specified were deposited with the Treasurer and Receiver-General for this single purpose.

By section 24 above quoted all persons whose lands were taken or condemned for the location of the canal were required, within six months after the filing in the registry of deeds for the county of Barnstable of the proper instruments showing the location of the canal, to file with the county commissioners of that county a written statement setting forth substantially the quantity of land taken and the amount of

damages claimed by such persons, respectively. Upon the filing of such statement the county commissioners were required to make an award of the amount of damages to which such persons were entitled. After this any party dissatisfied with the award of the commissioners might within one year bring his petition to the Superior Court of Barnstable County to have his damages assessed by a jury; and the Treasurer and Receiver-General is empowered and directed, upon the filing with him of a certified copy of the final decree as appears of record in any such proceeding, to pay to the parties appearing by such decree to be entitled thereto, or to their legal representatives, the sum of money set forth in said decree.

The copy of the execution submitted does not disclose whether the cause of action of the judgment creditor therein named was the taking of land by the defendant company or something else; but the funds in the hands of the Treasurer and Receiver-General can be used only to pay land damages. No certificate accompanies this execution. Before the Treasurer and Receiver-General pays any claim against the canal company there should be filed with him a certified copy of the final decree in the proceeding in which payment is claimed. The execution presented is not such a certified copy as the statute requires, and does not show compliance with the various steps required by the statute.

It is my opinion that as the matter now stands the Treasurer and Receiver-General should not pay this execution, and that this claim cannot properly be paid out of the fund above mentioned until compliance with the terms of the statute is shown.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Civil War Veteran — Gratuities — Re-enlistment as Substitute.

Under St. 1912, c. 702, as amended by St. 1913, c. 443, a Massachusetts veteran who served as a volunteer in the civil war and was honorably discharged is not debarred from receiving a gratuity from the Commonwealth by reason of subsequent service as a substitute.

JULY 1, 1914.

Commission on Gratuities.

GENTLEMEN: — You state that you have on file a claim made by a veteran who served as a volunteer in the civil war

from July, 1862, to September, 1863, and that by reason of this service he would be entitled to the gratuity provided by chapter 702 of the Acts of 1912, but that in August, 1864, he re-enlisted as a substitute, from which service he was discharged in August, 1867; and you ask my opinion on the following question: "Does the fact of his second service as a substitute debar the veteran from any benefit under this act?"

The first section of the chapter above referred to contains a very clear and emphatic declaration of the intention and purpose of the Legislature in its enactment. That section reads as follows: —

> For the purpose of promoting the spirit of loyalty and patriotism, and in recognition of the sacrifice made both for the commonwealth and for the United States by those veteran soldiers and sailors who volunteered their services in the civil war, and for the purpose of promoting the public welfare, by giving visible evidence to this generation and future generations that, if danger should again threaten the nation and the call should again come for men, Massachusetts will not forget the great service of those who volunteer, a gratuity of one hundred and twenty-five dollars to each veteran is hereby authorized to be paid from the treasury of the commonwealth under the conditions hereinafter set forth.

Section 2 of said act, as amended by chapter 443 of the Acts of 1913, provides as follows: —

> The gratuity herein provided for shall be paid to every person, or his legal representative, not being a conscript or a substitute, and not having received a bounty from the commonwealth or from any city or town therein, who served in the army or navy of the United States to the credit of the commonwealth during the civil war, or who served in the army or navy of the United States during the civil war and was an actual bona fide resident of the commonwealth at the time of his enlistment, or who served in a military organization from or raised by the commonwealth, and was honorably discharged from such service, and is living at the time of the passage of this act; it being intended and provided that the said gift shall not be a bounty, nor a payment in equalization of bounties, nor a payment for services rendered, nor a payment for the purpose of making the result of their contracts of enlistment more favorable to them because the contracts of other soldiers were on better terms, but a testimonial for meritorious service such as the commonwealth may rightly give, and such as her sons may honorably accept and receive.

I assume that the applicant was at the time of his enlistment an actual *bona fide* resident of the Commonwealth; that he was honorably discharged; and that there is no reason why he should not receive the gratuity provided by this act except the fact that after serving his country as a volunteer, and after being honorably discharged from the service, not having received a bounty from the Commonwealth or from any city or town therein, he voluntarily re-entered the country's service as a substitute.

The statement of the reasons suggested for rejecting the claim of this applicant indicates quite clearly what the answer to your question ought to be. Here is a man who did not wait for any financial consideration but who offered his services freely to the defence of the Union, whose only fault is, that having earned an honorable discharge, he was willing to do still further service for his country, and that on entering the service the second time he took the place of some one who would at best have been an unwilling soldier. To reject this claim for such a reason would, in my opinion, be entirely contrary to the plain provisions of the statute, and in this and all similar cases would defeat its spirit and purpose. The statute bars those whose only service was as conscripts or substitutes, not those who after honorable service as volunteers may have re-enlisted as substitutes.

It is my opinion that the claim referred to in your question, and all other like claims, should be allowed.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Salem Fire — Authority of Legislature to grant Relief.

It is within the constitutional authority of the Legislature to grant such relief to sufferers from a public disaster as may be deemed necessary for the protection of the health and safety of the people.

JULY 3, 1914.

His Excellency DAVID I. WALSH, *Governor of the Commonwealth.*

SIR: — In response to your oral inquiry whether the Legislature has authority under the Constitution to appropriate money to be placed in the hands of a commission and loaned to sufferers by the Salem fire, to aid them in rebuilding their

homes and places of business, I have to say that the subject-matter covered by your inquiry was very carefully and fully considered by the Supreme Judicial Court in the case of *Lowell* v. *Boston*, 111 Mass. 454, a case that grew out of legislation for the relief of sufferers by the great Boston fire of 1872 The act in question, St. 1872, c. 364, provided for the issue by the city of Boston of an issue of bonds to an amount not exceeding $20,000,000; and for the appointment of a commission authorized to loan the proceeds of the bonds so issued, in sums such as they should determine, to the owners of land, the buildings upon which were burned by the fire in Boston on the ninth and tenth days of November, 1872. In a discussion which seems to cover every point raised by your inquiry the court said: —

It is a question, not of municipal authority, but *of legislative power*. The point of difficulty is not as to the distribution of the burden by allowing it to be imposed upon a limited district within the State, but as to the right of the Legislature to impose or authorize any tax for the object contemplated by this statute.

The power to levy taxes is founded on the right, duty and responsibility to maintain and administer all the governmental functions of the State, and to provide for the public welfare. To justify any exercise of the power requires that the expenditure which it is intended to meet shall be for some public service, or some object which concerns the public welfare. The promotion of the interests of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object. However certain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental. The incidental advantage to the public, or to the State, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary. It is the essential character of the direct object of the expenditure which must determine its validity, as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion.

. . . . . .

The ultimate end and object of the expenditure, as indicated by the provisions of the statute itself, is "to insure the speedy rebuilding on said land."

The general result may indeed be thus stated collectively, as a single object of attainment; but the fund raised is intended to be appro-

priated distributively, by separate loans to numerous individuals, each one of which will be independent of any relation to the others, or to any general purpose, except that of aiding individual enterprise in matters of private business. The property thus created will remain exclusively private property, to be devoted to private uses at the discretion of the owners of the land; with no restriction as to the character of the buildings to be erected, or the uses to which they shall be devoted; and with no obligation to render any service or duty to the Commonwealth, or to the city, — except to repay the loan, — or to the community at large or any part of it. If it be assumed that the private interests of the owners will lead them to re-establish warehouses, shops, manufactories, and stores; and that the trade and business of the place will be enlarged or revived by means of the facilities thus provided; still, these are considerations of private interest, and, if expressly declared to be the aim and purpose of the act, they would not constitute a public object, in a legal sense.

As a judicial question the case is not changed by the magnitude of the calamity which has created the emergency; nor by the greatness of the emergency, or the extent and importance of the interests to be promoted. These are considerations affecting only the propriety and expediency of the expenditure as a legislative question. If the expenditure is, in its nature, such as will justify taxation under any state of circumstances, it belongs to the Legislature exclusively to determine whether it shall be authorized in the particular case; and however slight the emergency, or limited or unimportant the interests to be promoted thereby, the court has no authority to revise the legislative action.

On the other hand, if its nature is such as not to justify taxation in any and all cases in which the Legislature might see fit to give authority therefor, no stress of circumstances affecting the expediency, importance or general desirableness of the measure, and no concurrence of legislative and municipal action, or preponderance of popular favor in any particular case, will supply the element necessary to bring it within the scope of legislative power.

The expenditure authorized by this statute being for private and not for public objects, in a legal sense, it exceeds the constitutional power of the Legislature; and the city cannot lawfully issue the bonds for the purposes of the act. (*Lowell* v. *Boston*, 111 Mass. 454, 460, 472.)

This decision has never been overruled or in any degree limited or at all criticized by any later decision of the Supreme Judicial Court. It has been many times cited with approval, and I quote from an *Opinion of the Justices*, 204 Mass. 607, 611, a reference to this case, after quoting a portion of the opinion above set forth, and saying that the statement of the law in the case of *Lowell* v. *Boston* is clear and accurate: —

It has governed all later decisions upon kindred questions in this Commonwealth. *Opinion of the Justices*, 155 Mass. 598. *Mead* v. *Acton*, 139 Mass. 341. It is the law of the Supreme Court of the United States as laid down in an able and exhaustive opinion by Mr. Justice Miller, in *Loan Association* v. *Topeka*, 20 Wall. 655, in which it was held that a statute authorizing a town to issue its bonds in aid of a manufacturing enterprise was invalid. It has been followed by that court in later cases. *Parkersburg* v. *Brown*, 106 U. S. 487. *Cole* v. *LaGrange*, 113 U. S. 1. *Missouri Pacific Railway* v. *Nebraska*, 164 U. S. 403. It has been applied in different forms in a variety of cases in courts all over the United States. *Opinion of the Justices*, 58 Maine, 590. *Allen* v. *Jay*, 60 Maine, 124. *Markley* v. *Mineral City*, 58 Ohio St. 430. *State* v. *Osawkee Township*, 14 Kans. 418. *Central Branch Union Pacific Railroad* v. *Smith*, 23 Kans. 745. *Coates* v. *Campbell*, 37 Minn. 498. *Deering & Co.* v. *Peterson*, 75 Minn. 118. *Minnesota Sugar Co.* v. *Iverson*, 91 Minn. 30. *Eufaula* v. *McNab*, 67 Ala. 588. *Manning* v. *Devil's Lake*, 13 No. Dak. 47. *Michigan Sugar Co.* v. *Auditor General*, 124 Mich. 674. *Deal* v. *Mississippi County*, 107 Mo. 464. *Feldman & Co.* v. *City Council of Charleston*, 23 S. C. 57. *Sutherland-Innes Co.* v. *Evart*, 30 C. C. A. 305.

Without further discussion of this question I may say that the decisions of our Supreme Court above quoted unquestionably express the law covering your inquiry as it stands today, and are conclusive as to the power of the Legislature to authorize the loan of any part of the public funds of the Commonwealth for individual or private use, and preclude the possibility of such action. These considerations, however, relate to the matter of rebuilding the city.

But other and more important considerations arise as to the condition of things now existing at Salem. A great calamity has befallen, one which, while it affects more keenly the residents of the stricken city and those who without warning have been thrown out of employment and stripped of their worldly possessions, is still a disaster in which every citizen of the Commonwealth shares. Such a condition as now exists in Salem presents a public emergency, one that justifies and demands the exercise of the constitutional power of the government in making proper provision for the health and safety of the people.

When a great public disaster has occurred leaving thousands of people without food, shelter or employment, it is unthinkable that the hands of the government of the Commonwealth are so tied as to render it utterly supine and powerless

to render aid, and that the sufferers must of necessity be left to the haphazard of private charity. The local authorities are necessarily practically powerless in the presence of such great destruction and suffering. The condition of things so suddenly precipitated, the claims of humanity, and the good of the Commonwealth call for immediate and extraordinary relief. It is my opinion that the Legislature has power under the Constitution to appropriate money from the funds of the Commonwealth to be used under such direction and supervision as it may deem proper for providing proper food, clothing and shelter for the sufferers by the Salem fire during such period of time as may be deemed necessary, as a measure for the protection of the health and safety of the people, and for the promotion of the general welfare.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Labor — Eight-hour Day — Police Drivers.

Civilians employed as hostlers or drivers in the Boston police department are within the provisions of St. 1911, c. 494, § 1, restricting employment of certain persons to eight hours in a calendar day, but police officers detailed to perform the work of drivers or hostlers are not so restricted.

JULY 8, 1914.

State Board of Labor and Industries.

GENTLEMEN: — You have requested my opinion upon the following questions: —

First, are civilians employed as hostlers or drivers for the police department of the city of Boston within the provisions of chapter 494 of the Acts of 1911?

Second, are police officers who are detailed to perform the work of drivers and hostlers of the police department of the city of Boston entitled to the benefit of the eight-hour law?

Section 1 of chapter 494 of the Acts of 1911 provides as follows: —

The service of all laborers, workmen and mechanics, now or hereafter employed by the commonwealth or by any county therein or by any city or town which has accepted the provisions of section twenty of chapter one hundred and six of the Revised Laws, or of section forty-two of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, or by any contractor or sub-contractor for or upon any public works of the commonwealth or of any county

therein or of any such city or town, is hereby restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the commonwealth or of any county therein, or of any such city or town, or for any such contractor or sub-contractor or other person whose duty it shall be to employ, direct or control the service of such laborers, workmen or mechanics to require or permit any such laborer, workman or mechanic to work more than eight hours in any one calendar day, except in cases of extraordinary emergency. Danger to property, life, public safety or public health only shall be considered cases of extraordinary emergency within the meaning of this section. In cases where a Saturday half holiday is given the hours of labor upon the other working days of the week may be increased sufficiently to make a total of forty-eight hours for the week's work. Threat of loss of employment or to obstruct or prevent the obtaining of employment or to refrain from employing in the future, shall each be considered to be "requiring" within the meaning of this section. Engineers shall be regarded as mechanics within the meaning of this act.

Your letter does not state, and I am not informed, whether the city of Boston has accepted the provisions of the eight-hour law, but for the purposes of this opinion I assume that it has done so.

In answer to the first question I have to say that it is my opinion that civilians employed as hostlers or drivers for the police department of the city of Boston are within the provisions of section 1 of chapter 494 of the Acts of 1911.

In answer to your second question I have to say that it is my opinion that regular officers of the police department detailed to perform the duties of hostlers and drivers of that department are not within the provisions of the eight-hour law. They have a civil service rating as patrolmen, and draw salaries as police officers and not as hostlers or drivers.

Yours truly,

THOMAS J. BOYNTON, *Attorney-General.*

Clerks of Courts — Assistant Clerks — Clerks Pro Tempore.

Unless an assistant clerk of court is appointed clerk *pro tempore* in the absence of the clerk, such assistant is not entitled to any increase in his regular salary.

JULY 13, 1914.

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

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

When an assistant clerk of a police, district or municipal court is appointed clerk *pro tempore* is he entitled to the salary of the clerk while holding such position?

R. L., c. 160, §§ 11, 12 and 70, provide: —

Section 11. The clerk of a police, district or municipal court may, subject to the approval of the justice, from time to time appoint one or more assistant clerks, who shall be removable at his pleasure or at the pleasure of the court, for whose official acts the clerk shall be responsible and who shall be paid by him unless they receive salaries which may be allowed and fixed by law.

Section 12. In case of the absence, death or removal of a clerk of a police, district or municipal court, the court may appoint a clerk pro tempore, who shall act until the clerk resumes his duties or until the vacancy is filled.

. . . . . .

Section 70. Clerks pro tempore of police, district and municipal courts shall receive from the county as compensation for each day's service an amount equal to the rate by the day of the salary of the clerk; but compensation so paid to a clerk pro tempore for service, in excess of thirty days in any one calendar year, shall be deducted by the county treasurer from the salary of the clerk.

St. 1906, c. 256, provides: —

Section 1. In case of the absence, death or removal of an assistant clerk of a police, municipal or district court, other than the municipal court of the city of Boston, whose office is established by law, the clerk, subject to the approval of the justice, may appoint an assistant clerk pro tempore, who shall act until the assistant clerk resumes his duties or until the vacancy is filled, and who shall receive from the county as compensation for each day's service an amount equal to the rate by day of the salary of the assistant clerk; but compensation so paid to an assistant clerk pro tempore for service, in excess of twenty days in any one calendar year, shall be deducted by the county treasurer from the salary of the assistant clerk.

There is nothing in the law which prohibits the appointment of an assistant clerk of a court to the office of clerk *pro tempore*, but it is my opinion that the two positions are incompatible and cannot be held by one person at one and the same time. When an assistant clerk accepts an appointment as clerk *pro tempore* he vacates the position of assistant clerk, and is entitled to receive from the county as compensation for each day's service

an amount equal to the rate by the day of the salary of the clerk. Upon the expiration of his term as clerk *pro tempore* he is, of course, again eligible to appointment as assistant clerk.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Registers of Deeds — Salaries.

Salaries of registers of deeds are to be readjusted each year in accordance with the classifications provided in St. 1904, c. 452.

JULY 24, 1914.

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

DEAR SIR: — You ask my opinion as to the proper method of determining the salary of the register of the Franklin Registry of Deeds, in view of the fact that the receipts of said registry in 1913 exceeded $3,000.

Chapter 452 of the Acts of 1904 established the salaries of registers and assistant registers throughout the Commonwealth. Certain classifications were made: Class A, where the yearly receipts for the five years preceding the year 1903 amounted to $3,000 or more, and where the register was given an initial salary of $1,600 plus a sum equal to 15 per cent. of said receipts; Class B, where the receipts were between $1,500 and $3,000, with an initial salary of $900 plus 40 per cent.; Class C, where the receipts were less than $1,500 per year, with a salary equal to the receipts and not less than $600. Several registries were mentioned by name and the salaries stated.

Section 2 of that chapter reads as follows: —

> 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.

This was amended by chapter 682 of the Acts of 1913, as follows: —

> SECTION 1. Chapter four hundred and fifty-two of the acts of the year nineteen hundred and four is hereby amended by striking out section two and inserting in place thereof the following: — *Section 2.* The salaries of registers of deeds and assistant registers of deeds here-

inbefore specified shall be readjusted in January, nineteen hundred and fourteen, and in the month of January of each year thereafter, upon the basis of the receipts of the respective registries for the year preceding, every such readjustment to be in accordance with the classification set forth in section one.

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

The plain purport of the recent enactment was to readjust the salaries each year, the readjustment to be in accordance with the classification set forth in the prior act, and by classification is meant that all registries whose receipts are more than $3,000 in the year shall be in Class A; those whose receipts are between $1,500 and $3,000 shall be in Class B, etc. It was not intended that a registry named as a Class B registry in the 1904 act should remain so if it had attained the rank of a Class A registry.

As the Franklin Registry is now in Class A, the salary of the register must be determined by the Class A rate, namely, $1,600 plus 15 per cent. of the receipts.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Savings Banks — Boards of Investment — Mortgages.

The position held by a member of a board of investment of a savings bank becomes vacant in sixty days after such member holds, either personally or as trustee, property mortgaged to said bank.

July 27, 1914.

Hon. Augustus L. Thorndike, *Bank Commissioner.*

Dear Sir: — In a recent communication you state that you have received a letter from one of the savings banks in the Commonwealth which reads as follows: —

For several years we have had a mortgage on a piece of property which has now been sold to an association known as The Twenty-five Associates. One of the trustees of The Twenty-five Associates, in whom the title of the property is vested and by whom the papers assuming the mortgage are signed, is a member of our board of investment. Would there be any objection to our continuing this mortgage under the circumstances?

You ask for an opinion upon the question raised by the bank, and further inquire if this loan is taken by the bank,

whether it would be a violation of section 44 of chapter 590 of the Acts of 1908.

The bank does not state whether the mortgage in question is now due or whether it still has some time to run. If the mortgage is underdue it cannot be foreclosed until maturity. It might be assigned; but if held by the bank the position of the member of the board of investment who has become a trustee of The Twenty-five Associates will become vacant in sixty days from the time when he became such trustee, under the provisions of the section above referred to. With this member off the board of investment, only the usual business question will be present, either as to holding the mortgage or renewing it. If, however, the mortgage has matured and the question under consideration is really as to its renewal, I am of the opinion that this cannot be done legally while any member of the board of investment holds title to the mortgaged property, whether in his own right or as a trustee; and that this is so whether he holds as a sole trustee or as a member of a body of trustees. The making of a loan by a savings bank to a trustee or to a body of trustees, one of whom is a member of the board of investment of the bank, would, in my opinion, constitute a violation of the provisions of section 44 of chapter 590 of the Acts of 1908.

Very truly yours,

THOMAS J. BOYNTON, *Attorney General.*

State Board of Health — Civil Service.

The powers and duties of the State Board of Health are retained until the Department of Health is organized.

The secretary of the State Board of Health ceases to hold office upon the abolition of the Board.

Employees of the State Board of Health holding offices not created by statute hold office until removed or until their successors are appointed.

JULY 28, 1914.

State Board of Health.

GENTLEMEN: — You have requested my opinion upon the following questions: —

First. — Will its previously existing powers and duties reside in the State Board of Health until the new Department of Health is organized?

Second. — Will the secretary of the State Board of Health continue to hold office until the organization of the new Health Department?

Third. — In case the office of secretary to the State Board of Health ceases to exist on Aug. 6, 1914, would the official known as "assistant to the secretary" (not under Civil Service Rules) share in the status of the secretary or would he continue to hold office as an employee "under section 7 of chapter 792, Acts of 1914"?

The State Board of Health was appointed and holds office under the provisions of section 1 of chapter 75 of the Revised Laws. This section is expressly repealed by section 8 of chapter 792 of the Acts of 1914.

This act contains no provision as to the time when it shall take effect, and your first question is really whether section 8 takes effect on the passage of the bill or falls within the provisions of section 1 of chapter 8 of the Revised Laws, which section reads as follows: —

> A statute shall take effect throughout the commonwealth, unless otherwise expressly provided therein, on the thirtieth day next after the day on which it is approved by the governor, or is otherwise passed and approved, or has the force of a law, conformably to the constitution.

The rule established by the section last quoted is a statutory rule, and may be repealed or altered by statute, and it may be argued that in case of a repealing statute the later enactment takes effect immediately, and repeals by implication the provisions of section 1 of chapter 8 of the Revised Laws, above quoted, in so far as the particular later enactment is concerned; but it should be noted that repeals by implication are not favored.

It is presumed that the Legislature does not intend to make unnecessary changes in the pre-existing body of law. The construction of a statute will, therefore, be such as to avoid any change in the prior laws beyond what is necessary to effect the specific purpose of the act in question. *Manuel* v. *Manuel*, 13 Ohio St. 450; *Sykes* v. *St. Louis & S. F. R.R. Co.*, 127 Mo. App. 326; *State* v. *Hooker*, 22 Okla. 712.

It is in the last degree improbable that the Legislature would depart from the general system of law without expressing its intention with irresistible clearness. Maxwell on Interpretation of Statutes, 2d ed. 96.

It is my opinion, therefore, that the repeal of sections 1, 2 and 3 of chapter 75 of the Revised Laws does not take effect

until the thirtieth day next after the day on which chapter 792 of the Acts of 1914 was approved.

It is also my opinion that when the new law goes into effect, and the statute under which the State Board of Health now exists is abolished, the official powers and duties of the State Board of Health come to an end and expire with the statute under which that Board was appointed.

In response to your second question I have to say that the secretary of the Board holds his office by virtue of the provisions of section 3 of chapter 75 of the Revised Laws. This section provides for the election of a secretary "who will be the executive officer and shall hold office during the pleasure of the board." This section is repealed by section 8 of chapter 792 of the Acts of 1914, and while this chapter provides for the retention of the employees of the State Board of Health it makes no provision for the retention of any member of the Board nor of its officers. The secretary, being the executive officer of the Board, it is my opinion that when chapter 792 of the Acts of 1914 takes effect, and the State Board of Health ceases to exist, the secretary of the Board of Health will cease to hold office.

Referring now to your third inquiry, which relates to the position of assistant secretary of your Board, it appears that this is not an office created under the provisions of sections 1, 2 and 3, or either or any of them, and that the assistant secretary is an employee of your Board and is within the provisions contained in section 7 of chapter 792 of the Acts of 1914, to the effect that all present employees shall be continued in office until their successors are appointed and qualified or until removed by the commissioner.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Labor — Public Works — Citizens.

Under St. 1914, c. 900, where a city has a list of United States citizens eligible for employment in the street department, it is the duty of the city to discharge noncitizen employees, although their employment commenced prior to the enactment of the statute.

AUG. 3, 1914.

Civil Service Commission.

GENTLEMEN: — You state that citizens of the city of Newton complain that there are employed in the street de-

partment of that city a number of persons who are not citizens of the United States and insist that under the provisions of section 4 of chapter 600 of the Acts of 1914 the commission take steps to enforce the dismissal of these non-citizens. You further state that it appears upon investigation that in most of the cases the noncitizen employees referred to were appointed long prior to the enactment of chapter 600 of the Acts of 1914, and you ask my opinion as to whether your commission should insist upon the discharge of these non-citizens who were appointed prior to the passage of this act.

The statute referred to provides as follows: —

Section 1. In all work of any branch of the service of the commonwealth, or of any city or town therein, citizens of the commonwealth shall be given preference.

Section 2. The civil service commission shall not place upon its lists any person not a citizen of the United States.

Section 3. If an appointing officer, because of the non-existence of a list of eligible appointees, appoints under provisional authority from the civil service commission a person not a citizen of the United States, he shall discharge the person so appointed and appoint from the eligible list whenever the civil service commission establishes a list of the proper class.

Section 4. Whenever the attention of the civil service commission shall be called by complaint on the part of any citizen of the commonwealth to the employment of a non-citizen when there is a list of eligibles existing, the commission shall take steps to enforce the dismissal of such non-citizens and the appointment in his place from the suitable eligible list.

Section 5. Whenever it shall appear that any appointing officer has had due notice of unlawful employment of a non-citizen and that the said appointing officer has continued such employment for ten days after such notice, he shall be subject to a fine of not less than ten nor more than one hundred dollars for each offence.

Section 6. This act shall take effect upon its passage.

This statute seems to have been enacted with a double purpose. Sections 1, 2 and 3 relate to appointments; sections 4 and 5 to employment. I assume that the employees to which you refer are laborers. The act is not, in my opinion, retroactive so as to affect the legality of appointments made prior to its enactment, but section 4 relates to continuous employment after the passage of the act. For a man to be registered on the civil service list by a city and designated or appointed as a laborer is one thing; continuous employ-

ment is quite another. This section does not relate to things past, but provides that whenever after its enactment the attention of the Civil Service Commission shall be called by complaint on the part of any citizen of the Commonwealth to the employment of a noncitizen when there is a list of eligibles existing, action shall be taken to enforce the dismissal of such noncitizen.

It is my opinion that in the case stated, if the city of Newton has a list of eligibles made up of citizens as required by the provisions of this act, it is the duty of your Board to insist upon the discharge of the noncitizens whose employment is complained of.

Yours truly,

THOMAS J. BOYNTON, *Attorney-General.*

County Commissioners — Expenses — Controller of County Accounts.

County commissioners may be allowed reimbursement for expenses, under St. 1911, c. 162, only such sums as are expended in the performance of official duty, whether within or without the Commonwealth, if such expenses are reasonable and proper in amount.

AUG. 4, 1914.

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

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

May expenses of county commissioners incurred outside the limits of the Commonwealth be allowed by the controller of county accounts?

The statute governing this matter (section 1 of chapter 162 of the Acts of 1911) provides as follows: —

An itemized statement of the actual and proper cost to the commissioners for transportation and other necessary expenses incurred in the performance of their official duties shall on the first day of each month be certified by them to the controller of county accounts who shall audit and if correct certify the same to the county treasurer who shall reimburse the commissioners for such expenses from the county treasury.

The question does not appear to be as to the place where the expense is incurred, but whether the item charged represents the proper cost or expense to the commissioners of trans-

portation or other necessary expenses incurred in the performance of their official duties. The test is not whether the duty is to be discharged or performed within this Commonwealth or outside of it, but whether the expense charged was incurred in the performance of official duty, and whether it is reasonable and proper in amount.

You enclose correspondence containing an inquiry whether the expenses of county commissioners in attending the Congress of the American Prison Association should be allowed. Admitting that the commissioners by attending the congress would gain much useful and important information, it is still my opinion that attending the Congress of the American Prison Association could not be regarded as official business, and therefore that expenses incurred in attending that or other similar gatherings cannot properly be allowed except in cases where a special appropriation has been made. The rule which you state you have hitherto followed seems to me to be correct.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Labor — Materials and Supplies — Eight-hour Day.

Wood finish, doors, casings, etc., purchased in the open market under a contract to which the Commonwealth is a party, and which enter into the construction of a building, are materials and supplies, and St. 1911, c. 494, § 2, providing an eight-hour day for employees on State work, does not apply.

AUG. 12, 1914.

State Board of Labor and Industries.

GENTLEMEN: — You have requested my opinion on the following question: —

Are wood finish, doors, casings and other wood-trim material or supplies within the meaning of the provisions of section 2 of chapter 494 of the Acts of 1911?

That section reads as follows: —

Every contract, excluding contracts for the purchase of material or supplies, to which the commonwealth or any county therein or any city or town which has accepted the provisions of section twenty of chapter one hundred and six of the Revised Laws, is a party which may involve the employment of laborers, workmen or mechanics

shall contain a stipulation that no laborer, workman or mechanic working within this commonwealth, in the employ of the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by the contractor shall be requested or required to work more than eight hours in any one calendar day, and every such contract which does not contain this stipulation shall be null and void.

Your question possibly arises from the fact that you consider wood trim, wood finish, doors and casings as a finished product. They may be so, but it is true that many other kinds of material going into the construction of a building, and properly falling under the head of material or supplies, are also finished products. Such things as nails, putty, paint and many other kinds of articles represent somebody's finished product. They are, however, part of the necessary material of the building. If wood finish doors, casings and other wood trim are purchased of a manufacturer in the open market under a contract to which the Commonwealth or any town or city having adopted the provisions of the eight-hour law is a party, they are, in my opinion, to be regarded as material or supplies within the meaning of the statute above referred to.

Very truly yours,
THOMAS J. BOYNTON, *Attorney-General.*

Board of Education — Framingham Normal School — Laundry.

A resolve providing for the erection and furnishing of a dormitory in a normal school does not authorize the equipment of a laundry.

AUG. 12, 1914.

State Board of Education.

GENTLEMEN: — You have submitted a copy of chapter 141 of the Resolves of 1914, and you ask "if there is anything in this act which would prevent this Board from equipping a laundry in connection with this building."

The resolve referred to reads as follows: —

Resolved, That there be allowed and paid out of the treasury of the commonwealth a sum not exceeding one hundred and forty-five thousand dollars, to be expended at the state normal school at Framingham, under the direction of the board of education, for erecting and furnish-

ing a new dormitory, for additional sewer beds and drains, for repairs to the heating plant and the installation of new boilers, and for engineers' and architects' fees.

The appropriation is made for the specific purposes named in the act. Those purposes are (1) to erect and furnish a new dormitory; (2) for additional sewer beds and drains; (3) for repairs to the heating plant and the installation of new boilers; and (4) for engineers' and architects' fees.

The question seems to be whether the word "dormitory" may properly include equipping a laundry. The word "dormitory" is defined as —

A place, building, or room to sleep in. . . . That part of a boarding-school or other institution where the inmates sleep, usually a large room, either open or divided by low partitions, or a series of rooms opening upon a common hall or corridor: in American colleges, sometimes an entire building divided into sleeping-rooms. (Century Dictionary.)

The word "dormitory" has been held not to include a dining hall. *Hillsdale College* v. *Rideout*, 82 Mich. 94. By the same reasoning it would not include a laundry.

It is not what is contained in but what is omitted from this act that creates your difficulty. Your Board may lawfully exercise in this matter only such authority as is conferred upon it by the Legislature, and this act does not, in my opinion, confer authority to equip a laundry.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

District Police — Building Inspectors — Revocation of Certificates.

Certificates of the proper equipment of buildings, issued under St. 1913, c. 655, § 25, may be revoked by the inspector for the district where said buildings are located, whether such inspector issued the original certificate or not.

AUG. 17, 1914.

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

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

May an inspector of the building inspection department of the District Police revoke a certificate issued by his predecessor in office,

under the provisions of section 25 of chapter 655 of the Acts of 1913, to the owner, lessee or occupant of a building in the district of said inspector?

The section of the statute above referred to provides as follows: —

Section 25. Except as is otherwise provided by law, the inspectors shall from time to time examine all buildings within their respective districts which are subject to the provisions of this act. If, in the judgment of any such inspector, such building conforms to the requirements of this act for buildings of its class, he shall issue to the owner, lessee or occupant thereof, or of any portion thereof used in the manner described in section twenty of this act, a certificate to that effect, specifying the number of persons for whom the egresses and means of escape from fire are sufficient. Such certificate shall continue in force for not more than five years after its date, but so long as it continues in force it shall be conclusive evidence of a compliance by the person to whom it is issued with the provisions of this act. It shall be void if a greater number of persons than is therein specified are accommodated or employed or assemble, lodge or reside within such building or portion thereof, or if such building is used for any purposes materially different from the purpose or purposes for which it was used at the time of the granting thereof, or if its interior arrangement is materially altered, or if any egresses or means of escape from fire in such building at the time of granting the said certificate are rendered unavailable or are materially changed. The certificate may be revoked by such inspector at any time upon written notice to the holder thereof or to the occupant of the premises for which it was granted, and shall so be revoked if, in the opinion of the inspector, circumstances have so changed that the existing egresses and means of escape are not proper and sufficient. A copy of said certificate shall be kept posted in a conspicuous place upon each story of such building by the occupant of the premises covered thereby.

The certificate provided for by this section, so long as it remains in force, is conclusive evidence of a compliance with the statute by the owner, lessee or occupant of the building for which it was issued, but the certificate may be revoked by the inspector at any time upon written notice to the holder of it or to the occupant of the premises for which it was granted. No question can arise as to the power of the inspector issuing the certificate to revoke it, but your question refers to a situation that arises when an inspector having issued such a certificate dies or leaves the service or is transferred to another district.

The Legislature in enacting this statute did not, in my opinion, intend that it should be necessary that the same individual who issued the certificate should be the only one who could possibly revoke it. It is my opinion, therefore, that while such a certificate may not be revoked by an inspector other than the one who issued it, who may, by chance or upon some sudden exigency, be in the district, it may be revoked at any time upon notice in writing by the inspector for the district in which the building is located without regard to the personality or individuality of the inspector. In other words, the fact that the inspector who issued the license is not the same person who revokes it is not material so long as it was issued by the inspector for the district in which the building is situated and is revoked by the inspector for the same district. As this answers your first question in the affirmative, consideration of your second question becomes unnecessary.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Directors of the Port of Boston — Time devoted to Work.

Under St. 1914, c. 712, each member of the Directors of the Port of Boston is required to devote the regular working hours of every working day to the work of the Board.

AUG. 19, 1914.

Hon. EDWARD F. MCSWEENEY, *Chairman, Directors of the Port of Boston.*

DEAR SIR: — You have requested my opinion as to the proper construction to be placed upon that part of chapter 712 of the Acts of 1914, entitled "An Act relative to the Directors of the Port of Boston," which relates to the time to be devoted to the work of the Directors of the Port by the respective members of the Board. Section 1 of the chapter referred to provides as follows: —

The governor, with the advice and consent of the council, shall appoint three persons who shall constitute a board to be known as the Directors of the Port of Boston, hereinafter called the directors. The terms of office of the persons first appointed by the governor shall be so arranged and designated at the time of their appointment that the term of one member shall expire in three years, one in two years and one in one year from the first day of July nineteen hundred and

fourteen. Annually thereafter the governor shall appoint one member to serve for three years, as the term of any member expires. Any vacancy occurring among the directors shall be filled for the unexpired term by the governor. The governor shall designate one member as chairman and another as secretary, whose duties shall be those customarily performed by chairmen and executive secretaries. Each member shall devote his entire time to the work of the directors. Each member shall receive an annual salary of six thousand dollars.

Your inquiry relates solely to the following sentence: "Each member shall devote his entire time to the work of the directors."

It is provided by law that "in construing statutes . . . words and phrases shall be construed according to the common and approved usage of the language." R. L., c. 8, § 4.

Applying this rule of construction it hardly need be said that the phrase "entire time," as used in the statute, refers to the usual and regular time for work, and has no relation to any time other than the regular hours of labor; and the construction of this statute depends upon the common and approved usage of the word "entire." It has been said that "the best lexicographers define 'entire' to be the whole, undivided, not participated in with others." *Heathman* v. *Hall*, 3 Iredell, 414.

This word is more fully defined as "whole; unbroken; undiminished; perfect; not mutilated; . . . full; complete; undivided; wholly unshared, undisputed, or unmixed." (Century Dictionary.)

Applying the statutory rule of construction above stated to the statute in question, it is my opinion that the provisions of chapter 712 of the Acts of 1914 require that each member of the Directors of the Port of Boston shall devote the regular working hours of every working day to the work of the Board.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Liquor Law — Common-law Right to enter a Nolle Prosequi.

The common-law authority of district attorneys to enter a *nolle prosequi* in prosecutions for violation of liquor laws is prohibited by R. L., c. 100, § 55.

Aug. 26, 1914.

Hon. William J. Corcoran, *District Attorney for the Northern District, Cambridge.*

Dear Sir: — You have requested my opinion upon the following question: —

Does R. L., c. 100, § 55, regulating the disposition of prosecutions for violation of law relative to intoxicating liquors, constitute a prohibition of the common-law authority of the district attorney to enter a *nolle prosequi* in such cases?

The Constitution of Massachusetts, Chapter VI., Article VI., provides that —

All the laws which have heretofore been adopted, used, and approved in the Province, Colony, or State of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

This provision of the Constitution served in the first place to preserve in the Commonwealth a body of law and a system of legal procedure during the time that must necessarily elapse between the adoption of the Constitution and the enactment and adoption of such other body of laws and methods of procedure as the Legislature might determine upon.

It is perfectly clear that the common law and the laws adopted by the province, colony or state of Massachusetts Bay are subject to revision and repeal at the will of the Legislature. At the common law a district attorney might enter a *nolle prosequi* in cases of violation of the laws in regard to intoxicating liquors. And here the statute comes in with the provision that —

A prosecution for the violation of any provision of law relative to intoxicating liquors shall not, unless the purposes of justice require such disposition, be placed on file or disposed of except by trial and judgment according to the regular course of criminal proceedings.

It shall be otherwise disposed of only upon motion in writing stating specifically the reasons therefor and verified by affidavit if facts are relied on. If the court or magistrate certifies in writing that he is satisfied that the cause relied on exists and that the interests of public justice require the allowance thereof, such motion shall be allowed and said certificate shall be filed in the case. (R. L., c. 100, § 55.)

A statute is the written expression of the legislative will. It is the positive declaration of what the law shall be by that branch of the government possessing legislative functions, . . . When duly enacted it becomes controlling in respect to the matter to which it properly relates, and unless transcribing certain fixed constitutional limitations, its effect is absolute until again changed by like legislative authority. (36 Cyc. 941.)

A statute is impliedly repealed by a subsequent one revising the whole subject-matter of the first; *Bartlett* v. *King*, 12 Mass. 545; *Nichols* v. *Squire*, 5 Pick. 168; and in the case of a statute revising the common law, the implication is at least equally strong. (*Commonwealth* v. *Cooley*, 10 Pick. 37.)

Section 55 of chapter 100 of the Revised Laws was evidently intended to revise and change the statute and the common law in regard to prosecutions for violation of law relative to intoxicating liquors. It is true that a *nolle prosequi* is not specifically mentioned in this section. But entering a *nolle prosequi* is one way of disposing of a prosecution of this kind, and the statute provides that such a prosecution shall not, unless the purposes of justice require such disposition, be placed on file or disposed of except by trial and judgment according to the regular course of criminal proceedings. And if the purposes of justice require that such a prosecution be placed on file or otherwise disposed of without trial, this section contains elaborate provisions for bringing the fact to the attention of the court and for such action as the court may deem proper.

It is my opinion that section 55 of chapter 100 of the Revised Laws does prohibit the exercise of the common-law authority of the district attorney to enter a *nolle prosequi* in prosecutions for violation of any provision of law relative to intoxicating liquors.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Highway Commission — Contract.

Under a statute authorizing the construction of a street, and providing for a "roadway above the finished subgrade of wood block pavement upon a cement base, or some other suitable material," the last clause refers to the base, and does not warrant the use of pavement other than wood block.

The Highway Commission, in the absence of statutory direction, has authority to exercise its discretion as to the materials to be used in any work.

Aug. 31, 1914.

Massachusetts Highway Commission.

Gentlemen: — You have requested my opinion upon the following questions: —

(1) Has this Commission authority, under the provisions of section 5 of chapter 778 of the Acts of 1913 relating to the construction of Humphrey Street in the Town of Swampscott, to change, by agreement with the contractor, the contract and specification heretofore made for paving said street with wood block upon a cement base so that said street may be paved with some material other than wood block? (2) Has this Commission in constructing certain approaches to Humphrey Street authority to use any material other than wood block for paving?

Chapter 778 of the Acts of 1913 is entitled "An Act relative to the laying out and construction of Humphrey Street in the town of Swampscott." This chapter contains full and elaborate provisions for the preparation of plans and specifications for the laying out and construction of Humphrey Street in the town of Swampscott, for the approval of such plans and specifications by county commissioners for the county of Essex and the selectmen of the town of Swampscott, for the laying out of said street, the acquisition of such lands as may be necessary in order to carry this act into effect, for the payment of damages and for other things incident to and attendant upon the laying out and construction of a public way that is expected and intended to be a thoroughfare.

Your questions seem to be founded upon or to arise in regard to the provisions of section 5 of this chapter, which provides as follows: —

Upon the completion of the layout of said Humphrey street as aforesaid, the Massachusetts highway commission shall construct said street to the finished subgrade line, and shall construct sidewalks with curbs, the necessary retaining walls, and all necessary means of

drainage, including any changes which may be necessary in the present underground structures and connections, and shall build a roadway above the finished subgrade of wood block pavement upon a cement base, or some other suitable material, from a line eighteen inches outside the car tracks to the sidewalk curb on each side, in accordance with said plans and specifications.

Does the expression "and shall build a roadway above the finished subgrade of wood block pavement upon a cement base, or some other suitable material," as used in section 5, limit your board to the use of wood block as the only paving material it may lawfully use in the construction of this street?

In construing a statute the effort always is to ascertain and carry out the intention of the Legislature. It is ever to be borne in mind, however, that the intention of the law-making power is to be ascertained by a careful examination and a reasonable construction of the language of the statute and not by a construction founded upon mere arbitrary rule or conjecture.

In one case it was said by a judge of great learning that —

> Our decision may perhaps in this particular case operate to defeat the object of the statute but it is better to abide by this consequence than to put upon it a construction not warranted by the words of the act in order to give effect to what we may suppose to have been the intention of the Legislature. (Lord Tenterden in *King* v. *Inhabitants of Barham*, 8 Barn. & C. 99.)

It has been suggested that in the phrase "and shall build a roadway above the finished subgrade of wood block pavement upon a cement base or some other suitable material" the words "or some other suitable material" relate back to and include the words "wood block pavement" as well as to the words "cement base," the claim being that this phrase as it stands means the same and is to be given the same effect that it would have if it read "shall build a roadway above the finished subgrade of wood block pavement or some other suitable material, upon a cement base or some other suitable material."

It is suggested that the fact that a comma is found after the word "base" is of some peculiar force and significance in the construction of this statute. While punctuation may be resorted to as an aid, it is at best of slight value in the in-

terpretation of statutes and has been more frequently disregarded entirely than resorted to for assistance.

The Supreme Court of the United States has said that —

> Punctuation is a most fallible standard by which to interpret a writing; it may be resorted to when all other means fail; but the court will first take the instrument by its four corners, in order to ascertain its true meaning; if that is apparent on judicially inspecting the whole, the punctuation will not be suffered to change it. (*Ewing* v. *Burnet*, 11 Pet. 41.)

In the interpretation of written instruments, very little consideration is given by the courts to the punctuation, and it is never allowed to interfere with or control the sense and meaning of the language used. The words employed must be given their common and natural effect, regardless of the punctuation or grammatical construction. (Black on Interpretation of Laws, §§ 86–88.)

The Supreme Judicial Court of this Commonwealth, in a case in which the punctuation of the draft of a bill as passed by the Legislature to be engrossed was urged in support of a certain theory of statutory construction, said: —

> It is unnecessary to resort to the draft of the bill as passed to be engrossed, in order to explain the statute as actually engrossed, for the general rule is that punctuation is no part of a statute. Barrington on Sts. (5th ed.) 439, note. 3 Dane Ab. 558. Dwarris on Sts. (2d ed.) 601. (*Cushing* v. *Worrick*, 9 Gray, 382.)

Again, in the case of *Martin* v. *Gleason*, 139 Mass. 183, the Supreme Judicial Court, speaking by Allen, J., began its opinion deciding the case with these words: —

> Disregarding punctuation, as may properly be done in construing a statute.

The same doctrine was laid down by the Supreme Judicial Court in the case of *Browne* v. *Turner*, 174 Mass. 150.

In another case the Supreme Judicial Court said: —

> Although it has been held that punctuation may be disregarded (*Cushing* v. *Worrick*, 9 Gray, 382, 385), it may be resorted to as an aid in construction when it tends to throw light on the meaning. (*Commonwealth* v. *Kelley*, 177 Mass. 221.)

In a later case the Supreme Judicial Court has again declared that punctuation may be disregarded entirely or resorted to as an aid in construction, and that it is at best only

an aid in construction. *Friberg* v. *Builders' Iron & Steel Co.*, 201 Mass. 458.

Taking up the construction of the phrase above quoted without regard to its punctuation, we find that the ordinary and usual rule of construction in cases like the one presented by your first question has been declared by the Supreme Judicial Court in the following language: —

> The ordinary rule of construction in a case like this confines the exception to the last antecedent. . . . See also *Bullard* v. *Chandler*, 149 Mass. 532. (*Commonwealth* v. *Kelley*, 177 Mass. 221.)

The words of the statute under consideration are to be read in their ordinary and usual significance. They acquire no new, strange or technical meaning because found in a statute. The phrasing of the sentences of the statute is to be given the same force that would be given to sentences of like phrasing in other writings. The position of the words in the phrase above referred to, in which a succession of particulars is followed by an exception apparently single in purpose, is, in my opinion, of sufficient force to control the meaning of the phrase and make it subject to the ordinary rule of construction, that the exception refers to the last antecedent only, which in the sentence referred to is "cement base." I am aware that this rule, like most rules of construction, is, under certain circumstances, subject to modification, but the statute before me presents, in my opinion, a proper case for the application of the ordinary rule as established by the Supreme Judicial Court as stated above.

It is therefore my opinion that your commission is not authorized by chapter 778 of the Acts of 1913 to use any material for paving Humphrey Street other than wood block.

Referring to your second question, which relates to the material to be used for paving the approaches to Humphrey Street, we find that no provision for such approaches was made by chapter 778 of the Acts of 1913. The authority to lay out and construct the approaches was conferred on your commission by chapter 398 of the Acts of 1914. By section 1 of the last-mentioned act your commission is authorized "to prepare forthwith or to include in its plans and specifications for the layout and construction of Humphrey street in the town of Swampscott, in accordance with the provisions of chapter seven hundred and seventy-eight of the acts of the

year nineteen hundred and thirteen, plans and specifications for such suitable approaches at either end of said Humphrey street as it may deem proper."

It has been urged that the words "in accordance with the provisions of chapter seven hundred and seventy-eight of the acts of the year nineteen hundred and thirteen" mean that the construction of the approaches must in all particulars be identical with the construction of Humphrey Street, and that if the commission is bound by chapter 778 of the Acts of 1913 to use only wood block for paving that street it is bound to use the same material only for paving the approaches to the street.

It is to be observed, however, that the words "in accordance with" do not necessarily relate to the construction of the approaches but to plans and specifications that have been, or that may be, made for the layout and construction of Humphrey Street in the town of Swampscott in accordance with chapter 778 of the Acts of 1913.

The last part of the sentence above quoted from chapter 398 of the Acts of 1914, "for such suitable approaches at either end of said Humphrey street as it [the commission] may deem proper," confers upon your commission authority for the exercise of a broad discretion as to what are or will be suitable approaches, and as to what your commission may deem proper. It is my opinion that your commission is authorized to exercise its judgment and discretion as to the material to be used for paving the approaches to Humphrey Street.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Sealers of Weights and Measures — Signatures.

The signatures of sealers or deputy sealers of weights and measures on sealed scales should be in the handwriting of the officer who affixes the seal, and not a printed facsimile of his signature.

SEPT. 24, 1914.

THURE HANSON, Esq., *Commissioner of Weights and Measures.*

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

Would it be legal for the Sealer of Weights and Measures, or deputy sealer, to use a seal . . . with his name printed thereon, or should he sign his name, together with date, in his own handwriting, at the time of sealing a scale or other device?

Your question relates entirely to the necessity of a signature in the handwriting of the officer whose official act is to be attested by the signature.

Clause 25 of section 5 of chapter 8 of the Revised Laws provides that —

> The words "written" and "in writing" may include printing, engraving, lithographing and any other mode of representing words and letters; but if the written signature of a person is required by law, it shall always be his own handwriting or, if he is unable to write, his mark.

In a discussion of this provision of the statute the Supreme Court of the Commonwealth has said: —

> We think it was intended to require a signature in the proper handwriting of a person only in those cases where, by express language, or by usage, or by implication arising from the nature of the document to be signed, a written signature is required by law, as the direct personal act of the person whose name is to be signed. Numerous instances of this character are to be found in the Constitution and statutes. For example, a certain oath is required to be taken and subscribed by every person chosen or appointed to any office (Amend. to Mass. Const., Art. VI.); and the oaths of the Governor, Lieutenant Governor and Councillors are to be taken and subscribed in the presence of the two houses of assembly. Const. Mass., Pt. II., c. VI., art. I. For various statutes respecting the taking and subscribing of oaths by different officers, by insolvent debtors, and by poor debtors, see Pub. Sts., c. 14, § 55; c. 18, §§ 10, 14; c. 21, §§ 3, 4; c. 27, § 88; c. 157, § 76; c. 158, §§ 2, 6; c. 162, § 38. Various certificates also are to be made by different public officers, which according to usage bear their signatures in their own handwriting, such as certificates of the acknowledgment of deeds, and of the taking of oaths. See Pub. Sts., c. 27, § 88; c. 120, § 6; c. 150, § 5; c. 157, § 77; c. 162, §§ 1, 2, 17, 19, 40; c. 169, §§ 40, 48. Commissioners to take acknowledgments in other States and in foreign countries must file in the office of the Secretary of the Commonwealth impressions of their seals, together with their oaths of office and their signatures. This must necessarily imply signatures in the proper handwriting of such commissioners. Another illustration is found in the Twentieth Amendment to the Constitution, though this was not adopted till after the establishment of the statutory rule under consideration. This amendment provides that no person shall have the right to vote or be eligible to office who shall not be able to read the Constitution in the English language, and write his name. A signature in the proper handwriting of the voter or officer is plainly contemplated.

The fact that you ask this question indicates that the use of facsimiles of the signatures of your officers is of doubtful legality, while there is no doubt whatever if the genuine signature is used. The signature of the Sealer or deputy sealer upon such a seal as the one submitted with your inquiry is the attestation of an official act. It is an official signature. Clearly, the safe practice is in every instance to require the signature in the handwriting of the official who is acting, and this, it seems to me, is required by usage. While the question may not be entirely free from doubt, it is my opinion that the official signatures in cases of the kind covered by your question should be in the handwriting of the officer who affixes the seal.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Cold Storage Eggs — Sales in Storage — Interstate Shipments.

Under St. 1913, c. 538, as amended by St. 1914, c. 545, eggs which are in cold storage when sold, and which are to remain until called for by the purchaser, need not be marked until withdrawn from storage.

Cold storage eggs withdrawn for sale for consumption within the State or for export are required to be marked, under the statute.

SEPT. 29, 1914.

WILLIAM C. HANSON, M.D., *Acting Commissioner of Health.*

DEAR SIR: — You have requested my opinion upon the following questions: —

I. Suppose A owns 1,000 cases of eggs in a storage warehouse in Boston, and sells 500 cases to-day to B, it being understood that B is still to allow the eggs to be kept in storage until such time as he needs them; must A mark these eggs in storage "cold storage eggs"?

II. If A sells to-day 500 cases of eggs in storage to B, whose business is in Newport, R. I., and the eggs are delivered into a car switched into the warehouse, must these eggs be marked "cold storage eggs," it being understood that Rhode Island has no cold storage law?

III. Must all shipments to another State of eggs that have been cold stored be marked "cold storage eggs"?

The statute (section 1 of chapter 538 of the Acts of 1913, as amended by chapter 545 of the Acts of 1914) provides that —

Whenever eggs that have been in cold storage are sold at wholesale or retail, or offered or exposed for sale, the basket, box or other container in which the eggs are placed shall be marked plainly and conspicuously with the words "cold storage eggs," or there shall be attached to such container a placard or sign having on it the said words. If eggs that have been in cold storage are sold at retail or offered or exposed for sale without a container, or placed upon a counter or elsewhere, a sign or placard, having the words "cold storage eggs" plainly and conspicuously marked upon it, shall be displayed in, upon or immediately above said eggs; the intent of this act being that cold storage eggs sold or offered or exposed for sale shall be designated in such a manner that the purchaser will know that they are cold storage eggs. The display of the words "cold storage eggs," as required by this act, shall be in letters not less than one inch in height and shall be done in such a manner as is approved by the state board of health.

Your questions relate to the sale of eggs which are at the time of sale in cold storage. The language of the statute is, "whenever eggs that have been in cold storage are sold," etc. The intention of the Legislature in the enactment of this legislation was to protect the public against the sale of cold storage eggs for those of a more desirable quality.

You call attention to the self-evident fact that eggs that are in cold storage have been in cold storage. Notwithstanding this very apparent fact, I have to say that in my opinion the statute in regard to marking containers and in regard to placards and signs applies to eggs that have been in cold storage and have been withdrawn from cold storage for the purpose of sale or to be offered or exposed for sale, and that the words "eggs that have been in cold storage," as used in this statute, do not relate to eggs that are in cold storage when sold or offered for sale.

The purpose of this statute is set forth in the statute itself in the following words: "the intent of this act being that cold storage eggs sold or offered or exposed for sale shall be designated in such a manner that the purchaser will know that they are cold storage eggs." Obviously, when eggs are sold while actually in cold storage, the facts as to storage are necessarily known to both buyer and seller, and the opportunity for fraud as to the fact of storage in such a case does not exist. It is only when eggs in cold storage are withdrawn therefrom that opportunity is offered for fraud in their sale. I therefore answer your first inquiry in the negative; and the answer to this question, with the views above set forth, seems

also to dispose of your second inquiry, and further comment seems unnecessary.

In response to your third question I have to say that whenever eggs that have been in cold storage and have been withdrawn therefrom are sold or exposed or offered for sale in this Commonwealth, whether for consumption here or for export, the containers of such eggs must be marked as required by statute.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Civil Service — Inspectors of Masonry Construction — Building Inspectors.

Under St. 1914, c. 540, it is the duty of the Civil Service Commissioners to certify for positions as inspectors of masonry construction only persons who have had practical experience as journeymen masons, but the provisions of this statute do not apply to the position of a building inspector unless his principal duty is the inspection of masonry construction.

OCT. 6, 1914.

Civil Service Commission.

GENTLEMEN: — You have requested my opinion upon the following questions: —

First. — Is it the duty of the Civil Service Commission to certify for positions as inspectors of masonry construction only persons who have had practical experience as journeymen masons, or may it certify persons who without any experience as journeymen masons have acquired a knowledge of masonry construction by working as foremen, civil engineers, or architects, or other lines of employment which would give them a knowledge of masonry construction?

Second. — In certifying for the position of building inspectors in the different cities and towns of the Commonwealth, is it the duty of the commission to certify only such persons as have had practical experience as journeymen masons?

The statute in regard to this matter (chapter 540 of the Acts of 1914) provides as follows: —

SECTION 1. Persons employed by the commonwealth, or by any metropolitan board or commission, or by any county, city or town, as inspectors of masonry construction, shall have had at least three years' practical experience in masonry construction, but shall not be

required to have technical knowledge as engineers, architects or draftsmen, unless they have other duties for which such knowledge is necessary. The provisions of this section shall apply only to persons whose principal duty is the inspection of masonry construction, consisting of stone, brick or substitutes therefor.

The answer to your question depends upon the definition given to the phrase "practical experience." The word "practical," so far as its definition is necessary in the consideration of this question, may be defined as "relating or pertaining to action, practice, or use: opposed to *theoretical*, *speculative* or *ideal*. (*a*) Engaged in practice or action; concerned with material rather than ideal considerations. (*b*) Educated by practice or experience; as, a *practical* gardener. (*c*) Derived from experience; as *practical* skill; *practical* knowledge. (*d*) Used, or such as may advantageously be used, in practice. . . . (*e*) Exemplified in practice." "Experience" is defined as "a trial, proof, experiment, experimental knowledge. The state or fact of having made trial or proof, or of having acquired knowledge, wisdom, skill, etc., by actual trial or observation; also, the knowledge so acquired; personal and practical acquaintance with anything."

"Experience," then, may be gained either by actual trial or by observation. "Practical experience" clearly means experience gained by actual trial, that is, by the actual manual performance of work in masonry construction. This definition coincides precisely with the popular use of the term "practical experience." It is provided by clause 3 of section 4 of chapter 8 of the Revised Laws that —

> Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such meaning.

The popular use of the word "practical," as applied to various callings, as, a practical gardener, practical mechanic, practical farmer, coincides exactly with the definition and construction above given.

I have not found any decision of the Supreme Court defining the phrase "practical experience." My attention has been directed to the case of *State* v. *Starkey*, 49 Minn. 503, and to the case of *People* v. *Board of Aldermen*, 42 N. Y.

Supp. 545, but a distinction may readily be drawn between each of these cases and the question now under consideration.

It is my opinion that under this statute your commission should certify for positions as inspectors of masonry construction only such persons as have had three years' experience as journeymen masons.

In answer to your second question I have to call your attention to the language of the statute itself: "the provisions of this section shall apply only to persons whose principal duty is the inspection of masonry construction, consisting of stone, brick or substitutes therefor." This seems to me to clearly answer your question. The fact that a building inspector of a city or town may at some time be required to inspect masonry construction does not affect the matter of his qualification for appointment unless his principal duty is the inspection of that kind of work.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Civil Service — Foremen and Inspectors — Vacancies.

Whenever the Civil Service Commission is required to certify a list of names of persons by reason of a vacancy in the position of foreman or inspector in any department, it must, when practicable, include the name of one person serving as a laborer or mechanic in such department.

OCT. 21, 1914.

Civil Service Commission.

GENTLEMEN: — You ask for a construction by the Attorney-General of chapter 479 of the Acts of 1914, and whether your commission shall certify for each vacancy the name of one person who is serving as a laborer or mechanic in any department, or whether the person to be certified must have had special experience in the service required in the position which he is to fill.

The statute is clear and is, I think, to be taken literally. It reads as follows: —

Whenever an appointing officer or board shall make requisition upon the civil service commission to fill a vacancy or vacancies in the position of foreman or inspector, and a request is made in said requisition for the certification of persons having had experience in

the department from which the requisition comes, the commission shall, so far as may be practicable, include among the names certified the name of at least one person for each vacancy who is serving as a laborer or mechanic in such department.

The words "persons having had experience in the department" are not, in my opinion, to be taken to mean experience in some special work of the department. The last clause of section 1 — "the commission shall, so far as may be practicable, include among the names certified the name of at least one person for each vacancy who is serving as a laborer or mechanic in such department" — should be construed exactly as it reads; that is, any person serving as a laborer or mechanic in such department is eligible to certification.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Board of Education — Superintendency Union — Towns.

Under St. 1914, c. 556, only such towns as are required to *join* a superintendency union are required to *belong* to such a union.

Nov. 12, 1914.

Massachusetts Board of Education.

GENTLEMEN: — I am in receipt of your letter making inquiry as follows: —

Chapter 556 of the Acts of 1914 places upon the Board of Education the responsibility of establishing standards of organization, equipment and instruction for high schools maintained by the towns required to belong to a superintendency union. In the discharge of this duty the Board finds it is necessary to secure the opinion of the Attorney-General as to the interpretation of the phrase "required to belong to a superintendency union."

In my opinion the words in question refer only to towns required to join a union; *i.e.*, to the towns enumerated in section 43 of chapter 42 of the Revised Laws. The fact that other towns which have the option to join a union or not, may, by joining voluntarily, render themselves forever bound to that union, does not classify them as towns "required to belong to a superintendency union."

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Metropolitan Park Commission — Deeds — Mercantile Purposes.

A waiting room used for the sale of ice cream, soda, etc., comes within the restriction in a deed of land prohibiting the use of a building for mercantile purposes.

Where similar building restrictions are attached to different portions of a tract of land, each grantee has a right in the nature of an easement, which may be enforced against the grantee of another lot.

Nov. 19, 1914.

Metropolitan Park Commission.

GENTLEMEN: — You have submitted to me various inquiries relative to a certain deed of Eugene G. Ayer. The facts are briefly as follows: when your Board constructed Fellsway West, under the authority of chapter 288 of the Acts of 1894, all of the deeds which you obtained from the owners of land taken imposed certain restrictions on the remaining land of the owners. These restrictions contained substantially the following language: —

No building erected or placed upon said premises shall be used for a livery or public stable or for any mechanical, mercantile or manufacturing purposes.

Such a deed was received from Eugene G. Ayer. He now proposes to erect a building on his land covered by these restrictions, to be used as a general waiting room for the traveling public, and for the sale of ice cream, soda, cigars and tobacco, and such light commodities as are usually sold in street railway waiting rooms, and for the purposes of a drug store.

You have requested my opinion on the following four points: —

I. Would the use of this building, as set forth in the petition of Mr. Ayer, be for mechanical, mercantile or manufacturing purposes, and in violation of said restrictions?

II. Would a building of the nature and cost above set forth be erected and maintained in violation of said restrictions?

III. Has this Board authority under any circumstances to release this land from the operation of restrictions imposed in the manner above set forth?

IV. What would be the effect on the authority of the Board to enforce similar restrictions on other lands abutting on said Fellsway West, if it has authority to and should release the land of Ayer in question from the operation of the particular restrictions referred to above?

With regard to the first point I will say that our Supreme Judicial Court has recently quoted with approval the following definitions: —

The word "merchant" is defined in the Century Dictionary as "one who is engaged in the business of buying commercial commodities and selling them again for the sake of profit, especially one who buys and sells in quantity or by wholesale," or "a shopkeeper or storekeeper;" and "mercantile" is defined thus: "Of or pertaining to merchants or the traffic carried on by merchants; having to do with trade or commerce, trading, commercial." (*Carr* v. *Riley*, 198 Mass. 70, 75.)

Both that definition and the common acceptance of the word clearly show that the use of the building as contemplated by Mr. Ayer is for mercantile purposes.

With regard to the second point I will say that it naturally follows, from the answer to your first question, that such a building would violate the restrictions.

With regard to the third point.

It is a familiar principle of law, which has been applied in many cases, that when one makes deeds of different portions of a tract of land, each containing the same restriction upon the lot conveyed, which is imposed as a part of a general plan for the benefit of the several lots, such a restriction not only imposes a liability upon the grantee of each lot as between him and the grantor, but it gives him a right in the nature of an easement, which will be enforced in equity against the grantee of one of the other lots, although there is no direct, contractual relation between the two. (*Evans* v. *Foss*, 194 Mass. 513, 515.)

The principle should be the same when the restrictions are imposed by deeds from the various owners to a central authority instead of from one person to various owners. The other abutters on Fellsway West who have given deeds similar to that of Mr. Ayer have a right in Mr. Ayer's land in the nature of an easement which your Board cannot release. I therefore answer your third question in the negative.

The answer to the third inquiry disposes of the fourth.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Teachers' Retirement Act — Evening Schools.

A teacher who resigned in 1911 as principal of a public school, but who has since been employed in evening school work, is not eligible for retirement under the provisions of St. 1913, c. 832.

Nov. 25, 1914.

Edmund S. Cogswell, Esq., *Secretary, Teachers' Retirement Board.*

Dear Sir: — You have asked my opinion as to whether the facts relating to the petition of Mr. Dwight Clark for a pension come within the scope of the teachers' retirement act (St. 1913, c. 832). The facts as we understand them are as follows: Mr. Dwight Clark, eighty-three years of age, has been connected with the teaching force of the city of Springfield for fifty-one years. Because of failing health Mr. Clark resigned his principalship in June, 1911, but the school board intended to continue Mr. Clark's service in the public schools, and engaged him in evening school work for the two years following. Since September, 1913, Mr. Clark has been reemployed in the day school service.

Paragraph (5) of section 6 of this act provides —

> Any teacher who shall have become a member of the retirement association under the provisions of paragraph numbered (2) of section three, and who shall have served fifteen years or more in the public schools of the commonwealth, not less than five of which shall immediately precede retirement. . . .

The word "teacher," as used in this act, is defined in section 1, paragraph (4), to mean "any teacher, principal, supervisor or superintendent employed by a school committee, or board of trustees, in a public day school within the commonwealth."

The words "public school" are defined, in section 1, paragraph (5), to mean "any day school conducted within this commonwealth under the order and superintendence of a duly elected school committee and also any day school conducted under the provisions of chapter four hundred and seventy-one of the acts of the year nineteen hundred and eleven."

The language of the statute with relation to a consideration of the questions involved in this particular case admits of only one interpretation, namely, that a teacher before he is eligible for a pension "shall have served fifteen years or more in the public schools of the commonwealth, not less than five

of which shall immediately precede retirement." The language of the statute specifically precludes the presumption that service in the evening schools is included within the scope of the public school service. It follows, therefore, that Mr. Clark's service in the evening schools was not a remedy for the interruption of his service in the public school service, and the two years devoted to the evening schools cannot be reckoned in as a period of his service in the public schools within the meaning of the words as used in the statute.

I note what you say about the intention of the school board being to continue Mr. Clark in the public school service, but I am limited and confined by the statutory definitions and prescriptions which require service in the public day schools, and which make no provision for evening school work, so that permanent and continuous employment in an evening school is neither a substitute nor a remedy for the lack of the required continuous service in day school work.

I again refer you to the definition of the words "teacher" and "public schools" as defined specifically for the purposes of this act.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Internal Revenue — Tax on Insurance Policies — Rebates.

Under the Federal internal revenue law insurance companies are required to pay the tax on policies.

If the tax on insurance policies is added by insurance companies to the premiums it would be a violation of the anti-rebate law for agents to pay the amount of the tax.

DEC. 4, 1914.

Hon. FRANK H. HARDISON, *Insurance Commissioner.*

DEAR SIR: — I have received from you a request in the following language: —

The new internal revenue law, which goes into effect on December 1 next, puts a tax upon insurance policies thereafter issued. I beg to inquire whether fire insurance companies may, under the law, collect the amount of this tax from the policyholders without making it a part of the consideration or premium for the policies?

Also whether, if the answer to this question is that the companies may collect the tax from the policyholders as a separate matter from the premium, agents who pay the tax instead of collecting it from their customers would be guilty of rebating?

The Federal act of Oct. 22, 1914, contains the following provisions: —

Sec. 6. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped . . . such person or persons shall be deemed guilty of a misdemeanor, . . .

Sec. 11. That any person or persons who shall register, issue, sell, or transfer, or who shall cause to be issued, registered, sold, or transferred, any instrument, document, or paper of any kind or description whatsoever mentioned in Schedule A of this Act, without the same being duly stamped, . . . shall be deemed guilty of a misdemeanor, . . .

Schedule A.

Stamp Taxes.

. . . . . .

Insurance: Each policy of insurance . . . upon property of any description . . . made by any person, association, or corporation, upon the amount of premium charged, one-half of 1 cent on each dollar or fractional part thereof: *Provided*, That purely cooperative or mutual fire insurance companies or associations carried on by the members thereof solely for the protection of their own property and not for profit shall be exempted from the tax herein provided: . . .

Each policy of insurance . . . of indemnity for loss, damage, or liability issued, or executed, or renewed by any person, association, company, or corporation, . . . upon the amount of premium charged, one-half of 1 cent on each dollar or fractional part thereof.

Briefly, the Federal law in question imposes a stamp tax on certain insurance policies. From sections 6 and 11, above quoted, it is clear that the tax is on the person issuing the policy. This is made more clear by the fact that the proviso above quoted exempts certain companies, rather than exempting their policies or their customers. Thus the tax is for the insurance companies to pay.

But from this it does not follow that the companies may not pass the tax along.

Insurance companies, however, have no authority in law to charge their customers for a part of their running expenses, except as such expenses are included in and form a part of the consideration paid for insurance. If this tax could be passed on, as such, to the customers, so could local taxes, office rent, etc. The charging of doctors' fees for examinations of applicants is no precedent, for there an actual service is

rendered; and, in fact, it is usual not to charge such fees if the policy is finally written.

There is, however, no legal limit on premiums in Massachusetts, the only requirements being that they be uniform and that they be set forth in the policy. Therefore, an insurance company may lawfully add, as a part of the premium, the amount of the Federal tax; that is, the premium to be paid for insurance may be increased by that amount, but the company cannot charge the Federal tax in addition to the premium.

In the case of fire insurance companies, St. 1911, c. 493, provides a board of appeals, with recommendatory powers. I suggest that as to this class of companies this board has authority to pass upon the question of including the Federal tax in the premiums, and to make such recommendations as may seem meet.

With respect to the anti-rebate law, I will say that if the tax is included in the premium it would clearly be rebating for the agent to pay it. But, if not so included, the agent has merely paid an obligation of the company, which cannot possibly be a rebate to the customer.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Civil Service — Department of Fire Prevention Commissioner.

Under St. 1914, c. 795, the appointees in the department of the Fire Prevention Commissioner are subject to the provisions of the civil service law and rules.

DEC. 7, 1914.

Civil Service Commission.

GENTLEMEN: — You have requested my opinion as to the status under civil service requirements of the appointees in the department of the Fire Prevention Commissioner. R. L., c. 19, § 9, provides as follows: —

Judicial officers and officers elected by the people or by a city council, or whose appointment is subject to confirmation by the executive council or city council of any city, officers elected by either branch of the general court and the appointees of such officers, heads of principal departments of the commonwealth or of a city, the employees of the treasurer and receiver general, of the board of commissioners of savings banks, and of the treasurer and collector of taxes of any city, two em-

ployees of the city clerk of any city, teachers of the public schools, the secretaries and confidential stenographers of the governor, or of the mayor of any city, police and fire commissioners and chief marshals, or chiefs of police and fire departments, shall not be affected as to their selection or appointment by any rules made as aforesaid; but, with the above exception, such rules shall apply to members of police and fire departments.

Acts of 1914, chapter 795, entitled "An Act to provide for the better prevention of fires throughout the metropolitan district," in section 1 defines certain words. At the end of section 2 it is provided as follows: —

Subject to the approval of the governor and council, the commissioner shall be provided with suitable offices suitably furnished and equipped for the performance of his duties. Subject to the approval of the governor and council, the commissioner may employ such clerks, stenographers and office employees, engineering and legal assistance as he may deem necessary.

It is a general rule of statutory construction, to be applied under proper conditions and with important limitations, that the express mention of one person, thing or consequence is tantamount to the express exclusion of all others. Black on Interpretation of Laws, p. 219.

It would seem that "proper conditions" and "important limitations" are observed for the purpose of applying this particular principle to the case in hand. The section of the Revised Laws above quoted having expressly mentioned the persons and classes of persons who shall be exempt from the civil service requirements, it must be taken that the appointees about whom you inquire cannot be exempt unless they fall within a class or group mentioned expressly in the section of the Revised Laws above quoted.

Obviously, the only phrase or clause mentioning a class into which they could fall is "whose appointment is subject to confirmation by the executive council." The only ground upon which it could be contended that the appointees in question may fall within the class coming under this phrase is that the phrase "subject to the approval of the governor and council," in St. 1914, c. 795, means the same thing that the phrase "subject to confirmation by the executive council" means in the quoted section of the Revised Laws. This contention is not well taken.

In an opinion rendered by one of my learned predecessors, Hon. Dana Malone, upon a similar matter, he said: —

I am of opinion that the approval of the employment and compensation of clerks in the several departments of the Commonwealth is not an exercise of this function (meaning the function of confirmation of appointments exercised by the Executive Council, provided for by the Constitution and mentioned in the above-quoted section of the Revised Laws), even as designated in R. L., c. 19, § 9, and is rather an approval by the Council, acting with the Executive, of a scheme for proposed appointments and expenditures, than a confirmation of the particular appointment to be made.

I see no reason to differ from the opinion of my predecessor.

It follows, therefore, that the proposed appointments are not exempt from the requirements of the civil service.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Public Schools — Tuition of Nonresident Pupils.

Where pupils are attending school in a town other than that of their residence, the cost of such attendance should be computed on the average expense for each pupil in that school, and not on the average expense for pupils in such town.

DEC. 9, 1914.

State Board of Charity.

GENTLEMEN: — I am in receipt of your letter requesting my interpretation of St. 1913, c. 779, § 4. A State minor ward between the ages of five and fifteen years has been placed elsewhere than in his own home by the State Board of Charity, and is receiving tuition in the public schools of that town. The school committee has expressed its desire for reimbursement at the so-called "average expense rate."

You ask: —

Shall the amount reimbursed by the State in this case be an amount equal to the average expense for each pupil in the particular school which the State minor ward is attending, or shall it be an amount equal to the average expense per pupil in all of the public schools of the said town?

The language of the statute seems perfectly clear on this point. The words are, "an amount equal to the average expense for each pupil of such school." It is to be noted that

the word "school" is singular and not plural. Although the word "such" has apparently no antecedent in the paragraph containing it, and although this paragraph refers to "attendance of every such child in the public schools," yet preceding paragraphs of the same section contain the word "school" in the singular. The first paragraph contains the words "attend school," "attending school," "such school." The second paragraph contains the words "attend school," "admission to a school." Only in the paragraph in question is the word "school" used in the plural.

In the paragraph relative to reimbursement for transportation it is clear that the average expense to the individual school in question is contemplated.

Taking all these matters together it is my opinion that the words "such school" in the third paragraph refer to the particular school which the child in question attends.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Prison Commissioner — Prison Camp — Labor.

Under R. L., c. 225, §§ 63 and 65, the employment of prisoners at the Prison Camp is limited to the reclamation and improvement of waste places, the cultivation of lands and the preparing of material for road building.

DEC. 10, 1914.

Board of Prison Commissioners.

GENTLEMEN: — You have requested my opinion upon the following questions: —

First. Is employment of prisoners at the Prison Camp limited to reclaiming land and to road building?

Second. If such employment is not limited, is it within the power vested in the Prison Commissioners to establish at said Prison Camp such industries, in addition to reclaiming land and road building, as in their opinion are best suited to the institution and its inmates?

R. L., c. 225, §§ 63 and 65, provide as follows: —

SECTION 63. The governor and council may purchase or otherwise take in fee any parcel of waste or unused land, not exceeding one thousand acres in area, for the purpose of reclaiming, improving and disposing of it for the benefit of the commonwealth. When land has been so taken, the governor and council shall cause a description thereof as

certain as is required in an ordinary conveyance of land to be filed in the registry of deeds for the county or district in which the land lies, with a statement, signed by the governor, that it is taken on behalf of the commonwealth for the purposes described in this section. The act and time of filing such description shall be considered the act and time of taking such land, and shall be sufficient notice to all persons that the land has been so taken. The title to such land shall then vest in the commonwealth.

. . . . . .

Section 65. After such land has been so taken, the prison commissioners, with the approval of the governor and council, shall cause iron buildings of cheap construction to be erected thereon for the accommodation of not more than one hundred prisoners. When such buildings are ready for occupancy, the governor may issue his proclamation establishing on such land a temporary industrial camp for prisoners, and the prison commissioners may appoint a superintendent thereof, who shall hold his office at their pleasure, give such bond as they require, receive such salary as they determine and who shall have the custody of all prisoners removed thereto. The superintendent, with the approval of the prison commissioners, may appoint and determine the compensation of assistants, and they shall hold their office at his pleasure.

Section 66 of chapter 225 of the Revised Laws contained an explicit provision that prisoners at a camp should be employed in reclaiming and improving land and in preparing material for road building, but this section was expressly repealed by section 5 of chapter 243 of the Acts of 1904, while section 1 of that act provides as follows: —

Prisoners who are removed to the temporary industrial camp for prisoners shall be governed and employed there under regulations made by the prison commissioners. The Massachusetts highway commission and the board of agriculture shall from time to time, at the request of the prison commissioners, give to them such information as may enable them to prosecute to the best advantage the work of reclaiming and improving waste land and of preparing material for road building by hand labor.

It will be seen that the provision of section 66 of chapter 225 of the Revised Laws, above referred to, was omitted in the revision of that section, and as the law now stands prisoners in the Prison Camp and Hospital shall be governed and employed there under regulations made by the Prison Commissioners.

The authority of your commission appears to be limited by section 1 of chapter 633 of the Acts of 1913, which provides as follows: —

> During all times in which outdoor labor is practicable, inmates of penal institutions who are required to labor shall be employed, so far as is possible, in the reclamation of waste places, and in cultivating lands for raising produce to be used in public institutions. Prisoners so employed shall be at all times in the custody and under the direction of the prison officers.

The intention and purpose of the Legislature to make the work of reclaiming land and preparing material for road building the principal industries at the Prison Camp are indicated by the provisions of section 1 of chapter 243 of the Acts of 1904, to the effect that the Highway Commission and the Board of Agriculture shall, upon request of your Board, give such information as may enable you to prosecute to the best advantage the work of reclaiming and improving waste land, etc., as well as by section 1 of chapter 633 of the Acts of 1913, above quoted. But I do not think that as the statutes now stand your Board is absolutely precluded from employing prisoners at the Prison Camp in suitable lines of industry other than the reclamation and improvement of land and preparing material for road building at such times as it may be found impracticable to carry on this work.

I note that road building is mentioned in both your questions. May I suggest that preparing material for road building is the industry named in the statute.

It is my opinion that the employment of prisoners at the Prison Camp is limited to the reclamation and improvement of waste places, the cultivation of lands for raising produce to be used in public institutions, and preparing material for road building, during all the time when outdoor labor is practicable, and that your Board may provide for such period of time as outdoor work is not practicable such employment as is best suited to the welfare of the prisoners.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Co-operative Banks — Loans — Reduction of Rate.

A co-operative bank authorized by its by-laws to dispense with offering its money for bids, and in lieu thereof to loan money at not less than 5 per cent., as fixed by its directors, may reduce the rate of interest to any rate not less than 5 per cent. to a borrower who applied for and received a loan at a fixed rate, fixed by the board of directors when the loan was made.

DEC. 16, 1914.

Hon. AUGUSTUS L. THORNDIKE, *Bank Commissioner.*

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

In a case in which a co-operative bank is authorized by its by-laws to loan its money at such rate of interest, not less than 5 per cent. per annum, as may be fixed from time to time by its directors, in lieu of offering money for bids, may such bank reduce the rate of interest to a borrower who applied for and received a loan at the rate so fixed by the board of directors when the loan was made, or can the rate be reduced only in cases where the bank offers its money for bids?

St. 1912, c. 623, §§ 19 and 26, provide as follows: —

SECTION 19. The funds accumulated, after due allowance for all necessary expenses and the payment of shares, shall, at each stated monthly meeting, be offered to applicants according to the premium bid by them for priority of right to a real estate or share loan, which shall consist of a percentage charged on the amount loaned in addition to interest, at a rate not less than five per cent per annum, payable in monthly instalments. If the corporation so provides in its by-laws, the bid for loans shall, instead of a premium, be a rate of annual interest not less than five per cent per annum payable in monthly instalments upon the amount desired. Any such corporation may, when so authorized by its by-laws, dispense with the offering of its money for bids, and in lieu thereof may loan its money at such rate of interest not less than five per cent per annum or interest and premium as may be fixed, from time to time, by the board of directors, in which case the priority of right to a loan shall be decided by the priority of the approved applications therefor. Such bids or rates shall include the whole interest to be paid and may be at any rate not less than five per cent per annum.

. . . . . .

SECTION 26. If a borrower purchases money at a lower rate than that paid by him on an existing loan, secured by a mortgage, for the purpose by him declared of reducing the premium or rate of interest upon said loan, a new mortgage shall not be required, but an agreement in writing for the reduction of said premium or rate of interest, signed by the borrower and the treasurer of the bank, with the written approval

of the president, shall be valid, and shall not impair or otherwise affect the existing mortgage; and thereafter the borrower shall make the monthly payments on the loan in accordance with the terms of said agreement, and the amount of money previously so purchased by him may be resold by the bank at the same meeting.

Your question appears to have been suggested, in part at least, by the use of the phrase in the statute, "if a borrower purchases money," etc., in section 26, and by the idea that one who obtains a loan of money by bidding for it purchases the money, and that one who borrows money at a rate of interest not less than 5 per cent. fixed by the directors of the bank is not one who purchases.

The answer to your question, then, turns, in part at least, upon the scope and meaning of the word "purchase" as used in the statute. This word is defined as —

A term including every mode of acquisition of estate known to the law, except that by which an heir on the death of his ancestor becomes substituted in his place as owner by operation of law. (Bouvier's Law Dictionary.)

The word "purchase" is further defined as —

Acquisition; the obtaining or procuring of something by effort, labor, sacrifice, work, conquest, art, etc., or by the payment of money or its equivalent; procurement; acquirement. (Century Dictionary.)

These definitions indicate that the word "purchase" is not confined in its meaning to the process of bidding for something, nor to the acquisition of property by the payment of money, but to many other and different transactions; and that one who procures a loan from a bank at a rate of interest fixed by its directors is just as truly a purchaser of a loan as the man who procures a loan by bidding for it.

Your question may have been suggested also, in some part at least, by the fact that in those cases in which the bank loans its money at a rate fixed by the directors a written application is made for the loan; but the man who bids for the loan makes application for a loan at the rate named in his bid.

It is my opinion that a co-operative bank authorized by its by-laws to dispense with offering its money for bids, and in lieu thereof to loan money at a rate of interest not less than

5 per cent., fixed from time to time by its directors, may reduce the rate of interest to any rate not less than 5 per cent. per annum to a borrower who applied for and received a loan at a rate fixed by the board of directors when the loan was made, and that all the provisions of section 26 of chapter 623 of the Acts of 1912 apply to such a transaction.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Constitutional Law — Cities — Charters — General Act.

The Legislature has no authority to enact a general municipal corporation act, giving cities the right to adopt one of several forms of charters, without further special legislative enactment.

Authority to legislate so as to amend a city charter cannot be granted to a city.

It is within the power of the Legislature to enact a general act giving cities the right to change, alter, consolidate, create or abolish departments without special legislation in each particular instance.

The Legislature has power to authorize a city to choose by vote between two or more charters, and may provide that a form of charter once adopted shall remain in force for a fixed term of years.

DEC. 18, 1914.

Joint Special Committee on City Charters.

GENTLEMEN: — You have requested my opinion upon the following questions: —

1. Can the Legislature enact a general municipal corporation act, the effect of which will be to permit cities to adopt one of several forms of charters set forth in such municipal corporation act without further special enactment on the part of the Legislature?

2. Can the Legislature in such act or otherwise make provision for changes in existing charters without further special enactment on the part of the Legislature; *i.e.*, leave the charter in the main as heretofore granted, but giving authority to make changes in minor provisions?

3. Can the Legislature enact a general act which will give to cities the right to change, alter, consolidate, create or abolish departments as convenience or exigency demands, without further special legislation in each particular instance?

4. Can provision be made in the general act above referred to that when a municipality has rejected one of the several forms therein set forth, the same shall not again be available; *i.e.*, voted upon, for a fixed term of years thereafter?

(*a*) If accepted, that no other form shall be acted upon for a fixed term of years thereafter.

Article IV. of Section I. of Chapter I. of Part the Second of the Constitution of Massachusetts provides as follows: —

> Full power and authority are hereby given and granted to the said general court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same. . . .

Article II. of the Amendments to the Constitution provides: —

> The general court shall have full power and authority to erect and constitute municipal or city governments, in any corporate town or towns in this commonwealth, and to grant to the inhabitants thereof such powers, privileges, and immunities, not repugnant to the constitution, as the general court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants, in wards or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings. Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants, nor unless it be with the consent, and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose. And provided, also, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the general court.

Under the constitutional provisions above quoted it is my opinion that the special action of the Legislature is necessary to the erection and constitution of city governments. Indeed, no such government can be erected or constituted in any town unless it be with the consent and upon the application of a majority of the inhabitants of such town. That is, the inhabitants of a town who desire to have a city government instituted in their municipality cannot, in my opinion, be permitted or authorized to adopt a form of charter and establish a city government without first making the application to the General Court provided for in Article II. of the Amendments to the Constitution; and to establish a city government this must be followed by some action of the General Court in accordance with the provisions of the Constitution for the

establishment of a city government. It is my opinion, therefore, that your first question, as it stands, must be answered in the negative. It would be possible, however, for the General Court to establish two or more standard forms of charter, and upon each and every application for a charter or for a change of charter to enact a special law submitting these different forms, or some of them, to the choice by vote of the people of the municipality concerned.

Referring now to your second question, I have to say that it is my opinion that the authority to legislate so as to amend its charter cannot be granted to a city under our present Constitution.

In response to your third inquiry I have to say that such a provision as this question contemplates may be incorporated in the charter of a city, and might, in my opinion, be incorporated in a general act. It will, of course, occur to you that such an act would have no permanence but would be subject to amendment and repeal at the pleasure of the Legislature.

In answer to your fourth inquiry I have to say that if the Legislature authorizes the people of a city or town to choose by vote between two or more charters, it may, in my opinion, provide that the rejected form or forms shall not again be submitted to the people of the city wherein the rejection has taken place, nor be voted upon for a fixed term of years after such rejection; and that a form of charter once accepted and adopted shall remain in force for a fixed term of years after such acceptance or adoption.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Schools — Domicil of Parent — Tuition.

The domicil of the parent of a minor attending school is the domicil of the minor, and the city of such domicil is responsible for the tuition of the child.

DEC. 24, 1914.

State Board of Education.

GENTLEMEN: — In your letter of recent date you state the following case: —

It appears that a child resides during the spring and fall months in a town adjoining a city in which the father of the child is a legal voter.

The child attends school in the city. Said city claims that the town in which the child resides should pay tuition during the time of such residence. The town claims that the city, by virtue of the fact that the father of the child is a legal voter therein, is responsible for all the schooling of the child.

You ask to be advised as to the solution of the question whether the city or the town is right in the claims above stated.

I assume that the domicil of the father is, for all purposes, in the city in which he is a voter. It is a well-established rule of law that the domicil of a child follows that of the father. An infant, being *non sui juris*, is incapable of fixing his domicil, which therefore, during his minority, follows that of the father, provided such child is legitimate, and the mere separation of the parents does not affect the application of the rule. 14 Cyc., pp. 843–844.

By application of this rule it follows that since the father of the child has his domicil in the city, the city is responsible for the schooling of the child.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Teachers' Retirement Board — Substitute Teachers.

Only such substitute teachers as are duly elected and regularly employed on a salary are entitled to participate in the teachers' retirement fund, under St. 1913, c. 832.

DEC. 31, 1914.

Teachers' Retirement Board.

GENTLEMEN: — I am in receipt of your letter requesting an opinion as to whether substitute service performed by former teachers in the public schools is service within the meaning of paragraph 5 of section 6 of chapter 832 of the Acts of 1913.

The definition of "teacher" in the act might be broad enough to include call substitutes. St. 1913, c. 832, § 1, par. 4.

But the act must be taken as a whole. The act contemplates that the members shall be on a regular salary, and shall serve throughout the school year. This is clearly shown by the following proviso: —

When the total sum of assessments on the salary of any member at the rate established by the retirement board would amount to more than one hundred dollars or less than thirty-five dollars for any school year, such member shall in lieu of assessments at the regular rate be assessed one hundred dollars a year or thirty-five dollars a year as the case may be, payable in equal instalments to be assessed for the number of months during which the schools of the community in which such member is employed are commonly in session. (St. 1913, c. 832, § 5, par. 2.)

Even construing the definition by itself, the word "employed" may mean *regularly* employed. The United States Supreme Court has ruled: —

The terms "officers" and "employees" both, alike, refer to those in regular and continual service. Within the ordinary acceptation of the terms, one who is engaged to render service in a particular transaction is neither an officer nor an employee. They imply continuity of service, and exclude those employed for a special and single transaction. (*Louisville R.R. Co.* v. *Wilson*, 138 U. S. 501, 505.)

This interpretation is strengthened by the rest of the act before us. The act would be unworkable if it applied to call substitutes. For if the act so applied it would be impossible to draw a line at any one point between those who were called for constant service and those who were called for only one day. The absurdity of applying the minimum assessment of $35 to a substitute who works only one day is apparent. Equally apparent is the absurdity of placing a substitute who serves a few days a year for thirty years on a par with a teacher who serves steadily for thirty years, with respect to receiving an annuity of $300 under section 6, paragraph 5. It is therefore my opinion that the act applies only to teachers in regular salaried positions.

You say with respect to call substitutes —

None of these teachers has been elected as permanent substitute at a guaranteed salary by the school committees, and the amount of compensation is entirely on a *per diem* basis for actual day's service rendered.

Teachers of this class cannot, in my opinion, be regarded as eligible to participation in the benefits of the retirement system. I understand, however, that there are substitute teachers in the Commonwealth who are duly elected as such by the

school boards, whose entire time throughout the school year is devoted to teaching, and who are paid a regular salary. Substitute teachers of the last-named class are, in my opinion, entitled to participate in the retirement system, and may, of course, properly become members of the retirement association. This ruling makes the act apply, as above stated, only to teachers in regular salaried positions.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Public Institutions — Water Pipes — Highways — Grant by Selectmen.

Selectmen of towns may authorize the laying of water pipes in streets by trustees of a public institution.

JAN. 5, 1915.

Trustees of Hospitals for Consumptives.

GENTLEMEN: — You have requested my opinion upon the following question: —

Is it necessary to have the Legislature authorize the Board of Trustees to lay a water pipe in highways in Lakeville, or would it be sufficient for the board of selectmen to grant this franchise?

Chapter 459 of the Acts of 1903 provides as follows: —

SECTION 1. The mayor and aldermen of a city and the selectmen of a town may, upon terms and conditions prescribed by them, authorize persons and corporations to lay pipes and conduits for the conveyance of water under any public way in such city or town: *provided, however,* that nothing in this act shall authorize persons or corporations to supply water to persons or corporations other than themselves, in any city or town in which a municipal water plant is established, except with the consent of the board or authority having charge of such water plant in such city or town.

R. L., c. 8, § 5, cl. 16, provides that the word "person" may extend and be applied to bodies politic and corporate.

It is my opinion that the authorization of the board of selectmen would be entirely sufficient. If, however, the selectmen will not grant you the authority needed, I would suggest that you apply to the Legislature for such authority as you may need.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Cities and Towns — School Departments — Manual Training Schools — Liability for Accidents.

Cities and towns conducting manual training schools in compliance with law, and deriving no pecuniary benefit therefrom, are not liable in damages for injuries resulting to pupils from accidents, nor are school officers so liable except for their own wrongful conduct or negligence.

JAN. 6, 1915.

State Board of Education.

GENTLEMEN: — You have requested my opinion upon the following question: —

Is either the school department of a city or the city itself liable in damages for personal injury to pupils resulting from accidents in the manual training work in the schools?

By the provisions of section 9 of chapter 42 of the Revised Laws "the teaching of manual training" as a part of the elementary and high school system is required by law in all towns and cities having a population of 20,000 or more. It will be seen that it is not optional with a city or town having the required population to establish a department of manual training or not, as it may see fit. The law is mandatory. Manual training must be made a part of the educational system of every such city or town. The city or town derives no pecuniary profit or benefit from the manual training department. The school officers are not the agents of the city but are public officers whose duty it is to perform and discharge certain functions as required by law. A municipality is not liable in damages for the acts of its public officers.

The rule relating to the subject-matter of your question has been stated in the following language: —

Whether the neglected duty involves a liability depends, in the judgment of the court, upon the nature of the duty; that is to say, whether it is imposed for the pecuniary profit or other special advantage of the city, — if so, the city is liable; or whether it is a duty imposed upon the city as a public instrumentality of the State, without pecuniary or other special advantage to the city, — if so, the city is not liable. (Dillon on Municipal Corporations, Vol. IV., § 1643.)

See, also, *Hill* v. *Boston*, 122 Mass. 344.

The city or town conducting a manual training school in strict compliance with the requirements of the law, and deriv-

ing no pecuniary benefit therefrom, will not, in my opinion, be liable in damages for injuries resulting to pupils from accidents in such department; nor will the school officers be liable except for injuries caused by their own wrongful act or negligence.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Labor — Right to fine Employees for Damages.

Except in certain cases prohibited by statute, employers of labor may, where provision is made in the contract of employment, lawfully withhold money, due employees as wages, to cover damage to the employer caused by the negligent or wrongful act of the employee.

JAN. 6, 1915.

State Board of Labor and Industries.

GENTLEMEN: — You have requested my opinion upon the following question: —

Have employers of labor the right to fine employees for damage done by them, as in the breaking of dishes, spoiling goods in process of manufacture or damage to machinery?

A servant is directly liable to his master for any damage occasioned by his negligence or misconduct in connection with his work, whether such damage be directly to the property of the master or arises from compensation which he has been obliged to make to third persons for injuries sustained by them through the negligence or misconduct of the servant. 26 Cyc., p. 1023.

In a case in which the plaintiff sued a subcontractor on work done for the plaintiff, charging the subcontractor with negligence, the Supreme Judicial Court said: —

It is immaterial whether the defendants are to be regarded as the servants and agents of the plaintiff or as contractors under the principal contractor, which the defendants contend was the case. In either instance they owed the plaintiff the duty of not injuring his property by their neglect or wrongful acts. If they were the plaintiff's servants and their negligent actions caused injury to his building, they would be liable to him for the damage. (Bacon's Abridgement, Master and Servant, M.)

Smith, Master and Servant, 4th ed. 134, and cases cited; *White* v. *Phillipston*, 10 Met. 108; *Walcott* v. *Swampscott*, 1 Allen, 101; *Bickford* v. *Richards*, 154 Mass. 163.

If, then, dishes are broken or goods spoiled in process of manufacturing or damage is done to machinery through the negligence or misconduct of the employee, the employee is directly liable to the employer for the damage so caused. There seems to be no doubt that where it is made a part of the contract of employment that such damages shall be adjusted and taken out of the wages of the employee, the contract is lawful and may be enforced. *Gallagher* v. *Hathaway Mfg. Co.*, 172 Mass. 230.

There is a statute in regard to fines imposed on weavers which need not be discussed here, but I have found no statute in regard to fines imposed by employers in any other industry.

It is not to be understood that fines may be imposed arbitrarily or at the mere whim or caprice of the employer, but for a just cause and to a fair and just amount. In cases in which the contract of employment provides for it, the employer may, in my opinion, lawfully withhold money due the employee as wages to cover damages to the employer caused by the negligent or wrongful act of the employee.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Cities and Towns — Public Domain — Sales.

Land acquired for a public domain under St. 1914, c. 564, cannot be sold or used for any purpose not specified in the act without the authority of the Legislature.

Land acquired by a city or town for a public domain, and placed under the management of the State Forester, must be maintained at the expense of such city or town.

JAN. 8, 1915.

F. W. RANE, Esq., *State Forester.*

DEAR SIR: — You ask whether under the provisions of section 1 of chapter 564 of the Acts of 1914 a town or city having taken land for a public domain has the right to dispose of the land by sale or by making use of it for purposes other than the culture of forest trees; and second, in case the State Forester is given supervision of such public domain by the town, under section 2 of said chapter, whether the cost of control and management should be paid by the town or by the Forester's department.

The provisions of the first two sections of said act, so far as material, are as follows: —

Section 1. A town . . . or a city . . . may take or purchase land within their limits, which shall be a public domain, and may appropriate money and accept gifts of money and land therefor; . . . Such public domain shall be devoted to the culture of forest trees, or to the preservation of the water supply of such city or town and the title thereto shall vest in the city or town in which it lies.

Section 2. The city or town forester in each city or town . . . shall have the management and charge of all such public domain in that city or town . . . But a town . . . or a city . . . may place all such public domain within its limits under the general supervision and control of the state forester, who shall thereupon, upon notification thereof, make regulations for the care and use of such public domain and for the planting and cultivating of trees therein, and the city or town forester in such case and his keepers, under the supervision and direction of the state forester, shall be charged with the duty of enforcing all such regulations and of performing such labor therein as may be necessary for the care and maintenance thereof. . . .

Lands acquired under this act cannot, in my opinion, be sold by the town or used for any purpose other than the culture of forest trees or for the preservation of the water supply of the city or town making the taking, without first obtaining permission or authority from the Legislature to make the sale or to change the use.

In response to your second question I have to say that the only difference in the regulation of such public domains as is contemplated by placing them under the supervision and control of the State Forester in accordance with the provisions of section 2, above quoted, is to secure the advantage of a trained forester over the planting and cultivation of trees. The public domains still remain the property of the city or town, and all expenses must be defrayed by the city or town even though supervision and control have been vested in the State Forester.

Very truly yours,

Thomas J. Boynton, *Attorney-General.*

Employment of Labor — Building Laws.

A building containing two or more establishments, each establishment employing less than ten persons but in the aggregate ten or more persons, comes within the provisions of St. 1913, c. 655, §§ 15 and 20.

JAN. 12, 1915.

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

DEAR SIR: — You ask: —

Would a building containing two or more establishments, each employing less than ten persons but in the aggregate ten or more persons, come within the provisions of sections 15 and 20 of chapter 655 of the Acts of 1913?

You have quoted from the two sections the language most directly relating to your inquiry, as follows: —

SECTION 15. No building which is designed to be used, in whole or in part, and no building in which alteration shall be made for the purpose of using it, or continuing its use, in whole or in part, as a public building, public or private institution, schoolhouse, church, theatre, special hall, public hall, miscellaneous hall, place of assemblage or place of public resort, or as a factory, workshop or mercantile or other establishment and to have accommodations for ten or more employees. . . .

. . . . . .

SECTION 20. A building which is used, in whole or in part, as a public building, public or private institution, schoolhouse, church, theatre, special hall, public hall, miscellaneous hall, place of assemblage or place of public resort, and a building in which ten or more persons are employed in a factory, workshop, mercantile or other establishment. . . .

In each of the foregoing quotations from the statute the clause "a factory, workshop, mercantile or other establishment" might be regarded as indicating one shop or factory, etc., as the object at which the law is aimed, but the real purpose of the statute is the preservation of life and safety. The mischief aimed at is the crowding of people together, not necessarily in a single workshop but in a single building, under such circumstances as to make their condition one of danger in case of fire unless proper safeguards are adopted. To say that though there are a hundred workmen employed in a building, yet so long as not more than nine are employed in any one shop or factory the building is not subject to the

inspection laws of the Commonwealth, would be to defeat the purpose of those laws in most important particulars. The clause above quoted was undoubtedly intended to, and does, relate to the building in which the factory, workshop or other place of employment may be located, and whenever ten or more persons are employed in a building, whether employed in one shop or factory or divided between two or more places within the building, that building is subject to the provisions of the two sections to which you refer.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Loan Agencies — Expenses of Loans — Interest.

Under St. 1911, c. 727, actual expenses actually incurred by the lender may be collected of a debtor.

Although the addition of actual expenses to the interest collected by a loan agency from a debtor would make the cost to the borrower more than 3 per cent. per month, the transaction is lawful under St. 1911, c. 727.

JAN. 18, 1915.

GEORGE C. NEAL, Esq., *Deputy Chief of the District Police, Acting Supervisor of Loan Agencies.*

DEAR SIR: — You have requested my opinion upon the following questions: —

(1) Under the Acts of 1911, chapter 727, and amendments thereto, can the supervisor of loan agencies require by regulation the borrower in negotiating a loan of less than $300 to pay any expense incurred by the lender connected with the making of such loan?

(2) If such expense may be demanded by regulation can the amount of such expense, together with the interest placed on the loan, exceed the sum of 3 per cent. a month?

The authority of the Supervisor of Loan Agencies in regard to making regulations is contained in section 4 of chapter 727 of the Acts of 1911, which provides as follows: —

The supervisor shall, from time to time, establish regulations respecting the granting of licenses and the business carried on by the licensees, and by loan companies and associations established by special charter. He shall either personally, or by such assistants as he may designate, at least once a year, and oftener if he deems it necessary, investigate the affairs of such licensees, companies and associations and for that pur-

pose shall have free access to the vaults, books and papers thereof, and shall ascertain the condition of the business, and whether it has been transacted in compliance with the provisions of law and the regulations made hereunder. The supervisor may, if he deems it expedient, cause an examination of the said books and business to be made by an accountant whom he may select, and the cost of any such examination shall be paid by the person, corporation or association whose books are so examined.

His authority to establish rates of interest rests in the provisions of section 7 of the same chapter, which provides as follows: —

The supervisor shall establish the rate of interest to be collected, and in fixing said rate shall have due regard to the amount of the loan and the nature of the security and the time for which the loan is made; but the rate shall, in no case, exceed three per cent a month; and no licensee or company or association to which this act applies, shall charge or receive upon any loan a greater rate of interest than that fixed by the supervisor.

The statute does not in terms declare that any expense charge shall or may be made by the lender and collected from the borrower; neither does the statute in terms prohibit such a charge.

Statutes of the character of the one under consideration are framed and enacted with relation to some existing business, and this is true of chapter 727 of the Acts of 1911. It is a matter of very common knowledge that for many years prior to the passage of this statute, in the business of making small loans it was the custom of individuals and concerns to make a charge against borrowers to cover alleged expenses, and this statute, while it does not contain express provision allowing such charges, does contain provisions in which mention is made of expenses, in such terms as, in my opinion, to raise a fair implication that it was the intention of the Legislature to leave the law in such condition that actual expenses incurred in making small loans might still be charged to and collected from the borrower.

Section 3 of the statute, as amended contains the following provisions: —

In prosecutions under this act, the amount to be paid upon any loan of three hundred dollars or less for interest or expenses shall include all sums paid or to be paid by or on behalf of the borrower for interest,

brokerage, recording fees, commissions, services, extension of loan, forbearance to enforce payment, and all other sums charged against or paid or to be paid by the borrower for making or securing or directly or indirectly relating to the loan, and shall include all such sums when paid by or on behalf of or charged against the borrower for or on account of making or securing the loan, directly or indirectly, to or by any person, partnership, corporation, or association other than the lender, if such payment or charge was known to the lender at the time of making the loan, or might have been ascertained by reasonable inquiry. Any person, partnership, corporation or association directly or indirectly engaging in the business of negotiating, arranging, aiding or assisting the borrower or lender in procuring or making loans of three hundred dollars or less for which the amount paid or to be paid for interest and expenses, including all amounts paid or to be paid to any other party therefor, exceeds in the aggregate an amount equivalent to twelve per cent per annum, whether such loans are actually made by such person, partnership, corporation or association, or by another party or parties, shall be deemed to be engaged in the business of making small loans and shall be subject to the provisions of this act.

Section 10, as amended, provides as follows: —

Any person, partnership, corporation or association violating any provision of this act or any regulation made hereunder or any rule or order made by the supervisor, shall be subject to a fine of not more than five hundred dollars, and the license may be suspended or revoked by the supervisor. Any loan upon which a greater rate of interest or expense is charged or received, than is allowed by this act and the regulations made hereunder, may be declared void by the supreme judicial court or the superior court in equity upon petition by the person to whom the loan was made.

The words "interest" and "expenses" as they occur in this chapter are evidently not intended to cover one and the same thing. The word "interest" is defined by authorities to mean the sum paid for the use of money, and as used in this chapter means nothing else. The word "expense" is defined as —

A laying out or expending; the disbursing of money; employment and consumption, as of time or labor. (Century Dictionary.)

As used in this statute the word means expense of this kind on the part of the lender in and about the making of a loan.

In construing statutes we are bound by the rule that —

Words and phrases shall be construed according to the common and approved usage of the language. (R. L., c. 8, § 4, cl. 3rd.)

The application of this rule to the construction of this statute makes it apparent that the two words "interest" and "expenses" mean two different things. "Expenses," as the word is here used, means actual expense, — expense that is actually and necessarily involved in the transaction of making the loan and is incurred and charged in good faith. It does not mean an arbitrary charge to be made whether actual expense is incurred or not, nor can this term be lawfully used to cover a charge and collection of a sum that is beyond the actual expense incurred, or to cover a charge where there was no actual expense. Authority to make regulations does not confer authority to regulate in contravention of the meaning and intention of the statute itself.

If by your first question you intended to ask whether the Supervisor of Loan Agencies has authority to impose upon the borrower of a sum less than three hundred dollars the payment of a sum of money as expense in making the loan, without regard to the question whether any expense has been incurred by the lender, it is my opinion that the supervisor has not that authority. It is my opinion that under the authority of section 4 above quoted the supervisor has no authority to require that any sum whatever be paid by the borrower as a charge for the expense of making the loan, but under the statute the supervisor has authority to regulate charges made by the lender for expenses. He has authority to prevent the abuse of the opportunity to make charges of that kind, and as it is not possible for the supervisor to examine the details and circumstances attendant upon the making of each and every loan, he may make regulations, not requiring the payment of a stated sum as expenses, but requiring that only actual expenses necessarily incurred in the making of the loan be charged by the lender.

In response to your second question I have to say that in cases where only expenses actually and necessarily incurred in making the loan are charged to the borrower, even though the expenses together with interest on the loan make the cost to the borrower more than 3 per cent. a month, the transaction is, in my opinion, lawful.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

Charitable Corporations — Educational Institutions — Returns.

Although an institution for the education of the deaf may be essentially an educational institution, it may also be a charitable institution within the meaning of St. 1903, c. 402, and thereby be required to make an annual report to the State Board of Charity.

JAN. 18, 1915.

State Board of Charity.

GENTLEMEN: — You have requested the opinion of the Attorney-General upon the following question: —

Under the provisions of chapter 402 of the Acts of 1903 is the Clarke School for the Deaf required to make an annual report to the State Board of Charity?

Chapter 402 of the Acts of 1903 provides as follows: —

A charitable corporation whose personal property is exempt from taxation under the provisions of clause three of section five of chapter twelve shall annually, on or before the first day of November, make to the state board of charity a written or printed report for its last financial year, showing its property, its receipts and expenditures, the whole number and the average number of its beneficiaries and such other information as the board may require.

Corporations whose personal property is exempt from taxation are designated in Revised Laws, chapter 12, section 5, clause 3rd, as follows: —

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 appropriated 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.

Chapter 125 of the Revised Laws deals with the formation of corporations for charitable and other purposes. Section 2 thereof provides in part: —

> Such corporation may be formed for any educational, charitable, benevolent or religious purpose; for the prosecution of any antiquarian, historical, literary, scientific, medical, artistic, monumental or musical purpose; for establishing and maintaining libraries; for supporting any missionary enterprise having for its object the dissemination of religious or educational instruction in foreign countries; for promoting temperance or morality in this commonwealth. . . .

In connection with the general subject I submit section 19 of chapter 39 of the Revised Laws, which reads as follows: —

> The governor may, upon the request of the parents or guardians and with the approval of the board, send such deaf persons as he considers proper subjects for education, for a term not exceeding ten years, but, upon like request and with like approval, he may continue for a longer term the instruction of meritorious pupils recommended by the principal or other chief officer of the school of which they are members, to the American School, at Hartford, for the Deaf, in the state of Connecticut, to the Clarke School for the Deaf at Northampton, to the Horace Mann School at Boston, or to any other school for the deaf in the commonwealth, as the parents or guardians may prefer; and with the approval of the board he may, at the expense of the commonwealth, make such provision for the care and education of children who are both deaf and blind as he may deem expedient. No distinction shall be made on account of the wealth or poverty of such children or their parents. No such pupil shall be withdrawn from such institutions or schools except with the consent of the authorities thereof or of the governor; and the expenses of the instruction and support of such pupils in such institutions or schools, including their necessary travelling expenses, whether daily or otherwise, shall be paid by the commonwealth; but the parents or guardians of such children may pay the whole or any part of such expense.

If there is any difficulty in reaching a prompt conclusion in this case it is due to the failure of the statutes to distinguish between purely charitable and purely educational institutions. In the broad sense an institution of learning may be said to be a charitable institution, and gifts to colleges or similar corporations are upheld as charitable gifts. This is true even though such institutions make no pretence of being charitable in the narrow sense, and though their doors open to admit rich and poor alike.

It is not confined to mere almsgiving or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man. (*Molly Varnum Chapter, D. A. R.* v. *Lowell*, 204 Mass. 487.)

Gifts to colleges and other educational institutions, for the advancement of learning or to aid necessitous students in procuring an education, are charitable even if the donee may derive revenue from other investments and from students who are able to pay. (*Mount Herman Boys' School* v. *Gill*, 145 Mass. 139.)

In the case of *New England Sanitarium* v. *Stoneham*, 205 Mass. 335, at 341, the court says: —

It may be conceded that a trust for the exclusive benefit of the least wealthy of a well-to-do or prosperous class could not be sustained as a charity under the St. of 43 Eliz. c. 4. *Attorney-General* v. *Northumberland*, L. R. 7 Ch. D. 745. But the controlling purpose may be none the less charitable, even if those who need no pecuniary aid are either directly or indirectly benefited. A hospital established for the free treatment of poor patients may receive payments from rich persons who are permitted to avail themselves of its benefits. Every charity created for the gratuitous treatment and relief of disease, or the physical infirmities of the indigent, or other purposes enumerated in this statute, or if not enumerated, which are held to come within its spirit and intendment, in a large sense helps and aids the community, without regard to the social rank or pecuniary condition of its members.

In the Century Dictionary a "charitable institution" is defined as, "A foundation for the relief of a certain class of persons by alms, education, or care, especially a hospital." Again: "A gift in trust for promoting the welfare of the community or of mankind at large, or some indefinite part of it, as an endowment for a public hospital, school, church or library. . . ."

Charity, in its legal sense, comprises four principal divisions, — trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes beneficial to the community not falling under any of the preceding heads. (Bouvier's Law Dictionary, "Charitable Uses, Charities.")

Before the Statute of 43 Elizabeth, chapter 4, money given for the education of youth and the support of schools was recognized in England as given for a charitable use. Since the Statute of 43 Elizabeth, chapter 4, educational institutions furnishing tuition free of charge or for a smaller sum than

actual cost have been declared in a certain sense charitable trusts. Chief Justice Shaw said: —

That a gift designed to promote the public good, by the encouragement of learning, science and the useful arts, without any particular reference to the poor, is regarded as a charity, is settled by a series of judicial decisions, and regarded as the settled practice of a court of equity. (*American Academy of Arts and Sciences* v. *Harvard College*, 12 Gray, 582.)

Other courts have entertained similar views.

Nor has it ever been supposed in this country, that an institution established for the purposes of education is not a charity within the meaning of the law, because it sheds its blessings, like the dews of heaven, upon the rich as well as the poor. (*Price* v. *Maxwell*, 28 Pa. 23.)

It has been asserted, however, that there is a recognized distinction between strictly educational institutions and charitable institutions. In a minority opinion in *State* v. *Board of Control*, 85 Minn. 189, the court said: —

It is, however, now the settled law in all jurisdictions in which the statute of Elizabeth is in force that a gift or devise for the advancement of education, even if it be made without reference to the poor, is a charity, within the law of charitable uses. It was necessary for courts of equity to so define "charity" in order to sustain such gifts or devises, and not permit them to lapse. The cause justified the definition. But the broad, common-sense, and popular distinction between "education" and "charity" has always been recognized by the courts of this country, except in cases involving the doctrine of charitable uses, or the taxation of property held for such uses. It is true that the statute of Elizabeth expressly declared that the maintenance of schools of learning and free schools was a charity; but the fact is not significant, for at that time there were not, and never had been, any free schools in England, except those maintained by the charity of the church or other organizations. It was not until after the commencement of the reign of Queen Victoria that the government began seriously to recognize that it was any part of the duty of the State to provide for the education of all of her citizens. Prior to that time the cause of education was in fact, as well as in law, a charity.

In the same opinion the justice said: —

I cannot believe that the Legislature, in adopting the title of the statute in question, intended to reject the usual and popular meaning of the word "charitable," and substitute therefor the ancient and moss-

covered definition of "charity" which the chancery court invented centuries ago for the purpose of sustaining charitable uses, and thereby classify the State normal schools and the State university as charitable institutions. . . . Now, as conclusively demonstrated, . . . the constitutional, legislative, executive, and popular classification of such institutions is, and always has been, in this State, based upon the popular and common-sense distinction between education and charity. In such classification our institutions of learning are classified by themselves as "educational institutions," and our institutions for defectives are also separately classified as "charitable institutions."

While the court in the above case divided on the main point in issue, there seems to have been no division on the point involved in the question here On page 192 the minority opinion further states: —

We need not cite definitions from the lexicographers to show what, in the present age, are generally understood to be "charitable" and what "educational" institutions, but it may be stated that the former are usually defined as founded "for the relief of certain classes of persons by alms, education, or care; especially a hospital;" as "institutions established for the help of the needy;" as "pertaining to charity; springing from or intended for charity;" while the latter are institutions founded for the express purpose of instructing the youth of our land along mental and physical lines, such instruction not being granted as a bounty, but as of right.

If we were compelled solely to rely upon these definitions, they would be quite sufficient to justify the assertion that our educational institutions are not charitable, within any of the definitions, but the paramount question here is an entirely different one. We are called upon to ascertain what should be understood when these words are used in the statutory jurisprudence of this State; and, as a consequence, what would their use by the Legislature suggest or convey to the reader of such a title. To what institutions have these terms been applied, and how have they been used? An examination for this purpose should lead to but one conclusion, in my judgment, namely, that the words "charitable institutions" mean institutions, supported in whole or in part at the expense of the State, for the relief of the indigent, the defective, and the unfortunate, — institutions in which the State dispenses and administers charity to those dependent upon it, and the inmates of which (victims of misfortune) are the beneficiaries and recipients of charity.

In *People* v. *New York*, 161 N. Y. 233, it was contended that as the defendant corporation had been given legal capacity to take and administer gifts and bequests under the Statute

of 43 Elizabeth, and under the general rules applicable to trusts, it was a charitable institution. To this claim the court answered: —

It is said that this corporation, in order to promote the objects of its incorporation, has been given legal capacity to take and administer gifts and bequests that would be called charitable under the statute of Elizabeth and under general rules of law applicable to trusts, and all that is quite true. But it is an error to conclude that a corporation must necessarily be of a charitable nature because it has capacity to take and administer such gifts. A very large class of corporations may do that, without affording the slightest ground for an argument that they are or must be charitable institutions or corporations. Colleges, academies and nearly all institutions of learning or of a literary character, and even cities, villages and other municipal corporations, may take and administer such gifts; but that fact cannot in the least affect their true character, or convert them into charitable institutions. Again, it was said: "It is only necessary to add that if we were to hold that every corporation with capacity to take and administer such a gift or bequest is a charitable institution within the meaning of the Constitution and the statute, we would have to include a great number of corporations whose objects are entirely foreign to any work of charity, even in the broadest sense. Capacity to take a bequest proceeding from charitable motives is no real test of the class to which the corporation taking it belongs."

A similar question to the one at issue arose in *People* v. *Fitch*, 154 N. Y. 14. In this case it was decided that an institution for the blind was such a charitable corporation as would come under the supervision of the State Board of Charities. At page 26 the court said: —

The relator is, doubtless, to an extent, an educational institution. But that fact alone does not justify the conclusion that it is not a charitable institution within the meaning and intent of the Constitution and statutes. An institution may be in a sense educational and at the same time be wholly or partly charitable, as the education and maintenance of indigent pupils, while being educated, may be the subject of charity as well as support alone. An institution may be both educational and charitable, and if so, it falls within the provisions of the Constitution and statutes, as it is to be observed that the provisions are that the board of charities shall visit and inspect all institutions which are of a charitable character or design, and, hence, to fall within that description, it is not necessary that the institution shall be wholly charitable. It need only be an institution which is wholly or partly charitable in its character and purpose.

Nor is the fact that institutions for the instruction of the blind are made subject to the visitation of the superintendent of public instruction controlling in determining this question. It may be conceded that this institution is partially educational and subject to the visitation of the superintendent of public instruction, and yet by no means follow that it is not an institution which is charitable in its character and purpose, and, therefore, also subject to the visitation of the board of charities, as the Constitution provides that the visitation by the board of charities is not exclusive of any visitation then provided by law, which would clearly include the visitation by the superintendent of public instruction.

Another case in point is that of *Asylum* v. *Phœnix Bank*, 4 Conn. 172. Here a corporation had for its sole object the education and instruction of the deaf and dumb, which supported and instructed indigent persons of that class gratuitously, received a pecuniary compensation from pupils of ability to make it, derived its means of dispensing charity from the donations of individuals and of the public, and applied its funds exclusively to the general object of its institution. The court said, at pages 177–8: —

The American Asylum may, with the strictest propriety, be defined, *an incorporated school for charitable purposes*. It is a *school*, which is a generic term, denoting an institution for instruction or education; and from the nature of its object, is a private incorporation. Its objects and operations are all of a private character; and the donations of States to aid in effectuating them, do not, in the minutest degree, change its nature. The institution is exclusively "for charitable purposes;" its sole object being to pour instruction into the minds of the deaf and dumb; to elevate them from the lowest degradation of intellect to the dignity of intelligent, and fit them to become moral and religious beings; to open their blind eyes, and unstop their deaf ears; and to accomplish this, through the means of funds, derived from the gratuities of the benevolent. A purpose so honorable and noble, and free from the dross of self-interest, brings the American Asylum peculiarly within the spirit, as it is obviously within the letter, of the law, which authorizes a compulsory subscription of the stock of the Phœnix Bank. The Asylum, in no sense of the expression, is a money-making institution. All its funds are necessarily applicable to the charitable object of educating the deaf and dumb; and this is done gratuitously, except so far as the power of doing is enlarged, by the sums paid for instruction, by the rich and able. By this operation, the funds of the institution are not absorbed, but augmented; the charitable object of the Asylum is not diminished, but promoted; and the nature of it is not changed, but pursued.

It is my opinion that the Clarke School for the Deaf is a charitable institution within the meaning of chapter 402 of the Acts of 1903, and that a report should be made annually to the State Board of Charity. The Clarke School was incorporated for the purpose of benefiting a class of defectives who are most seriously handicapped in their struggle for existence and in their participation in the blessings of life. Such was the noble end of the founders of the school, and these purposes and aims have never been lost sight of by those having the care and education of this weaker portion of our society. To suggest that such an institution is not charitable would seem to cast a reflection on the school and all those interested in its achievements. That it is also an educational institution in no way lessens its charitable nature. There would seem to be no reason why many institutions may not be both charitable and educational, and the fact that this school, by reason of its educational features, submits a report to the State Board of Education is no reason in itself why it ought not to report likewise to the State Board of Charity.

It might also be argued that the Legislature intended to give the State Board of Charity supervision over all institutions which exercise a control over the weaker elements of society, as a guard against the abuse of the confidence reposed in them by the contributing public, and as a protection to the unfortunates intrusted to their care, the latter being obviously handicapped in any effort to protect themselves.

Very truly yours,

THOMAS J. BOYNTON, *Attorney-General.*

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LIST OF CASES

IN WHICH THE

ATTORNEY-GENERAL

HAS APPEARED

DURING THE YEAR 1914.

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. Disposed of.

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. Disposed of.

Lanesborough, Selectmen of, petitioners. Petition for abolition of Valley Road and Glen Road crossings. Railroad Commissioners appointed commissioners. Commissioners' report filed. Frank H. Cande appointed auditor. Auditor's second 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 second report filed. Disposed of.

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, 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. Disposed of.

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. James D. Cote. Charles W. Bosworth and James L. Tighe appointed commissioners. 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. Disposed of.

Fall River, Mayor and Aldermen of, petitioners. Petition for abolition of Brownell Street crossing and other crossings in Fall River. John Q. A. Brackett, Samuel N. Aldrich and Charles A. Allen appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's nineteenth report filed. Disposed of.

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. George F. Swain appointed commissioner in place of Wm. Jackson, deceased. 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. Disposed of.

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. Edward A. Thurston appointed auditor. Auditor's first 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. Edward A. Thurston appointed auditor. Auditor's first 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. Charles H. Beckwith appointed commissioner in place of Thomas M. Babson, deceased. Commissioners' report filed. James A. Stiles appointed auditor. 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. A. W. DeGoosh appointed auditor. Auditor's first 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. E. A.

McLaughlin appointed auditor in place of Fred E. Jones, deceased. Auditor's fifteenth 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. E. A. McLaughlin appointed auditor in place of Fred E. Jones, deceased. Auditor's fourth report filed. Pending.

Lawrence, Mayor and Aldermen of, petitioners. Petition for abolition of crossing at Merrimac and other streets in Lawrence. Robert O. Harris, Edmund K. Turner and Henry V. Cunningham appointed commissioners. 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 third 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.

Erving, Selectmen of, petitioners. Petition for abolition of grade crossing on the road leading from Millers Falls to Northfield. 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.

Greenfield, Selectmen of, petitioners. Petition for abolition of grade crossing at Silver Street. Stephen S. Taft, Henry P. Field and Thomas J. O'Connor appointed commissioners. Commissioners' 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. James J. Irwin appointed auditor. Auditor's first 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 third 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. Chas. E. Hibbard appointed commissioner in place of Richard W. Irwin, resigned. Commissioners' report filed. Walter F. Frederick appointed auditor. Auditor's first report filed. 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. Wm. H. Feiker appointed auditor. Auditor's first report filed. Pending.

Middlesex County.

Acton, Selectmen of, petitioners. Petition for abolition of Great Road crossing in Acton. Benj. W. Wells, George D. 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.

Chelmsford, Selectmen of, petitioners. Petition for abolition of grade crossing at Middlesex Street. 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 Claflin Street crossing. Pending.

Framingham, Selectmen of, petitioners. Petition for abolition of grade crossing at Willis Crossing. Pending.

Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of Middlesex and Thorndike streets crossings. George F. Swain, Patrick H. Cooney and Nelson H. Brown appointed commissioners. 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. A. W. DeGoosh appointed auditor. Auditor's eighth report filed. Pending.

Lowell, Mayor and Aldermen of, petitioners. Petition for abolition of crossing at Western Avenue and Fletcher Street. 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 sixth 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.

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.

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. Thomas W. Proctor appointed auditor. Auditor's first report filed. Pending.

Somerville, Mayor and Aldermen of, petitioners. Petition for abolition of Park Street, Dane Street 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 tenth report filed. Pending.

Somerville, Mayor and Aldermen of, petitioners. Petition for abolition of Somerville Avenue crossing in Somerville. George W. Wiggin, George F. Swain and James D. Colt appointed commissioners. Commissioners' report filed. Patrick H. Cooney appointed auditor. Auditor's ninth 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.

Wayland, Selectmen of, petitioners. Petition for abolition of grade crossing at State Road. George F. Swain, Harvey E. Shepherd and Arthur W. DeGoosh appointed commissioners. Pending.

Weston, Selectmen of, petitioners. Petition for abolition of Church Street, Pigeon Hill and Concord Road crossings. Railroad Commissioners appointed commissioners. Commissioners' report filed. Joseph W. Lund, Esq., appointed auditor. Auditor's third report filed. Disposed of.

Weston, Selectmen of, petitioners. Petition for abolition of grade crossings at Central Avenue, Conant Road, Church and Viles streets. P. H. Cooney, Louis A. Frothingham and Andrew M. Lovis appointed commissioners. 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. Commissioners' report filed. 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. Commissioners' report filed. Pending.

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

Canton. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Dedham Road crossing in Canton. Samuel L. Powers, Stephen

S. Taft and Wm. Jackson appointed commissioners. Commissioners report filed. Recommitted. 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.

Dover, Selectmen of, petitioners. Petition for abolition of grade crossing at Springdale Avenue and Dedham and Haven streets. Public Service Commission appointed commissioners. 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. Recommitted. Pending.

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. Commissioners' report filed. Thomas W. Proctor appointed auditor. Auditor's third report filed. Pending.

Needham, Selectmen of, petitioners. Petition for abolition of Charles River Street crossing in Needham. Pending.

Quincy. Directors of New York, New Haven & Hartford Railroad Company, petitioners. Petition for abolition of Saville and Water streets crossings in Quincy. John L. Bates, Winfield S. Slocum and Arthur H. Wellman appointed commissioners. Commissioners' report filed. 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. Recommitted. 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. Disposed of.

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. Recommitted. Pending.

Plymouth County.

Rockland, Selectmen of, petitioners. Petition for abolition of grade crossings at Union and other streets in Rockland.

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. 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 twentieth report filed. Pending.

Boston, Mayor and Aldermen of, petitioners. Petition for the abolition of the Essex Street crossing in Brighton. George W. Wiggin, William B. French and Winfield S. Slocum appointed commissioners. Pending.

Boston, Mayor and Aldermen of, petitioners. Petition for abolition of Blue Hill Avenue and Oakland Street crossings in Boston. William B. French, Arthur H. Wellman and George A. Kimball appointed commissioners. Commissioners' report filed. Fred E. Jones appointed auditor. Auditor's twenty-first report filed. Pending.

Boston, Mayor and Aldermen of, petitioners. Petition for abolition of all crossings in East Boston. George W. Wiggin, William B. French and Edward B. Bishop appointed commissioners. Commissioners' report filed. Winfield S. Slocum appointed auditor. Auditor's seventeenth 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. Robert O. Harris appointed auditor. Auditor's first report filed. Pending.

Revere, Selectmen of, petitioners. Petition for abolition of Winthrop Avenue crossing in Revere of the Boston, Revere Beach & Lynn Railroad. Pending.

Worcester County.

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. Commissioners' report filed. David F. Slade appointed auditor. Frederic B. Greenhalge appointed auditor in place of David F. Slade deceased. Auditor's sixth report filed. 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 fifth report filed. Disposed of.

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 second 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. Commissioners' report filed. Recommitted. 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.

Southbridge, Selectmen of, petitioners. Petition for abolition of grade crossings at Foster, Central and Hook streets. George F. Swain, P. H. Cooney and William F. Garcelon appointed commissioners. Pending.

Webster, Selectmen of, petitioners. Petition for abolition of grade crossing at Main Street. 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 sixty-eighth report filed. Pending.

CASES ARISING IN THE COURTS

UNDER THE

ACTS RELATIVE TO INHERITANCE AND SUCCESSION TAXES.

PETITIONS FOR INSTRUCTIONS.

Barnstable County.

Dyer, Henry K., estate of. James P. Warbasse *et al.*, executors, petitioners. Petition for abatement of inheritance tax. Pending.

Berkshire County.

Barnard, Anna Eliza, estate of. Joseph R. Walker, administrator *c. t. a.*, petitioner. Pending.

Smith, Henry L., estate of. Harry Smith, executor, petitioner. Attorney-General waived right to be heard.

Bristol County.

Borden, Matthew C. D., estate of. Bertram H. Borden *et als.*, executors, petitioners. Pending.

Essex County.

Clines, Mary G., estate of. Catherine A. Laycock, administratrix, petitioner. Petition for abatement of inheritance tax. Pending.

Hoyt, William R., estate of. Charles Neal Barney, executor, petitioner. Pending.

Lane, Annie B., estate of. Helen N. Allen, executrix, petitioner. Petition for abatement of inheritance tax. Decree.

Meserve, Chastina S., estate of. James W. Leitch, executor, petitioner. Petition for abatement of inheritance tax. Pending.

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

Smith, Robert I., estate of. Sheridan U. Grant, administrator *c. t. a.*, petitioner. Petition for abatement of inheritance tax. Attorney-General waived right to be heard.

Hampden County.

Bates, Henry C., estate of. Charles H. Barrows, executor, petitioner. Decree.

Bellamy, Charles J., estate of. Asher Allen, administrator *c. t. a.*, petitioner. Pending.

George, Julinah R. C., estate of. Allen Webster, executor, petitioner. Petition for abatement of inheritance tax. Pending.

Moore, Margaret, estate of. Charles H. Barrows, executor, petitioner. Decree.

Hampshire County.

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

Middlesex County.

Aspell, Mary Louise, estate of. Jane L. Quinn, petitioner. Decree.

Bancroft, Frederick, estate of. John F. Moors, executor, petitioner. Petition for abatement of inheritance tax. Decree.

Barker, Felicia H., estate of. Maria Barker, executrix, petitioner. Attorney-General waived right to be heard.

Bouton, Eliza J., estate of. Louis Bell *et al.*, executors, petitioners. Rescript.

Cronin, William P., estate of. Hannah J. Thomassin, executor, petitioner. Petition for abatement of inheritance tax. Pending.

Hobart, William D., estate of. Clarence P. Weston, administrator *c. t. a.*, petitioner. Petition for abatement of inheritance tax. Decree.

Palmer, Edward H., estate of. Emily M. Palmer *et als.*, executors, petitioners. Pending.

Perry, Emery B., estate of. Thomas Weston, executor, petitioner. Pending.

Proudfoot, David, *et al. v.* Third Congregational Society in Cambridge *et al.* Decree.

Scott, Julia A., estate of. Emma E. Doty, executrix, petitioner. Petition for abatement of inheritance tax. Pending.

Slater, Andrew C., estate of. Joseph T. Brown *et al.*, executors, petitioners. Petition for abatement of inheritance tax. Pending.

Wolfe, Georgette Emeline, estate of. Newton Trust Company, administrator, petitioner. Decree.

Norfolk County.

Hill, William H., estate of. William H. Hill *et al.*, trustees, petitioners. Decree.

Nichols, Lucy, estate of. Edward H. Nichols *et al.*, administrators, petitioners. Petition for abatement of inheritance tax. Pending.

Tobin, Ellen A., estate of. William Sullivan, executor, petitioner. Pending.

Tobin, Lawrence, absentee, estate of. Howard A. Wilson, receiver, petitioner. Pending.

Plymouth County.

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

Killoran, Catherine, estate of. Harry W. Flagg, administrator. Decree.

Low, Cordelia A., estate of. John F. Low, executor, petitioner. Petition for abatement of inheritance tax. Attorney-General waived right to be heard.

Peirce, Harriot O., estate of. Osgood Putnam, executor, petitioner. Petition for abatement of inheritance tax. Pending.

Suffolk County.

Amory, Arthur, estate of. Ingersoll Amory, trustee, petitioner. Decree.

Babcock, Lucy F., estate of. Joseph C. Hagar, executor, petitioner. Petition for abatement of inheritance tax. Attorney-General waived right to be heard.

Bliss, Cornelius N., estate of. Cornelius N. Bliss, Jr., *et als.*, executors, petitioners. Petition for abatement of inheritance tax. Pending.

Bliss, Cornelius N., estate of. Cornelius N. Bliss, Jr., *et als.*, executors, petitioners. Pending.

Burnham, John A., estate of. William A. Burnham *et al.*, petitioners. Decree.

Butler, Joanna C., estate of. Wilfred Bolster, executor, petitioner. Pending.

Dwight, Mary S., estate of. Grenville Clark *et als.*, petitioners. Rescript.

Henderson, Charles W., estate of. Martha J. Henderson, executrix, petitioner. Attorney-General waived right to be heard.

Murdoch, James, estate of. Archibald C. Jurdan *et al.*, executors, petitioners. Attorney-General waived right to be heard.

Park, William D., estate of. Osmond S. Park, executor, petitioner. Petition for abatement of inheritance tax. Pending.

Single, Anna Katharina, estate of. Frank Ganter, executor, petitioner. Submitted to determination of the court.

Skinner, Eliza B., estate of. George A. Gardner *et al.*, trustees, petitioners. Pending.

Tucker, Lawrence, estate of. Robert H. Gardiner *et al.*, executors, petitioners. Petition dismissed.

Worcester County.

Buss, Ellen M., estate of. Joseph A. Lovering, trustee, petitioner. Pending.

INVENTORIES.

Berkshire County.

Daley, Eliza, estate of. Edward A. Fisher, administrator. Pending.

Hall, Sidney L., estate of. Mary R. Hall, administratrix. Dismissed.

Roberts, Herbert I., estate of. Lura M. Roberts, administratrix. Pending.

Williams, Frederick S., estate of. Edward P. Williams, administrator. Dismissed.

Bristol County.

Atwood, Lizzie, estate of. Elizabeth M. Tripp, executrix. Dismissed.

Benson, Susan F., estate of. Azuba A. Bumpus, administrator. Dismissed.

Grilo, Augusto T., estate of. Maria de Estrella Grilo, administratrix. Dismissed.

Hargreaves, Robert, estate of. Margaret E. Hargreaves, administratrix. Dismissed.

McFarlane, Robert, estate of. William James McFarlane, administrator. Dismissed.

McKenna, Patrick F., estate of. James F. Kiernan, administrator. Dismissed.

Murphy, Mary A., estate of. Bridget T. Lord, administratrix. Dismissed.

Olson, Clara S., estate of. Carl A. Olson, administrator. Dismissed.

Percival, Amanda M., estate of. Charles N. Richmond, administrator. Dismissed.

Pokross, Jennie, estate of. Israel Pokross, administrator. Dismissed.

Sullivan, Mary E., estate of. Anna M. Sullivan, administratrix. Dismissed.

Essex County.

Antiello, Gaetana, estate of. Samuele Antiello, administrator. Dismissed.

Birenbaum, Etta, estate of. Joseph Birenbaum, administrator. Dismissed.

Brown, Lucy R., estate of. Nellie Brown, administratrix. Dismissed.

Burrill, Louise, estate of. Augustus L. Burrill, administrator. Pending.

Cahill, Martin, estate of. E. B. O'Brien, administrator. Dismissed.

Crowley, Flindy, estate of. Michael P. Haven, executor. Dismissed.

Goldthwait, Edward O., estate of. Clarence E. Goldthwait, executor. Dismissed.

Green, William F., estate of. Margaret Green, administratrix. Decree.

Hennessy, William, estate of. Margaret A. Hennessey, administratrix. Dismissed.

Hewett, Peter H., estate of. John C. Kane, executor. Dismissed.

Holdsworth, L. C., estate of. Lillian A. Edgar, administratrix. Dismissed.

Lyons, Sadie F., estate of. Frank H. Lyons, administrator. Dismissed.

Magee, John A., estate of. Bella H. Magee, executrix. Dismissed.

Magner, Matthew J., estate of. Annie T. Magner, administratrix. Pending.

Pike, Hattie K., estate of. Grace R. Beard, administratrix *c. t. a.* Dismissed.

Prescott, Augusta S., estate of. William F. Moyes, administrator. Dismissed.

Rosenthal, Victor, estate of. Ida Rosenthal, administratrix. Dismissed.

Thompson, Annie B., estate of. Moses W. Thompson, administrator. Dismissed.

Franklin County.

Devino, Louis E., estate of. Joseph H. Devino, administrator. Dismissed.

Hampden County.

Bienvenue, Albina, estate of. Laura A. Renand, administratrix. Dismissed.

Boucher, Edgar A., estate of. Joseph E. Boucher, administrator. Dismissed.

De Giacomo, Alfonso, estate of. Gaetano Poccardi, administrator. Dismissed.

Easton, George A., estate of. Minnie E. Hannum, administratrix. Dismissed.

Griffin, Eugene, estate of. Thomas Griffin, administrator. Dismissed.

Guiel, Conrad, estate of. Louis Guiel, administrator. Dismissed.

Harrington, Mary E., estate of. Margaret L. Harrington, administratrix. Dismissed.

Kennier, Bartholomew, estate of. Catherine Kennier, administratrix. Dismissed.

Melaszansky, Joseph, estate of. Ursula J. Melaszansky, administratrix. Pending.

Moriarty, Dennis, estate of. Norah Moriarty, administratrix. Dismissed.

Hampshire County.

Charron, Alfred J., estate of. Cordelia Charron, executrix. Dismissed.

Middlesex County.

Bartlett, Charles C., estate of. Lewis H. Lovering, administrator. Dismissed.

Bedell, Isabelle J., estate of. Melancthon Bedell, administrator. Dismissed.

Browne, Caroline L., estate of. George H. Browne, administrator. Dismissed.

Calef, Helen M., estate of. Susan M. Barker, administratrix. Pending.

Calivas, Christos, estate of. Caliron Calivas, administrator. Dismissed.

Campbell, Thomas D., estate of. Ella R. Campbell, administratrix. Dismissed.

Cavanaugh, Mary, estate of. Bridget Maher, administratrix. Dismissed.

Chadbourne, Marshall W., estate of. Addie Chadbourne, executrix. Pending.

Collins, Frank H., estate of. Ida I. Collins, administratrix. Dismissed.

Conners, Ellen, estate of. John P. Conners, executor. Dismissed.

Crocker, Mae S., estate of. Philander R. Crocker, administrator. Dismissed.

Donahoe, Bridget, estate of. Philip McLaughlin, executor. Dismissed.

Edmands, Hannah B., estate of. George E. Crafts, administrator. Dismissed.

Gilchrist, Isabella I., estate of. John J. Briggs *et al.*, executors. Dismissed.

Haderbolets, Joseph, estate of. Mary C. Haderbolets, administratrix. Dismissed.

Hill, Charles H., estate of. Aphia C. F. Hill, executor. Dismissed.

Howard, Joseph W., estate of. Henry C. Hache, executor. Dismissed.

Johnson, Caroline, estate of. Francis B. Burns, administrator. Dismissed.

Lambert, Vivian L., estate of. William J. Lambert, administrator. Dismissed.

Lang, Augustus M., estate of. Harriet E. Lang, executrix. Dismissed.

Lathe, Leonora F., estate of. Leonora M. Lockhart, administratrix. Dismissed.

Marchant, Helen I., estate of. Henry J. Marchant, administrator. Dismissed.

McCall, Bridget, estate of. Joseph L. Keogh, executor. Dismissed.

Nelson, Charles, estate of. Arthur E. Nelson, executor. Dismissed.

Pace, John, estate of. Nellie L. Pace, administratrix. Dismissed.

Pullen, John F., estate of. Harriet L. Pullen, administratrix. Dismissed.

Revelle, John J., Jr., estate of. John J. Revelle, administrator. Dismissed.

Robard, Samuel R., estate of. Catherine King, administratrix. Dismissed.

Sebastiano, Rigoli, estate of. Antonio Paladino, administrator. Dismissed.

Shanney, William, estate of. Patrick Shanney, administrator. Dismissed.

Sheehan, Grace E., estate of. George M. Sheehan, administrator. Dismissed.

Stiles, Diantha L., estate of. William H. Durkee, executor. Dismissed.

Storti, Soccorso, estate of. Sabatina Storti, administratrix. Dismissed.

Thompson, William G., estate of. Mary T. Thompson, administratrix. Dismissed.

Touello, Angelo, estate of. Emiliano Touello, administrator. Dismissed.

Norfolk County.

Davies, John C., estate of. Mary Delilah Davies, administratrix. Dismissed.

Kannally, Richard H., estate of. Ellen F. Kannally, administratrix. Dismissed.

Lockney, Johanna, estate of. Joseph A. Sheehan, administrator. Dismissed.

McPherson, Mary A., estate of. Duncan McPherson, administrator. Pending.

Pasqualone, Francisco, estate of. J. J. McAnarney, administrator. Dismissed.

Pederson, Maria, estate of. John A. Johnson, executor. Dismissed.

Record, Delphina K., estate of. Sarah A. Waterman, executrix. Dismissed.

Shackett, Adrianna, estate of. Joseph Shackett, administrator, *c. t. a.* Dismissed.

Wenstrom, Oscar A., estate of. Oscar F. Wenstrom, administrator. Dismissed.

Plymouth County.

Bardwell, Emma M., estate of. Josiah Bardwell, administrator. Dismissed.

Brown, Augusta W., estate of. Frank L. Brown, executor. Dismissed.

Morse, Amos, estate of. Julia M. Pollard, administratrix. Dismissed.

Suffolk County.

Amory, Francis, estate of. George A. Goddard *et al.*, administrators. Dismissed.

Barrett, John J., estate of. Delia L. Barrett, administratrix. Dismissed.

Bartholomew, Susan W., estate of. Sarah B. James, administratrix. Decree.

Baxter, Albert, estate of. Elizabeth A. Baxter, administratrix. Pending.

Blodgett, Minnie L., estate of. Clement B. Blodgett, administrator. Pending.

Boleisha, Kazimerz C., estate of. Mary Boleisha, administratrix. Dismissed.

Bullard, Mary, estate of. Annie M. Fitzgerald, executrix. Dismissed.

Byrne, William R., estate of. Catherine M. Byrne, administratrix. Pending.

Campbell, Patrick J., estate of. John J. Campbell, administrator. Dismissed.

Casey, Frank, estate of. Abbie Casey, administratrix. Dismissed.

Chaplin, Matilda C., estate of. Samuel Chaplin, administrator. Dismissed.

Clifford, Mary A., estate of. James F. Clifford, executor. Dismissed.

Collins, Ellen L. F., estate of. Henry S. Ormsby, executor. Dismissed.

Crane, Lida D., estate of. Aaron M. Crane, executor. Dismissed.

Crowley, Dennis, estate of. William A. H. Crowley, administrator. Dismissed.

Cunningham, William, estate of. James J. Heggie, administrator. Dismissed.

Daly, Michael, estate of. Ellen E. Murray, administratrix. Pending.

Damelio, Antonio, estate of. Rose Damelio, administratrix. Dismissed.

Damelio, Michael, estate of. Genovario Damelio, administrator. Dismissed.

Davis, Nicholas J., estate of. Matilda Davis, administratrix. Dismissed.

Dizwegeleski, Julius, estate of. William W. Clarke, administrator. Dismissed.

Dorini, Celestina, estate of. Antonio Dorini, administrator. Pending.

English, Hortense B., estate of. Mary A. Tennyson, administratrix. Dismissed.

Evers, Frank, estate of. Michael Evers, administrator. Dismissed.

Fiori, Angelo, estate of. Maria Fiori, administratrix. Dismissed.

Flaherty, Margaret, estate of. Margaret J. Burns, administratrix. Dismissed.

Galligan, Brian B., estate of. Richard J. Galligan, administrator. Decree.

Giacobbe, Marianna, estate of. Santo Giacobbe, administrator. Pending.

Gibbons, Bernard, estate of. Ellen Gibbons, executrix. Dismissed.

Griffin, John P., estate of. Irene J. Griffin, administratrix. Dismissed.

Hart, John H., estate of. William H. Hart, administrator. Dismissed.

Hirshberg, Max, estate of. Louis Schwartz, administrator. Dismissed.

Holmes, Olive E., estate of. M. Sumner Holbrook, administrator. Dismissed.

Johnston, Catharine G., estate of. Julian E. Johnstone, executor. Dismissed.

Kilday, Thomas, estate of. Patrick Kilday, administrator. Dismissed.

Kilroy, Mary E., estate of. Martin J. Kilroy, administrator. Dismissed.

Lane, John, estate of. Francis W. Lane, administrator. Dismissed.

Lehmann, Frank G., estate of. James W. Colgan, administrator. Dismissed.

Lehmann, Michael, estate of. James W. Colgan, administrator. Dismissed.

Littig, Katherine, estate of. Henry Zepp, executor. Dismissed.

Lucy, Ellen M., estate of. Daniel J. Lucy, administrator. Disposed of.

Moriarty, Patrick J., estate of. Edward P. Barry, administrator. Dismissed.

O'Brien, Cornelius, estate of. Catherine A. Nash, administratrix. Dismissed.

O'Farrell, Mary M., estate of. John D. Carmody, executor. Dismissed.

O'Hara, Margaret, estate of. John O'Hara, administrator. Dismissed.

O'Neil, Ellen, estate of. John O'Neil, administrator. Dismissed.

Palma, Cosima, estate of. Nunzio Santaniello, administrator. Dismissed.

Peterson, Peter, estate of. Christina Peterson, administratrix. Dismissed.

Poulos, Thomas, estate of. Amanda Teresa Poulos, administratrix. Dismissed.

Reddish, Mary E., estate of. Agnes T. Reddish, administratrix. Dismissed.

Richardson, Frank, estate of. Willard P. Lombard, administrator. Dismissed.

Ridge, John, estate of. Catherine Ridge, administratrix. Dismissed.

Santoorj, Samuel, estate of. Margaret Mikaelian, executrix. Dismissed.

Scannell, David J., estate of. Margaret J. Scannell, administratrix. Dismissed.

Shea, Mary A., estate of. John F. Shea, administrator. Pending.

Simpson, Louis A., estate of. Vincent B. Simpson, administrator. Dismissed.

Sirvain, Marcelin, estate of. Aglar Sirvain, executor. Dismissed.

Smith, Sarah M., estate of. A. DeFilippo, executor. Dismissed.

Stedman, Elizabeth, estate of. Edward Hall, administrator. Dismissed.

Sullivan, Daniel J., estate of. Annie T. Sullivan, executrix. Dismissed.

Sullivan, Jeremiah, estate of. Julia V. Smith, administratrix. Dismissed.

Tow, Annie, estate of. William E. Burke, executor. Dismissed.

Wilbur, George A., estate of. Louis T. Wilbur, administrator. Dismissed.

Worcester County.

Copp, Charles D., estate of. Isabel C. Copp, executrix. Pending.

Decuyper, Charles L., estate of. Hortense Decuyper, administratrix. Dismissed.

Falvey, Richard S., estate of. Nellie L. Lynch, executrix. Dismissed.

Gaudreau, Adelaide, estate of. Adelard Gaudreau, administrator. Dismissed.

Hartwell, Eveline E., estate of. Susan R. Hartwell, administratrix. Dismissed.

Hosmer, Leaffie A., estate of. Merrill Mills Hammond, administrator *c. t. a.* Dismissed.

Kennedy, Thomas F., estate of. Rose Kennedy, administratrix. Dismissed.

Leary, John J., estate of. Timothy J. Leary, administrator. Dismissed.

Mahoney, James J., estate of. Frank J. Mahoney, administrator. Dismissed.

Mroczska, Maryjanna, estate of. Thomas Mroczska, executor. Dismissed.

Oliveri, Leonardo, estate of. Carmina Oliveri, administratrix. Dismissed.

Setaro, Christopher, estate of. John B. Setaro, administrator. Dismissed.

Steinecke, Henry, estate of. Julia Steinecke, administratrix. Dismissed.

PUBLIC CHARITABLE TRUSTS.

Berkshire County.

Camp, Daniel A., estate of. James B. Turner, executor, petitioner. Petition for instructions. Attorney-General waived right to be heard.

Bristol County.

Freese, John Wesley, estate of. Helen M. Freese, executrix, petitioner. Petition for instructions. Decree.

Oldfield, Charles T., *et al. v.* Attorney-General. Petition for instructions. Pending.

White, John, estate of. Iram N. Smith, executor, petitioner. Petition for instructions. Pending.

Essex County.

Atwood, Margaret, estate of. Henry B. Little *et als.*, petitioners. Petition for appointment of petitioners as trustees. Pending.

Barr, Henry, estate of. Salem Young Men's Christian Association, petitioner. Petition for authority to sell real estate. Decree.

Beach, Persis A., estate of. Edward F. Childs *et als.*, formerly trustees of the First Methodist Episcopal Church of Lawrence, petitioners. Petition for instructions. Pending.

Bonney, Nellie H., estate of. George W. Noyes, executor, petitioner. Petition for instructions. Submitted to determination of the court.

Cliftondale Chapel Association. J. Arthur Raddin, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

Cliftondale Chapel Association. J. Arthur Raddin, trustee, petitioner. Petition for license to sell real estate. Attorney-General waived right to be heard.

Corliss, Mary, estate of. George H. Carleton, administrator *c. t. a.*, petitioner. Petition for instructions. Decree.

Dole's Pasture Burying Ground Corporation, petitioner. Petition for instructions. Submitted to determination of the court.

Gile, David, estate of. Charles E. Sawyer, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

Hahn, Eliza J., estate of. Charles A. Cross, trustee, petitioner. Petition for instructions. Decree.

Haskins, Leander M., estate of. Grafton Butman, petitioner. Petition for appointment of trustee. Pending.

Hawks, Esther H., estate of. Hannah T. Carret *et als.*, trustees, petitioners. Petition for allowance of sixth account. Attorney-General waived right to be heard.

Moore, Martha, estate of. Mary Barker, executrix, petitioner. Petition for instructions. Pending.

Moseley, Julia M., estate of. Oliver H. Perry *et al.*, executors. Petition for instructions. Submitted to determination of the court.

Moseley, Julia M., estate of. Oliver H. Perry *et al.*, executors, petitioners. Petition for instructions. Decree.

Smith, Joseph N., estate of. Henry B. Sprague *et al.*, executors, petitioners. Petition for instructions. Pending.

Stearns, Artemas W., estate of. John P. Sweeney *et al.*, trustees, petitioners. Petition for allowance of first account. Attorney-General waived right to be heard.

Wingate, Charles, estate of. Charles P. Parker *et al.*, petitioners. Petition for appointment of trustees. Attorney-General waived right to be heard.

Wingate, Charles, estate of. Charles P. Parker *et als.*, trustees, petitioners. Petition for license to sell real estate. Attorney-General waived right to be heard.

Franklin County.

Belcher, Eliza, and Mary A. Belcher, estates of. Osgood L. Leach *et al.*, trustees, petitioners. Petition for allowance of first account. Attorney-General waived right to be heard.

Delano, Lucy J., estate of. Thomas F. Harrington, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

Durkee, Lauriston C., estate of. William G. Packard *et al.*, trustees. Petition to have part of estate set out in fee. Attorney-General waived right to be heard.

Field, Simeon A., estate of. Henry W. Montague, trustee, petitioner. Petition for allowance of third account. Pending.

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

Tilton, Chauncey B., estate of. Otis Hagar *et als.*, trustees, *v.* Attorney-General *et al.* Petition for modification of decree. Submitted to determination of the court.

Hampden County.

Chapin, Emily J., estate of. Carlos M. Gage, executor, petitioner. Petition for instructions. Pending.

Conner, Lydia T., estate of. James C. S. Taber, executor, petitioner. Petition for instructions. Pending.

Dearborn, Danville A., estate of. American Baptist Home Mission Society, petitioner. Petition for authority to sell real estate. Decree.

Harkins, Catherine, estate of. John T. Madden, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

Monson Academy, Trustees of, *v.* Attorney-General. Petition for instructions. Submitted to the determination of the court.

Moseley, Jane A., estate of. Peter King, petitioner. Petition for instructions. Pending.

Scott, Mary E., estate of. Asbury Methodist Episcopal Church, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

Taylor, Ethan, estate of. Springfield Safe Deposit and Trust Company, trustee. Petition for allowance of fourth account. Attorney-General waived right to be heard.

Winter, Sarah J., estate of. Thomas W. Kenefick, executor, petitioner. Petition for instructions. Attorney-General waived right to be heard.

Winter, Sarah J., estate of. Wesson Memorial Hospital, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

Winter, Sarah J., estate of. Wesson Memorial Hospital, trustee, petitioner. Petition for authority to sell real estate. Pending.

Hampshire County.

Goodwin, Moses G., trustee under a deed of trust from Carroll J. Hasbrook, petitioner. Petition for authority to transfer real estate. Submitted to determination of the court.

Russell Church in Hadley. Francis S. Reynolds, trustee. Petition for instructions. Pending.

Middlesex County.

Barrett, Martha L., estate of. Frank R. Sircom *et als.*, executors, petitioners. Submitted to determination of the court.

Bugbee, Samuel W., *et al. v.* Attorney-General. Petition for instructions. Pending.

Bull, Sara C., estate of. Joseph G. Thorp *et al. v.* John Lund *et al.* Petition for instructions. Pending.

Child, Lydia Maria, estate of. Eleanor G. May, petitioner. Petition for leave to transfer trust fund. Dismissed.

Copeland, Sarah E., estate of. Alba A. Giles, executor, petitioner. Petition for allowance of second account. Pending.

Donaghey, Henry, estate of. William E. Whitney *et al. v.* Annie J. Davenport *et al.* Petition for instructions. Decree.

Hammond, George P., estate of. Elizabeth F. Johnson, executrix, petitioner. Petition for instructions. Pending.

Manning, Lucinda, estate of. Petition for appointment of trustee. Attorney-General waived right to be heard.

Martin, Webster Warner, estate of. Wesley T. Lee *et al.*, trustees, petitioners. Petition for allowance of ninth account. Attorney-General waived right to be heard.

McEvoy, Elizabeth, estate of. Thomas A. McAvoy, trustee, petitioner. Petition for allowance of first and final account. Attorney-General waived right to be heard.

Mellen, William H., estate of. Town of Framingham, petitioner. Petition for authority to sell real estate. Pending.

Roby, Christopher, estate of. George F. Snow *et al.*, trustees, petitioners. Petition for allowance of sixteenth account. Attorney-General waived right to be heard.

Simonds, Marshall, estate of. Town of Burlington *v.* Attorney-General. Petition for instructions. Decree.

Tabor, Frances F., estate of. Charles S. Norris, executor, petitioner. Petition for allowance of first and final account. Attorney-General waived right to be heard.

Talbot, Isabella W., estate of. Adelbert L. Wait *et al.*, petitioners. Petition for appointment of trustees. Pending.

Thompson, Emulus, estate of. Melvin G. Rogers, administrator, petitioner. Petition for instructions. Decree.

White, Daniel, estate of. Winslow Warren *et al.*, trustees, petitioners. Petition for allowance of sixteenth, seventeenth and eighteenth accounts. Pending.

Norfolk County.

Brigham, Elizabeth F., estate of. New England Trust Company *et als.*, trustees, petitioners. Petition for allowance of first account. Attorney-General waived right to be heard.

Brigham, Elizabeth F., estate of. New England Trust Company *et als.*, trustees, petitioners. Petition for allowance of second account. Attorney-General waived right to be heard.

Lee, Henry, estate of. Schuyler S. Bartlett, executor, petitioner. Petition for instructions. Pending.

Mann, Jonathan, estate of. John F. Brown *et al.*, executors, petitioners. Petition for instructions. Rescript.

Mann, Jonathan, estate of. Carrie S. Leeds, petitioner. Petition for removal of trustee. Pending.

Quincy, City of, *v.* James M. Swift, Attorney-General, *et als.* Petition for authority to sell land held in trust and reinvest proceeds. Pending.

Plymouth County.

Edgar, James, estate of. Emery M. Low, petitioner. Petition for appointment of trustee. Assented to appointment of trustee.

Perritt, Dora, estate of. Henry W. Barnes, administrator *c. t. a.* Petition for instructions. Pending.

Suffolk County.

Amory, Francis I., *et al. v.* Trustees of Amherst College *et al.* Petition for instructions. Pending.

Bartlett, Schuyler S., *v.* William Endicott *et al.* Petition for instructions. Decree.

Bird, John H., estate of. Charles T. Gallagher *et al.*, trustees, petitioners. Petition for allowance of fortieth account. Pending.

Brigham, Robert B., estate of. New England Trust Company, trustee. Petition for allowance of third account. Attorney-General waived right to be heard.

Dewing Memorial *v.* Attorney-General. Petition for leave to sell real estate. Decree.

Franklin Square House *v.* Attorney-General. Petition for authority to sell real estate. Submitted to determination of the court.

Geyer, Mary French, estate of. George H. Cary, trustee, petitioner. Petition for allowance of first and second accounts. Attorney-General waived right to be heard.

Gregerson, Mary E., estate of. Zachariah Chafee, trustee, petitioner. Petition for allowance of first and final account. Attorney-General waived right to be heard.

Hall, Conray P., *et al.,* trustees, *v.* Attorney-General. Petition for instructions. Pending.

Hamm, Sarah A., estate of. James W. Moore, administrator *c. t. a.* petitioner. Petition for instructions. Submitted to determination of the court.

Healy, Anna M., estate of. William Ropes Trask, executor, petitioner. Petition for instructions. Decree.

Lang, Betsey R., estate of. Enoch Foster, trustee, petitioner. Petition for allowance of third and final account. Account allowed.

Lawrence, Abbott, estate of. John Lawrence *et al.,* trustees, petitioners. Petition for allowance of twenty-fourth account. Attorney-General waived right to be heard.

Liversidge, Thomas, estate of. Richard C. Humphreys *et als.,* trustees, petitioners. Petition for allowance of twenty-sixth to thirty-third accounts, inclusive. Attorney-General waived right to be heard.

Liversidge, Thomas, estate of. Clift Rogers Clapp *et als.,* trustees, petitioners. Petition for authority to sell real estate. Pending.

Locke, Elbridge W., estate of. Otis Merriam *et al.,* trustees, petitioners. Petition for instructions. Dismissed.

Lowe, Janet M., *et al. v.* Leopold Morse Home for Infirm Hebrews *et al.* Petition for instructions. Pending.

Mabie, William I., *et al. v.* Edwin S. Gardner and the Attorney-General. Petition for instructions regarding a public charitable trust under will of Mary Redding. Pending.

Ranlett, Leonard B., estate of. Dana D. Holbrook, executor, petitioner. Petition for instructions. Pending.

Refuge in the City of Boston, The, *v.* The Bethesda Society. Petition for instructions. Decree.

Sargent, Anna Coombs, estate of. Edmund D. Codman, executor, petitioner. Petition for instructions. Attorney-General waived right to be heard.

Society for Promoting Theological Education, The, *v.* Attorney-General. Petition for leave to sell real estate. Submitted to determination of the court.

Soren, George Wales, estate of. Lucy E. Buffington, petitioner. Petition for appointment of trustee. Decree.

Sterling, Virginia A., estate of. William H. Ballou *et al.*, executors, petitioners. Petition for instructions. Decree.

Thompson, Thomas, estate of. Richards M. Bradley *et al.*, trustees, petitioners. Petition for allowance of second account. Attorney-General waived right to be heard.

Warren Avenue Baptist Church *v.* Attorney-General. Petition for authority to use a certain trust fund. Pending.

White, Joseph H., *et al. v.* Attorney-General. Petition for instructions. Submitted to determination of the court.

Whitney, Sarah W., estate of. Charles A. Stone, trustee, petitioner. Petition for allowance of first and second accounts. Accounts allowed.

Whitney, Sarah W., estate of. Charles A. Stone, trustee, petitioner. Petition for authority to sell real estate. Attorney-General waived right to be heard.

Withee, Josiah E., estate of. Daniel S. Davis, executor, petitioner. Petition for instructions. Pending.

Worcester County.

Bartlett, Nancy, estate of. Chester F. Williams, petitioner. Petition for appointment of trustee. Attorney-General waived right to be heard.

Bemis, George, estate of. Myron A. Young *et als.*, trustees, petitioners. Petition for allowance of first and second accounts. Attorney-General waived right to be heard.

Cummings, Lurinda, estate of. Moses P. Greenwood, executor, petitioner. Petition for instructions. Decree.

Eames, Mary E., estate of. Mount Vernon Cemetery Association, petitioner. Petition for authority to transfer trust fund. Attorney-General waived right to be heard.

Grout, Eliza P., estate of. Robert L. Carter *et als.*, trustees, petitioners. Petition for allowance of ninth account. Attorney-General waived right to be heard.

Meagher, Luke, estate of. John W. Sheehan, executor. Petition for appointment of trustee. Attorney-General assented to petition.

Newton, Kate L., *et als. v.* Harry W. Fay *et als.* Petition for instructions. Submitted to determination of the court.

Pierce, Sarah J., estate of. D. Oscar Putnam *et als.*, petitioners. Petition for authority to transfer trust funds. Attorney-General waived right to be heard.

Upton, George C., estate of. Edwin Upton, petitioner. Petition for instructions. Attorney-General waived right to be heard.

Williams, Henry, estate of. Reason T. Lee *et als.*, trustees, *v.* Methodist Episcopal Church in the United States *et al.* Petition for instructions. Decree.

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 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.

Stoneham, Town of, *v.* Commonwealth. Pending.
Ward, George A., *et als. v.* Commonwealth. Pending.

Worcester County.

Allen, Byron D., *v.* Commonwealth. Dismissed.
Allen, Byron D., *v.* Commonwealth. Dismissed.
Bradley, Patrick, *v.* Commonwealth. Dismissed.
Cutting, Louis, administrator, *v.* Commonwealth. Dismissed.
Wood, J. Frank, *et als. v.* Commonwealth. Dismissed.

2. 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.

Barnstable County.

Gibbs, E. Porter, *v.* Commonwealth. Pending.
Wagner, Jeanette, *v.* Commonwealth. Pending.

Berkshire County.

Connelly, William H., *v.* Commonwealth. Pending.
Rogerson, Sophia, *v.* Commonwealth. Pending.
Stevens, John A., *et al. v.* Commonwealth. Pending.

Hampshire County.

Flagg, Lucretia Taft, *v.* Commonwealth. Pending.
Nash, Harlan E., *et al. v.* Commonwealth. Settled.
Taft, Kate P., *v.* Commonwealth. Pending.

Middlesex County.

Hogan, James J., *v.* Commonwealth. Pending.
Howe, Louis P., *v.* Commonwealth. Pending.
Huntington, Herbert R., *v.* Commonwealth. Pending.
McGee, John P., *v.* Commonwealth. Pending.
Mower, Clara I., *v.* Commonwealth. Settled.
Nourse, Joseph P., *v.* Commonwealth. Pending.

Norfolk County.

Ireson, Jennie E., *v.* Commonwealth. Pending.
Jordan, S. Annie, *v.* Commonwealth. Pending.
York, Addie A., *et al. v.* Commonwealth. Pending.

Suffolk County.

Jones, Lizzie E., *v.* Commonwealth. Pending.
Jones, Lizzie E., *et al. v.* Commonwealth. Pending.
Williams, William, *et al. v.* Commonwealth. Pending.

Worcester County.

Mahan, Annie T., *et als. v.* Commonwealth. Settled.
Ray, Foster S., *v.* Commonwealth. Pending.

3. 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.

4. 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.

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.
Hooper, James R., *v.* Commonwealth. Pending.
Hooper, Robert C., *et al. v.* Commonwealth. Pending.
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.
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.
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.

5. Armory Commissioners.

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

Berkshire County.

Pittsfield & North Adams Railroad *et al. v.* Commonwealth. Pending.

Essex County.

Griffin, Henry, *v.* Commonwealth. Pending.

6. 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, George A., *et al. v.* Commonwealth. Pending.
Flint, James H., *et al.,* trustees, *v.* Commonwealth. Pending.
Holbrook, Wellington, *et al. v.* Commonwealth. Pending.
Kiley, Daniel J., *v.* Commonwealth. Pending.
Shea, Julia A., *et als.,* trustees, *v.* Commonwealth. Pending.

7. Mount Everett Reservation Commission.

Berkshire County.

Macnaughton, Elizabeth P., *v.* Commonwealth. Pending.

8. Directors of the Port of Boston.

Suffolk County.

Codman, Edmund D., *et al.,* trustees, *v.* Commonwealth. Pending.
Haskins, Elizabeth S., *et al.,* trustees, *v.* Commonwealth. Pending.

9. Miscellaneous Cases from Above Commissions.

Essex County.

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.

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.

McFarland, Mark, *v.* Edward J. Doyle. Claim for damages alleged to have been caused by collision with motorcycle owned by the Metropolitan Park Commission. Settled.

Suffolk County.

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. v.* Sewer Commissioners of Revere. Petition for injunction to restrain town from obstructing sewer built by the Park Commission for bath house. Pending.

Dickey, Leroy W., *v.* Commonwealth *et al.* Claim for money due the petitioner for materials furnished Joseph Wagenbach & Son in the construction of a section of State highway in Dracut. 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.

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

Ellis, William H., *v.* Commonwealth. Claim for compensation for removing auto truck from Charles River Basin. Settled.

Gibbons, William H., *v.* Commonwealth. Damage caused by blasting in construction of metropolitan sewer. Pending.

H. B. Smith Company *v.* Commonwealth. Claim for money due under contract for Boston State Hospital. Pending.

Hildreth Granite Company *v.* Commonwealth *et al.* Claim for money due the petitioner for materials furnished P. Rosetti & Sons in the construction of a section of State highway in Revere. Pending.

Kinmond, John D., *v.* Commonwealth. Action of tort to recover for injuries caused by defect in State highway in Salisbury. Disposed of.

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.

Mereno, Andrew, *et al.*, Henry P. Walcott *et als., v.* Petition for an injunction enjoining the respondents from violating certain rules established by the Metropolitan Water and Sewerage Board. Injunction issued.

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.

O'Connell, Dennis F., *v.* Michael J. McGawley *et als.* Bill of complaint to restrain the respondent McGawley from assigning his interest in a contract entered into with the Metropolitan Park Commission. Pending.

Old Colony Construction Company, Commonwealth *v.* Action of contract to recover on bond. Pending.

Pacific Surety Company *v.* Commonwealth *et al.* Petition to recover from McBride & Co. certain sums expended by petitioner. Pending.

Smith, Frederick W., *et al. v.* Commonwealth. Claim for money due under contract for Boston State Hospital. Pending.

Waterproof Leatherboard Company, Henry H. Sprague *et als.*, Metropolitan Water and Sewerage Board, *v.* Bill of complaint to restrain respondent from discharging factory wastes into Beaver Dam Brook. Pending.

Waterproofing Company, The, *v.* Commonwealth. Claim for money due for labor performed on Psychopathic Hospital. Pending.

10. 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.

Mansfield, Treasurer, *v.* Adams, town of. Settled.
Mansfield, Treasurer, *v.* Horatio N. Allin, executor of the will of Abbie N. Tilton. Settled.
Mansfield, Treasurer, *v.* Franklin, town of. Settled.
Stevens, Treasurer, *v.* Warren M. Andrews. Pending.
Stevens, Treasurer, *v.* Franklin Balch, administrator of the estate of Benjamin H. Potter. Pending.
Stevens, Treasurer, *v.* Boston, city of. Pending.
Stevens, Treasurer, *v.* Boston, city of. Pending.
Stevens, Treasurer, *v.* Boston, city of. Pending.
Stevens, Treasurer, *v.* Boston, city of. Pending.
Stevens, Treasurer, *v.* Charles F. Bushby. Pending.
Stevens, Treasurer, *v.* Caroline R. Clasby. Pending.
Stevens, Treasurer, *v.* Caroline R. Clasby. Pending.
Stevens, Treasurer, *v.* Mary E. Clasby. Pending.
Stevens, Treasurer, *v.* Joseph C. Colligan. Pending.
Stevens, Treasurer, *v.* John J. Cronin, administrator of the estate of Mary Murphy. Pending.
Stevens, Treasurer, *v.* Fall River, city of. Pending.
Stevens, Treasurer, *v.* John Grieneeks. Pending.
Stevens, Treasurer, *v.* Michael Harper, guardian. Settled.
Stevens, Treasurer, *v.* Lowell, city of. Pending.
Stevens, Treasurer, *v.* New Bedford, city of. Pending.
Stevens, Treasurer, *v.* Newton, city of. Settled.
Stevens, Treasurer, *v.* Newton, city of. Settled.
Stevens, Treasurer, *v.* Emma C. Russell, guardian. Pending.
Stevens, Treasurer, *v.* Rutland, town of. Pending.
Stevens, Treasurer, *v.* Josiah Ryder. Pending.
Stevens, Treasurer, *v.* Thomas J. Sexton, guardian. Pending.
Stevens, Treasurer, *v.* Julia Tully. Pending.
Stevens, Treasurer, *v.* Louise C. Westcott. Pending.

MISCELLANEOUS CASES.

Abbott, Lillian, administratrix of the estate of Eunice M. Abbott, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Acme White Lead and Color Works *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

Adams, Fannie A., petitioner. Petition for registration of title to land in Billerica. Pending.

Ahmeek Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Ahmeek Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Ahmeek Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Aldrich, Frank E., petitioner. Petition to register title to land in Northfield. Pending.

Algomah Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Algomah Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Allouez Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Allouez Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Amalgamated Nevada Mines Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Amalgamated Nevada Mines Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

American Agricultural Chemical Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

American Agricultural Chemical Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

American Agricultural Chemical Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

American Axe and Tool Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

American Axe and Tool Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

American Bank Note Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

American Bank Note Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

American Brass Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

American Brass Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

American Can Company *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 1912 paid by foreign corporation. Pending.

American Can Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

American Can Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 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 Chicle Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 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 Dyewood Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

American Hide and Leather Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

American Hide and Leather Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

American Investment Securities Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

American Investment Securities Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

American Investment Securities Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

American Laundry Machinery Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

American Piano Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

American Pneumatic Service Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

American Pneumatic Service Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

American Radiator Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

American Radiator Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

American Radiator Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

American Steel and Wire Company of New Jersey *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Final decree.

American Steel and Wire Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

American Steel and Wire Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

American Steel and Wire Company of New Jersey *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

American Thread Company of New Jersey *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

American Thread Company of New Jersey *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

American Woolen Company *v.* Commonwealth. Petition to recover excise tax for the years 1909 and 1910 paid by foreign corporation. Final decree.

American Woolen Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

American Woolen Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

Ames Shovel and Tool Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Ames Shovel and Tool Company *v.* Commonwealth. Petition to cover excise tax for the year 1912 paid by foreign corporation. Pending.

Ames Shovel and Tool Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Amoskeag Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Amoskeag Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 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.

Arizona Commercial Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Arlington Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, p. 56. Decree.

Armstrong Cork 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 1912 paid by foreign corporation. Pending.

Armstrong Cork Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Asbestos Protected Metal Company *v.* Commonwealth. Petition for abatement of franchise tax. Pending.

Ashland Emery and Corundum 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 1912 paid by foreign corporation. Pending.

Ashland Emery and Corundum Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Atlas Tack 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 1912 paid by foreign corporation. Pending.

B. F. Goodrich Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

B. T. Babbitt *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

Babb, George W. P., executor of the will of Hannah D. Gaynor, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Ball, Eustace H., executor of the will of Harriet S. Ball, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Baltic Mining 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 1912 paid by foreign corporation. Pending.

Barney, Alanson S., petitioner. Petition for registration of title to land in Nantucket. Attorney-General waived right to be heard.

Barrett, Josephine, *et al.,* petitioners. Petition for registration of title to land in Dennis. Pending.

Bates Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Bates Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Beaman, Charles Hall, executor of the will of Charles Henry Beaman, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Belding Brothers & Co. *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Belding Brothers & Co. *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Belding, Rainsford W., *et als.,* petitioners. Petition for registration of title to land. Attorney-General waived right to be heard.

Bellows Falls Power Company *v.* Commonwealth. Petition for abatement of franchise tax. Pending.

Bentley, Alice L., executrix of the will of Eli E. Bentley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Berry Brothers, Ltd. *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Berry Brothers, Ltd. *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Bingham Mines Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Blair, Frank W., administrator of the estate of Mary F. Blair, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Blake & Knowles Steam Pump Works *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Bliss, Elmer J., *et al.,* executors of the will of Rosilla Gould, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Bohemia Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Boston & Corbin Copper and Silver Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Boston & Northern Street Railway Company. Claim for amount expended in relaying water pipes in Washington Street, Lynn, destroyed by electric currents. Pending.

Boston & Roxbury Mill Corporation, petitioner for dissolution. Petition of the Commonwealth for leave to intervene. Pending.

Boston & Worcester Street Railway Company *v.* Board of Railroad Commissioners. Petition for modification of ruling by Railroad Commissioners. Pending.

Boston Bedding Supply Company *v.* Commonwealth *et al.* Petition for assessment of damages alleged to have been caused by the passage of legislation restricting the right to draw water from the Charles River during certain seasons. Pending.

Boston Sand & Gravel Company, petitioner. Petition for registration of title to land in Scituate. Decree.

Boston Securities Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Boston Securities Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Bosworth, Charles O., executor of the will of John P. Campion, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Boulevard Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Bourne, Inhabitants of, *v.* Public Service Commission *et al.* Petition for writ of certiorari. Pending.

Bowles, Francis T., petitioner. Two petitions for registration of title to land in Barnstable. Attorney-General waived right to be heard on both petitions.

Bowman, Joseph W., *v.* Commonwealth. Petition for writ of error. Pending.

Brackett, Arthur L., *v.* Commonwealth. Petition for assessment of damages caused by the erection of the Anderson Bridge. Charles K. Darling, John T. Swift and Joseph A. Conry appointed commissioners. Pending.

Brady, Francis P., administrator *d. b. n.* of the estate of Bridget German, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Breakwater Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Breakwater Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Bresnan, John H., administrator of the estate of Bridget Wall, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Bresnan, John H., administrator of the estate of Patrick Wall, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Briggs, Benjamin F., *v.* Elmer A. Stevens, Treasurer and Receiver-General. Appeal from decree of Land Court. Pending.

Brooks, Sarah H., *et al.*, executors of the will of Mary E. Brooks, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Brooks, William W., administrator of the estate of George S. Smith, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Brookside Mills *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Brookside Mills *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Brookside Mine *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Browning, Harry A., administrator of the estate of Harvey C. Browning, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Browning, King & Co. *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Bryne, Andrew W., *et als. v.* Commonwealth *et al.* Petition to recover money in hands of Commonwealth. Pending.

Bulkeley, Morgan C., *et al. v.* New York, New Haven & Hartford Railroad Company and the Public Service Commission. Petition for annulment of an order of the Public Service Commission approving the issue of certain debenture bonds by the New York, New Haven & Hartford Railroad Company. Rescript.

Bullard, John C., executor of the will of Justina Dennison, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Bullard, John C., executor of the will of Sarah J. Hills, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Bullard, John D., petitioner. Petition for registration of title to land in Hyde Park. Pending.

Bunzel, Gustave, Attorney-General *ex rel. v.* Bill in equity to restrain the respondent from conducting the business of slaughtering in Lexington. Pending.

Burke, Edmund, administrator of the estate of John Kelley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Burke, William E., administrator of the estate of Margaret A. Evans, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.

Butchers' Slaughtering and Melting Association *v.* Commonwealth. Petition for assessment of damages caused by the erection of the Anderson Bridge. Charles K. Darling, John T. Swift and Joseph A. Conry appointed commissioners. Pending.

Caldwell, C. Chester, *et al.,* executors of the will of Joanna Caldwell, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Calumet & Hecla Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Calumet & Hecla Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Cambridgeport Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Campbell, Henry W., administrator of the estate of Sarah P. Graves, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

Campbell, Louise H., *et al., petitioners.* Petition for registration of title to land in Wareham. Pending.

Campbell, Louise H., petitioner. Petition for registration of title to land in Wareham. Pending.

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. Final decree.

Carmichael, James H., executor of the will of Oliver R. Willis, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Casey, John F., *v.* Mary A. Smith *et als.* Bill of complaint for a writ of injunction enjoining the respondents from using or occupying certain buildings located in Fitchburg, improperly constructed. Disposed of.

Casey, Mary N., *et al.,* trustees, petitioners. Petition for registration of title to land in Billerica. Pending.

Centennial Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Centennial Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Chamber of Commerce of the State of New York *v.* New York Central & Hudson River Railroad Company *et als.* Petition to intervene in differential rate cases. Disposed of.

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.

Champion Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Charles H. Schieren Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

Charlestown Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Chase, William E., *et als.,* petitioners. Petition for registration of title to land in Newburyport. Decree.

Chelsea Day Nursery and Children's Home *v.* Rufus S. Frost General Hospital. Bill of complaint to compel defendant to perform contract. Disposed of.

Cheney Brothers *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Cheney Brothers *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Chicopee, city of, *v.* Commonwealth. Claim for difference in amount of money allowed by the State Board of Charity

and amount expended by the town in treatment of typhoid patients. Pending.

Children's Health Fund, Attorney-General *v.* Information in the nature of *quo warranto* to test the right of the corporation to continue to exercise its franchise as a charitable corporation. Disposed of.

Childs' Dining Hall Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Childs' Dining Hall Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Churchill, Susan A., executrix of the will of John B. Churchill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Disposed of.

City Institution for Savings, Lowell, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Clapp, George W., executor of the will of Elmira S. Hinman, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Clark, Mary M., executrix of the will of Elizabeth N. Clark, 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.* Worcester. To recover for land taken from the Commonwealth. Pending.

Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1909 paid by foreign corporation. Disposed of.

Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Final decree.

Consolidation Coal Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

Continental Gin 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 1912 paid by foreign corporation. Pending.

Continental Gin Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

Continental Mills *v.* Commonwealth. Petition to recover excise tax for the year 1912 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 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 1912 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.

Copper Range Consolidated Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Copper Range Consolidated Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Costello, Michael W., executor of the will of Catherine Costello, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Creaden, William T., administrator of the estate of Nellie Reardon, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Crossett, Lewis A., petitioner. Petition for registration of title to land in Cohasset. Pending.

Cudahy Packing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Curtis Publishing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Decree.

Curtis Publishing Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Decree.

Curtis Publishing Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Decree.

Damon, Daniel E., executor of the will of Maria L. Thompson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Davis Sewing Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Davis Sewing Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 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.

Dineen, Timothy, executor of the will of Julia Dineen, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

di Pesa, Alfred, petitioner. Petition for registration of title to land. Pending.

Dolan, Peter T., executor of the will of Nellie Young, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.

Donahue, Abbie A., executrix of the will of Abbie McDonald, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Dorchester Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Draper Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

Drohan, John, executor of the will of Anastasia Clapp, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Duddy, Joseph H., petitioner. Petition for writ of habeas corpus. Pending before the full court.

Dunham, Etta E., petitioner. Petition for writ of habeas corpus. Dismissed.

Eagleston, Allen P., petitioner. Petition for registration of title to land in Gay Head. Pending.

East Boston Company *v.* Directors of the Port of Boston. Writ of entry. Pending.

East Butte Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

East Butte Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

East Butte Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

East Cambridge Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

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

Edgerly, Frank H., *et al. v.* Cattle Bureau. Bill to recover for horse killed by order of Cattle Commissioner under R. L., c. 90. Pending.

Edwards Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Edwards Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 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.

Ennis, John D., *et al.*, administrators of the estate of Edmund Walsh, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Everton, Elfonso I., administrator of the estate of Charles H. Dimond, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

F. Blumenthal Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Fairbanks Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Fairbanks Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Farley, John, executor of the will of Maria A. Giddings, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Farr Alpaca Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1912. Pending.

Farwell, John W., petitioner. Petition to register title to land in Melrose. Attorney-General waived right to be heard.

Fidelity Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. 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.

Fishley, Cora O., executrix of the will of Edward E. Fishley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Fitts, Frank E., executor of the will of Harriet N. Fitts, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Fleming, Henry E., *v.* State Board of Health. Appeal from an order of the State Board of Health in regard to the use of ice cut from Flax Pond. Pending.

Foss-Hughes Company *v.* Commonwealth. Petition for abatement of franchise 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 Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Franklin County Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Franklin Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Franklin Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Frazer, Charles F., executor of the will of Emma T. Cotton, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Free Home for Consumptives, Attorney-General *v.* Information in the nature of *quo warranto* to annul the charter of the respondent because of the misuse of its charter privileges and franchises. Dismissed.

Frontenac Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Frontenac Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Fuller, Edgar S., petitioner. Petition for registration of title to land in Falmouth. Pending.

Galena Signal Oil Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Galena Signal Oil Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Gamash, David, petitioner. Petition for registration of title to land in Ludlow. Pending.

Gamewell Fire Alarm Telegraph Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Gamewell Fire Alarm Telegraph Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Genzale, Michelina, petitioner. Petition for writ of habeas corpus. Petition dismissed.

Georgia Home Insurance Company *v.* Commonwealth. Action to compel Treasurer and Receiver-General to return bond deposited with him by said company. Pending.

Gorton-Pew Fisheries Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Gorton-Pew Fisheries Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Grace, William F., administrator of the estate of Nora Kelly, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

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.

Gratiot Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Gratiot Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 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 Atlantic & Pacific Tea Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 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.

Griffith, Mary, executrix of the will of Christopher Foster, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Gutta-Percha and Rubber Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Hale, Josiah L., executor of the will of Pauline H. Patterson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Hamlin, Katharine B., petitioner. Petition for registration of title to land in Marion. Pending.

Harmon, Rollin, H., Judge of Probate, *v.* Samuel D. Hildreth *et al.* Action to recover on administrators' bond. Pending.

Harrington, Charles C., executor of the will of Elizabeth A. Harrington, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Hastings, George A., *v.* Commonwealth. Petition to recover unclaimed bank deposit in the hands of the Treasurer. Disposed of.

Hatch, Elizabeth M., *et al.*, petitioners. Petition for registration of title to land in Bourne. Pending.

Havens, Jennie R., administratrix of the estate of Katherine L. Mooney, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Haverhill Gas Light Company *v.* Forrest E. Barker *et als.*, Board of Gas and Electric Light Commissioners *et al.* Bill of complaint brought in the United States Circuit Court to restrain the Board of Gas and Electric Light Commissioners from enforcing an order in regard to the price of gas. Disposed of.

Haverhill Gas Light Company, Attorney-General *v.* Information in equity to restrain respondent from transferring its franchises and property. Rescript.

Healy, Mary, executrix of the will of Patrick Healy, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Hecker-Jones-Jewell Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Hecker-Jones-Jewell Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Hecker-Jones-Jewell Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Henry K. Wampole & Co., Inc., *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Hewitt, Fred L., petitioner. Petition for registration of title to land in Salisbury. Decree.

Hill, Annie Leslie, petitioner. Petition for registration of title to land in Webster. Pending.

Hill, Sarah T., executor of the will of Rowena Hill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Holden, Maria, executrix of the will of Alice Maher, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Holden, Nicholas F., *v.* Civil Service Commission. Petition for writ of mandamus to compel the respondents to authorize the reinstatement of the petitioner as a member of the police department of Worcester. Pending.

Hollingsworth, Ellis, petitioner. Petition for registration of title to land in Marblehead. Decree.

Holmes, Thankful A., executrix of the will of James Churchill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Holt, Frank W., administrator of the estate of Elizabeth C. Moulton, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

Hong, Harry Eng, petitioner. Petition for writ of habeas corpus. Rescript from Circuit Court of Appeals dismissing petition.

Houghton Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Houghton Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Houghton, Neidhard H., administrator of the estate of Julius H. Houghton, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Hoyt, Grover C., *v.* Alfred W. Donovan *et als.,* Petition for writ of mandamus to compel the State Board of Labor and Industries to reinstate the petitioner as its secretary. Reserved for the full court.

Ingraham, Leonidas H., executor of the will of Mary A. Ingraham, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

International Paper Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

Isle Royale Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Isle Royale Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Jackson Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Jackson Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Jackson, Ethel M., administratrix of the estate of George F. Bailey, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Jacob Dold Packing Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

James Cunningham Son & Co., *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

James Cunningham Son & Co., *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Jaynes Drug Company *v.* William S. Flint *et als.,* constituting the Board of Registration in Pharmacy. Petition for writ of mandamus to compel said Board to grant a permit to the petitioner to transact a retail drug business in Pittsfield. Writ issued.

Jenney, E. C., executor of the will of Maria P. Stark, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Jennings, Malachi L., administrator of estate of Mary McGeehan, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

John L. Whiting-J. J. Adams Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

John L. Whiting-J. J. Adams Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Johnson, Susan M., petitioner. Petition for registration of title to land in Tisbury. Decree.

Judkins, C. Ernest, executor of the will of Gertrude I. Sawyer, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Kelley, Hannah, executrix of the will of Martin T. Walsh, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

Kelly, Charles A., *et als.,* executors of the will of Anna E. Mongan, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Kempton, Francis H., administrator of the estate of Maria M. Lindsey, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

Kernwood Country Club, petitioner. Petition for registration of title to land in Salem. Pending.

Keyes, Charles D., administrator *d. b. n.* of the estate of Eliza A. DeShon, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.

Keymes, William, administrator of the estate of James Keymes, *v.* Commonwealth. Petition to recover bank deposit in the hands of the Treasurer. Pending.

Keystone Watch Case Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

Keystone Watch Case Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

Keystone Watch Case Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Final decree.

King Philip Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Laedlein, Abby M., petitioner. Petition for registration of title to land in Framingham. Attorney-General waived right to be heard.

Lafayette Savings Bank, Augustus L. Thorndike, Bank Commissioner, *v.* Information to restrain the respondent from further prosecution of its business. Pending.

Lake Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Lake Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 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.

Lake Milling, Smelting and Refining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Lake Superior Smelting 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.

Lamont-Corliss Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Lamson Consolidated Store Service Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 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.

Lanston Monotype Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Lanston Monotype Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Lanston Monotype Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

LaSalle Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

LaSalle Copper 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 1912 paid by foreign corporation. Pending.

LaSalle Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Laurium Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Laurium Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Lawrence Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Lawton, Isaac M., executor of the will of Daniel T. Lawton, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Lee, Charles F., trustee, petitioner. Petition for registration of title to land in Beverly. Decree.

Leland, Percy F., petitioner. Petition for registration of title to land in Ashland. Decree.

Lever Brothers Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Lever Brothers Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Libby, George W., administrator of the estate of Oliver Libby, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Library Bureau *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

Library Bureau *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

Liquid Carbonic Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Liquid Carbonic Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Liquid Carbonic Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Lithuanian Alliance of America, Attorney-General *ex rel. v.* Information at the relation of the Insurance Commissioner for violation of insurance laws. Injunction issued.

Locomobile Company of America *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Locomobile Company of America *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Locomobile Company of America *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation.

Long, John D., petitioner. Petition for registration of title to land in Hingham. Pending.

Lowell Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Lowell Institution for Savings, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Lundagen, Mary, executrix of the will of Lawrence Lundagen, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Lyons, John P., Attorney-General *v.* Petition for the use of the Attorney-General's name in an information in the nature of *quo warranto* to test the right of the respondent to be granted a permit to transport intoxicating liquors in the city of Brockton. Use of name allowed.

Maguire, William C., executor of the will of Margaret Dowden, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.

Mahar, Joseph P., executor of the will of Thomas J. Rehill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Mahoney, Patrick, executor of the will of John Hart, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Malley, Edward B., executor of the will of Dennis F. McCloskey, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Manchester, Abraham, executor of the will of Abraham E. Manchester, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Manitou Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Manitou Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Mann, Edwin M., petitioner. Petition for registration of title to land. Pending.

Marchant, Charles B., executor of the will of Edna L. Hinckley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Marconi Wireless Telegraph Company of America *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

Marconi Wireless Telegraph Company of America *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Final decree.

Marlborough Savings Bank, Attorney-General *v.* Petition for withdrawals of deposits under St. 1908, c. 590, § 56. Decree.

Massachusetts Catholic Order of Foresters *v.* Elmer A. Stevens, Treasurer and Receiver-General. Petition for writ of mandamus to compel respondent to deliver securities to petitioner. Disposed of.

Massachusetts Consolidated Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Massachusetts Consolidated Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Massachusetts Institute of Technology *v.* Boston Society of Natural History, *et als.* Petition brought in the Land Court for instructions as to certain alleged easements in land bounded by Berkeley, Boylston, Clarendon and Newbury streets, Boston. Decree.

Massachusetts Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Mayflower Mining Company *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 1912 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.

McCauley, George D., petitioner. Petition for registration of title to land in Springfield. Pending.

McClusky, Clara B., executrix of the will of Annie B. Dunn, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

McDonald, Theodore H., Insurance Commissioner of Connecticut, *v.* The Ætna Indemnity Company. Intervening petition of the Commonwealth of Massachusetts. Pending.

McGee, Patrick S., petitioner. Petition for registration of title to land in Attleborough. Pending.

McGuirk, Ann, executrix of the will of Terrence Farley, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

McIntire, Charles H., trustee under the will of Maria T. Clark, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

McLoughlin, Francis J., petitioner. Petition for registration of title to land in Becket. Attorney-General waived right to be heard.

Mead-Morrison Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

Mechanics Savings Bank, Lowell, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Medford Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. 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. Reserved for full court. Pending.

Michigan Smelting Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Midvale Steel Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Midvale Steel Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Moore, Mary, executrix of the will of Ellen M. Aston, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

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, William M., *et al.,* administrators of the estate of Charles A. Mitchell, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Morrill, Ellen A., *et al.,* executors of the will of Emeline E. Coolidge, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Disposed of.

Murphy, Mary E., executor of the will of Delia Martin, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Murphy, Mary L., executrix of the will of Annie M. Crowdle, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.

Murphy, Michael, *v.* Harrie W. Pierce, Agent of the Commissioner of Animal Industry. Claim for damages for death of horse. Pending.

Murray, James H., petitioner. Petition for registration of title to land in Salisbury. Pending.

N. K. Fairbank Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

N. K. Fairbank Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

N. K. Fairbank Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

Nantucket Cranberry Company, petitioner. Six petitions for registration of title to land in Nantucket. Pending.

Nashua Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Nashua Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Natick Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

National Casket Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

National Casket Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

National Contracting Company *v.* Commonwealth. Petition to recover under R. L., c. 201. Pending.

National Mercantile Company, Limited, Attorney-General *v.* Information in the nature of *quo warranto* for violation of St. 1904, c. 427. Injunction issued.

New England Maple Syrup Company *v.* Henry P. Walcott *et als.* Bill in equity for an injunction. Pending.

Newport Fisheries, Ice and Cold Storage Company *v.* Commonwealth. Petition for abatement of franchise tax for the year 1912. Pending.

Newton, Frank B., *v.* Commonwealth. Petition for assessment of damages alleged to have been sustained by reason of the erection of a bridge across the Neponset River. Pending.

Nickerson, Horace W., *et al.*, petitioners. Petition for registration of title to land in Barnstable. Pending.

Norcross, Joseph E., administrator of the estate of Charles F. Aldrich, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.

Norman, Archibald W., administrator of the estate of Walter Albert Norman *v.* Commonwealth. Petition to recover bank deposit in hands of the Treasurer. Decree.

North End Savings Bank, Boston, Attorney-General *v.* Petition for withdrawal of deposits under R. L., c. 113, § 55. Decree.

Northwestern Consolidated Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Northwestern Consolidated Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Northwestern Consolidated Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Noyes, George E., petitioner. Petition for registration of title to land in Swampscott. Pending.

Nye, Helen M. S., executrix of the will of Sarah E. Lane, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

O'Connor, James B., administrator of the estate of Patrick H. O'Connor, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

O'Donohue, Lillie B., executrix of the will of Joseph J. O'Donohue, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Odd Fellows Beneficial Corporation of Southern Massachusetts, Attorney-General *ex rel. v.* Information at the relation of the Insurance Commissioner for violation of insurance laws. Injunction issued.

Old Colony Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Old Colony Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Old Colony Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Old Colony Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Oliver Typewriter Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Oliver Typewriter Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Oliver Typewriter Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Oliver Typewriter Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

Order United Hebrews of America, Attorney-General *ex rel. v.* Information at the relation of the Insurance Commissioner for violation of insurance laws. Injunction issued and Eleazer Freedman, Esq., appointed temporary receiver.

Osceola Consolidated Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Osceola Consolidated Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Osceola Consolidated Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Owens, Fannie M., administratrix of the estate of Lucy Jones, Petitioner. Petition to recover bank deposit in hands of the Treasurer. Decree.

Oxford Linen Mills *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Dismissed.

Oxford Linen Mills *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Dismissed.

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

Parmenter, Freeman A., petitioner. Petition for registration of title to land in Dover. Decree.

Patten, Ina F., administratrix of the estate of Carrie M. Fitz, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Perkins, Charles F., administrator of the estate of Amos R. Aldrich, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Decree.

Pierce, George H., *et al.,* petitioners. Petition for registration of title to land in Manomet. Pending.

Pillsbury Flour Mills Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Pillsbury Flour Mills Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Pillsbury Flour Mills Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

Piper, Edith B., executrix of the will of Frederick B. Fanning, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Platt, James C., *et al.,* executors of the will of Margaret J. Platt, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Plymouth County Trust Company *v.* Commonwealth. Petition for abatement of tax on deposits in savings department of trust company. Pending.

Pocahontas Fuel Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

Poole, Clara I., petitioner. Petition for registration of title to land in Weymouth. Pending.

Pope Manufacturing Company, The, *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Powers, James F., Attorney-General *v.* Petition for use of the Attorney-General's name in an information in the nature of *quo warranto* to test the respondent's right to act as overseer of outdoor work in the city of Brockton. Use of name allowed.

Purinton, Charles S., petitioner. Petition for registration of title to land in Plymouth. Pending.

Quaker Oats Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Quaker Oats Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Quirk, Charles I., executor of the will of William Byrne, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Ramsdell, Hattie, petitioner. Petition for writ of habeas corpus for discharge of Elton Ramsdell *et als.* from the custody of the State Board of Charity. Petition dismissed.

Rathbun, Charles B., petitioner. Petition for registration of title to land in Canton. Decree.

Redfern, Mary E., petitioner. Petition for registration of title to land in Swampscott. Pending.

Reed, Andrew F., *et al.*, petitioners. Petition in equity for removal of certain restrictions on land, Nantasket Beach Reservation. Decree.

Regal Shoe Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Regal Shoe Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Reilly, Margaret, executrix of the will of John Reilly, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Reilley, William J., *et al.*, executors of the will of Charles A. Goessman, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Rice & Hutchins, Incorporated, *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.

Richards, Fred J., *et al.*, petitioners. Petition for registration of title to land in Springfield. Pending.

Richardson Silk Company *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 1912 paid by foreign corporation. Pending.

Richardson Silk Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Richmond, Charles F., petitioner. Petition for registration of title to land in Wareham. Decree.

Riley, Richard G., *v.* Commonwealth of Massachusetts. Writ of error to the Superior Court of Bristol County to set aside a conviction for violation of the law governing the employment of women in factories. Mandate from Supreme Court of the United States.

Ripley, Mary Ella, executrix of the will of Sarah B. King, 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.

Roche, Teresa G., administratrix of the estate of Mary A. Roche, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Rockland-Rockport Lime Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Rogers, Harlow H., petitioner. Petition for registration of title to land in Marlboro. Attorney-General waived right to be heard.

Ross, John H., petitioner. Petition for registration of title to land in Hingham. Pending.

Rouillard, Cora L., executrix of the will of Sarah A. Gillett, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

Russell, Herbert J., *et al.*, executors of the will of George H. Russell, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

Russell-Miller Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Russell-Miller Milling Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

S. S. White Dental Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Saxonville Mills, petitioner. Petition for registration of land in Framingham. Decree.

Schaefer, Gustav, petitioner. Petition for registration of title to land in Billerica. Pending.

Scott, Joseph R., *et al.*, administrators of the estate of Robert W. Scott, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Seager Engine Works *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Sealshipt Oyster System *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Sealshipt Oyster System *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Seneca Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Shannon Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1910 paid by foreign corporation. Pending.

Shannon Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 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.

Shattuck, Joseph, *et al. v.* City of Lawrence *et al.* Petition for abatement of tax on personal property illegally assessed. Disposed of.

Shepard & Morse Lumber Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

Silver Fox Ranching Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Final decree.

Simonds, Leon M., petitioner. Petition for registration of title to land in Princeton and Holden. Decree.

Simons, Charles L., *v.* Commonwealth. Claim for reward offered by Commonwealth for apprehension of the murderer of Martha B. Blackstone. Pending.

Simpson, Esther P., petitioner. Petition for registration of title to land in Chelmsford. Pending.

Skehill, Patrick J., administrator of the estate of John E. Skehill, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Slade, Ruthven Tucker *v.* Commonwealth. Petition to recover bank deposit in hands of Treasurer. Decree.

Smith & Dove Manufacturing Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Smith, Louisa, executrix of the will of George Smith, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Sons of Freedom, Incorporated, Attorney-General *ex rel. v.* Information at the relation of the Insurance Commissioner for violation of insurance laws. Injunction issued and Thomas D. Lavelle, Esq., appointed receiver.

Sousa, Rosa Emily, executrix of the will of Joseph L. Matthews, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

South Lake Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

South Lake Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Sprague, Charles M., executor of the will of Alonzo Miller, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Springfield Breweries Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Springfield Breweries Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Springfield Mutual Disability Company *et al.*, Attorney-General *ex rel. v.* Information at the relation of the Insurance Commissioner for violation of insurance laws. Injunction issued and Judd Dewey, Esq., appointed receiver.

St. Mary's Mineral Land Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

St. Mary's Mineral Land Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Stafford 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 1913 paid by foreign corporation. Pending.

Standard Plunger Elevator Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

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

Submarine Signal Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Submarine Signal Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Sugden Press Bagging Company, petitioner. Petition for registration of title to land in West Chelmsford. Pending.

Sullivan, Ellen E., executrix of the will of Daniel O'Connell, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Sullivan, Mary, *v.* Commonwealth. Petition to recover bank deposit in hands of Treasurer. Pending.

Superior Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Superior Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Swampscott, Town of, *v.* Richard L. Beyer. Appeal from order of inspector of factories and public buildings. Pending.

Tamarack Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Tamarack Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Taylor, Louis C., executor of the will of William J. Taylor, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Trimountain Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Trimountain Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 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.

Tuttle, Frank J., administrator *c. t. a.* of the estate of William H. Chick, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Dismissed.

Tuttle, Horace F., petitioner on behalf of Isabella M. Brooks. Petition for discharge from Westborough State Hospital. Pending.

Underwood, Henry O., petitioner. Petition for registration of title to land in Nantucket. Pending.

Union Copper Land and Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Union Copper Land and Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Union Copper Land and Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Union Curled Hair Company *v.* Commonwealth. Bill in equity to restrain the State Department of Health from trespassing upon land of the petitioner. Disposed of.

Union News Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Union News Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Union Square Methodist Episcopal Church, petitioner. Petition to register title to land in Charlestown. Decree.

United States Volunteer Life Saving Corps of Volunteer Life Savers, Attorney-General *v.* Information in the nature of *quo warranto* to annul the charter of the respondent because of misuse of its charter privileges and franchises. Pending.

United States Worsted Company, Attorney-General *v.* Action of contract to compel payment of filing fee. Pending.

Upham, George F., petitioner. Petition for registration of title to land in North Brookfield. Attorney-general waived right to be heard.

Valvoline Oil Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Valvoline Oil Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Van Greenberg, Frank J., petitioner. Petition for registration of title to land in Lowell. Pending.

Victoria Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Victoria Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Victoria Copper Mining Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

Viets, Samuel D., administrator of the estate of James H. Viets, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Vining, Floretta, executrix of the will of Elizabeth Jacobs, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

W. L. Douglas Shoe Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Walen, William W., administrator of the estate of Almira C. Walen, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Walkley, Mary Nesbit, petitioner. Petition for registration of title to land in Lee. Decree.

Walling, Arca, administrator of the estate of Whipple Caswell, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Final decree.

Walpole Rubber Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Walpole Rubber Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Waltham Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Ward Baking Company *v.* Commonwealth. Petition to recover excise tax for the year 1914 paid by foreign corporation. Pending.

Watt, William D., executor of the will of Mary J. Pierson, Attorney-General *ex rel. v.* Petition to recover inheritance tax. Pending.

Webster, Anna C. M., petitioner. Petition for registration of title to land in Beverly. Pending.

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.* 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.

Welsbach Street Lighting Company of America *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Westinghouse, Church, Kerr & Co. *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Westinghouse, Church, Kerr & Co. *v.* Commonwealth. Petition to recover excise tax for the year 1912 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.

Whitall-Tatum Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

Whitall-Tatum Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

White Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

White Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

White Company *v.* Commonwealth. Petition to recover excise tax for the year 1913 paid by foreign corporation. Pending.

White Pine Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

White Pine Copper Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

White Sewing Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Pending.

White Sewing Machine Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Pending.

Whittemore, Charles, petitioner. Petition for registration of title to land in Wareham. Pending.

Willett, Lewis, petitioner. Petition for registration of title to land in Newburyport. Pending.

William L. Gilbert Clock Company *v.* Commonwealth. Petition to recover excise tax for the year 1911 paid by foreign corporation. Final decree.

William L. Gilbert Clock Company *v.* Commonwealth. Petition to recover excise tax for the year 1912 paid by foreign corporation. Final decree.

Williams, Charles H., petitioner. Petition for registration of title to land in Billerica. Pending.

Williams, Susan S., petitioner. Petition for registration of title to land in Nantucket. Attorney-General waived right to be heard.

Winona 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 1912 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.

Woburn Five Cents Savings Bank, Attorney-General *v.* Petition for withdrawal of deposits under St. 1908, c. 590, § 56. Decree.

Wyandot Copper Company *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 for the year 1910 paid by 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 1913, overdue and referred by the Treasurer of the Commonwealth to the Attorney-General for collection,	$201,275 93
Interest,	1,966 11
Costs,	2,467 00
Miscellaneous,	28,703 34
Total,	$234,412 38

The following table shows a detailed statement of the Corporation Taxes: —

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
A. B. Noyes & Co., Corporation,	$152 32	$3 04	$155 36
A. E. Jebb Refinishing Company,	53 76	27	54 03
A. Himmel Company,	71 68	36	72 04
A. Homer Skinner Lumber Company,	684 18	4 90	689 08
A. I. Asher Pants Company,	133 32	66	133 98
A. P. Nardini Company,	69 88	3 48	73 36
A. S. Tucker Company,	18 40	16	18 56
A. Ziegler & Sons Company,	1,585 02	7 92	1,592 94
Acme Register Company,	30 96	15	31 11
Alfred H. Aldrich Company,	7 43	04	7 47
Alpha Investment Company,	16 00	–	16 00
American Belting & Tanning Company,	403 20	2 42	405 62
American Cloak Company,	116 48	35	116 83
American Cork Company,	179 20	4 54	183 74
American Cultivator Publishing Company,	43 00	1 19	44 19
American Grocery Company,	1,433 60	5 02	1,438 62
American Jewel Company,	328 40	2 79	331 19
American Lithuanian Co-operative Public Market Corporation,	25 80	12	25 92
American Paper Stock Company,	35 84	08	35 92
American Specialty Company,	179 20	90	180 10

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
American Stable Company,	$70 96	$0 32	$71 28
American Stay Company,	1,075 20	4 30	1,079 50
American Steam Gauge and Valve Manufacturing Company,	3,468 97	20 23	3,489 20
Apsley Rubber Company,	9,388 43	43 81	9,432 24
Aroostook Farming and Lumber Company,	30 00	25	30 25
Arthur C. Harvey Company,	1,935 36	5 81	1,941 17
Ashoyton Knitting Company,	37 63	19	37 82
Athol and Orange Street Railway Company,	2,195 36	13 17	2,208 53
Atlantic Printing Company,	537 60	2 24	539 84
Atlantic Rubber Company,	219 77	80	220 57
Atwood Preserving Company,	87 09	1 74	88 83
Auto Renting Company,	35 84	1 40	37 24
Auto Sales Company,	35 84	18	36 02
B. F. Smith Construction Company,	1,750 78	35 01	1,785 79
Bacon and Donnovan Engine Company,	107 52	65	108 17
Baer's, Inc.,	8 74	–	8 74
Bangs and Ramsey Express Company,	89 60	36	89 96
Barlow Company,	234 94	7 05	241 99
Baush Machine Tool Company,	3,393 33	16 97	3,410 30
Bay State Packing Company,	48 38	24	48 62
Bay State Silver Company,	78 84	66	79 50
Bay State Storage and Warehouse Company,	2,670 08	12 02	2,682 10
Bay State Tool Handle Company,	18 81	09	18 90
Beacon Ice Cream Company,	20 96	–	20 96
Beacon Mining Company,	8 59	26	8 85
Beaver Construction Company, Inc.,	32 61	33	32 94
Bedford Safety Razor Company,	26 88	42	27 30
Bellows Falls Power Company,	2,729 21	21 83	2,751 04
Belmont Spring Water Company,	150 77	1 13	151 90
Bemis Rubber Company,	450 50	2 25	452 75
Bennett's, Inc.,	134 40	1 48	135 88
Beverly Lighter and Wrecking Company,	342 25	5 66	347 91
Blanchard & Co., Inc.,	251 11	1 26	252 37
Blanchard Press,	141 01	3 93	144 94
Blanking Machine Company,	54 83	50	55 33
Bon-Ton Millinery Company,	53 76	20	53 96
Bonney Company,	286 72	1 60	288 32
Booker Custom Laundry, Incorporated,	143 36	1 43	144 79
Boston Artesian Well Company,	53 76	1 77	55 53
Boston Bolt and Iron Company,	310 01	15 50	325 51

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Boston Commercial Company,	$163 10	$0 95	$164 05
Boston Condensed Milk Company,	3,158 56	169 56	3,328 12
Boston Express Exchange (Inc.),	21 50	10	21 60
Boston Felt and Rubber Company,	143 36	86	144 22
Boston Felt Manufacturing Company,	537 60	2 69	540 29
Boston Gazette Company,	32 97	16	33 13
Boston Hat and Bonnet Frame Company,	26 88	08	26 96
Boston Institute, Inc.,	27 32	1 38	28 70
Boston Lighter Company,	430 29	8 52	438 81
Boston Sash Weight Company,	34 04	15	34 19
Boston Store, Inc.,	64 51	32	64 83
Boston Surgical Specialty Company,	10 75	–	10 75
Boston Woven Hose and Rubber Company,	10,639 96	49 65	10,689 61
Boulevard Pharmacy,	35 84	18	36 02
Boyden & Co., Inc.,	26 88	27	27 15
Boynton & Plummer, Inc.,	89 60	50	90 10
Brewer Elevator Company,	157 69	7 88	165 57
Brighton Dressed Meat Company,	81 55	33	81 88
Brockton Box Toe Corporation,	120 06	1 30	121 36
Brockton Die Company,	32 72	1 30	34 02
Brockton Family Market, Inc.,	86 01	–	86 01
Brookline Press,	15 05	–	15 05
Bruce-Heustis Electric Company,	348 54	1 74	350 28
Budd Company,	155 68	–	155 68
Builders' Iron and Steel Company,	125 44	2 50	127 94
Bullard Company,	61 07	31	61 38
Burnham Shoe Company,	60 92	–	60 92
Butler Beef Company,	349 44	2 09	351 53
Butman & Cressey Company,	372 73	3 48	376 21
C. & J. Manufacturing Company,	31 36	78	32 14
C. D. Wright Company,	107 52	2 15	109 67
C. F. Coombs & Co., Inc.,	92 25	3 13	95 38
C. F. Tompkins Company,	250 36	1 50	251 86
C. G. Howes Company,	53 76	22	53 98
C. H. Goulding Company,	75 26	38	75 64
C. J. Peters & Son Company,	346 89	1 38	348 27
C. P. Hicks Company,	65 00	–	65 00
C. P. Thompson Company, Inc.,	537 60	10 75	548 35
C. Sargent Bird, Inc.,	53 76	36	54 12
C. W. Stone Company,	35 84	21	36 05
Cambyses Company,	148 98	4 44	153 42
Cape Ann Clothing Company, Inc.,	224 03	1 33	225 36
Cape Cod Products Company,	837 76	12 40	850 16

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Carder Wood Working Company,	$89 60	$0 31	$89 91
Carl G. Westlund Company,	56 16	37	56 53
Carr Mines Company,	10 00	–	10 00
Carter & Woodman Company,	25 23	13	25 36
Carter-Chesebro Company,	85 47	–	85 47
Cattaraugus Tanning Company,	375 00	1 31	376 31
Caverly-Plumer Company,	13 51	25	13 76
Central Autogenous Welding and Manufacturing Company,	53 83	27	54 10
Ceylon Tea Growers, Inc.,	197 12	1 18	198 30
Chas. A. Jackson Company,	22 40	11	22 51
Charles E. Hall & Sons, Inc.,	61 98	38	62 36
Charles E. Lauriat Company,	1,792 00	8 05	1,800 05
Charles E. Perry Company,	222 45	78	223 23
Charles Emmel & Rose Company,	135 47	67	136 14
Chas. P. Whittle Manufacturing Company,	131 89	71	132 60
Chattel Loan Company,	1,115 08	55 77	1,170 85
Chelsea Investment Association, Inc.,	78 27	46	78 73
Church's Booking Office, Inc.,	21 50	86	22 36
Clark Remedies Company,	15 39	40	15 79
Coates Clipper Manufacturing Company,	89 60	1 85	91 45
Cobb & White Company,	12 90	07	12 97
Cochrane Manufacturing Company,	3,344 40	18 95	3,363 35
Coconis Cigarette Machine Company,	26 88	12	27 00
Codman & Co., Inc.,	134 40	71	135 11
Coldwell-Gildard Company,	126 73	63	127 36
Colonial Counter Company,	41 21	37	41 58
Columbia Comb Company,	116 48	68	117 16
Columbia Manufacturing Company, Inc.,	26 88	1 34	28 22
Columbian Furniture Company,	69 67	1 30	70 97
Commonwealth Avenue Pharmacy, Inc.,	107 52	64	108 16
Commonwealth Laundry Company,	216 83	4 32	221 15
Connecticut Valley Street Railway Company,	2,955 52	17 73	2,973 25
Continental Fruit Products Company,	111 03	60	111 63
Converse Rubber Shoe Company,	5,776 29	17 33	5,793 62
Corey Klein Company,	5 37	–	5 37
Cote Piano Manufacturing Company,	3,849 21	119 33	3,968 54
Cotuit Oyster Company,	524 07	2 97	527 04
Crocker Drug Company,	26 88	1 60	28 48

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Crown Linen Mills,	$16 12	$1 08	$17 20
Crown Packing Company,	104 36	52	104 88
Cuba Importation Company,	30 00	17	30 17
Cunningham Brothers, Inc.,	67 20	1 34	68 54
Curtis & Cameron, Inc.,	107 52	50	108 02
Cushing Medical Supply Company,	232 96	1 24	234 20
D. A. Smith Company,	84 22	53	84 75
D. Doherty Company,	326 93	9 15	336 08
D. L. Page Company,	199 61	69	200 30
Dadmun Company,	107 52	3 65	111 17
Dan E. Spaulding Restaurant Company,	43 00	22	43 22
Dana Furniture Company,	89 60	45	90 05
Daudelin & Cotton, Inc.,	21 05	–	21 05
Davies Rose & Co., Ltd.,	206 08	58	206 66
Dine Brothers, Company,	268 80	1 34	270 14
Dine Rubin & Macaulay Company,	161 28	–	161 28
Donoghue Silk Company,	197 12	1 41	198 53
Douglas Granite Company,	15 68	–	15 68
Dove Machine Company, Inc.,	244 07	4 88	248 95
Dr. Hallock Drug Company,	44 80	22	45 02
Dr. Swett Root Beer Company,	114 68	46	115 14
Driscoll & Co., Inc.,	71 68	40	72 08
Druggists' Manufacturing Association,	181 70	5 05	186 75
Dudley Mears & Stevens, Inc.,	207 87	–	207 87
Dukelow & Walker Company,	43 00	42	43 42
Dunn Flyer Company,	387 96	1 74	389 70
Dunster Amusement Company,	143 36	72	144 08
E. C. Andrews Company,	32 25	–	32 25
E. C. Howard Company,	128 21	1 62	129 83
E. G. Tutein & Co., Inc.,	111 10	3 78	114 88
E. H. McCausland Company, Inc.,	8 96	04	9 00
E. J. Scanlon Company,	17 92	11	18 03
E. L. French Company,	5 32	04	5 36
E. M. Sands (Inc.),	89 60	52	90 12
E. R. Brown Beer Pump Company,	33 58	–	33 58
E. R. Sherburne Company,	87 64	–	87 64
E. S. Lincoln, Inc.,	13 61	0 08	13 69
Earle Provision Company,	26 44	13	26 57
East Douglas Clothing Company,	21 50	–	21 50
East India Extract Company,	30 00	1 56	31 56
Eastern Discount Company,	11 32	08	11 40
Eastern Furniture Company,	11 41	–	11 41
Eastern Handle Company,	45 69	38	46 07
Eastern Metal and Refining Company,	104 38	42	104 80

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Eastern Salt Company,	$446 87	–	$446 87
Eastern Theatres Company,	46 59	$0 15	46 74
Eastern Underwriting Company,	18 81	–	18 81
Edgewood Garage Company, Inc.,	67 20	34	67 54
Electro-Chemical Fibre Company,	25 98	12	26 10
Electro Service Press,	21 50	10	21 60
Elliott & Douglas Manufacturing Company,	125 44	50	125 94
Elm Hill Provision Company,	47 30	24	47 54
Elston & Swift, Inc.,	448 00	8 96	456 96
Ensign Manufacturing Company,	365 56	1 83	367 39
Essex Investment Company,	78 40	22	78 62
Essex Waste Company,	55 91	34	56 25
F. A. Phelps Company,	26 88	09	26 97
F. A. Teeling Carriage Company,	8 60	04	8 64
F. B. Tilton Company,	39 42	22	39 64
F. H. Lane Company,	286 72	1 29	288 01
F. H. Thomas Company,	1,194 27	3 58	1,197 85
F. J. Terrill Motor Company,	38 70	40	39 10
F. M. Butler Company,	131 53	79	132 32
F. W. Martin Company,	8 96	–	8 96
Fall Brook Cranberry Company,	41 21	25	41 46
Fall River Wholesale Grocery Company,	86 71	26	86 97
Farmer's Shoe Shop, Inc.,	53 04	1 27	54 31
Federal Metallic Packing Company,	259 84	10 65	270 49
Felton-Turner Heating Company,	198 23	47	198 70
Ferncroft Club, Inc.,	89 60	50	90 10
Field Holmes Company,	250 88	1 00	251 88
Fitchburg Drug Company,	179 20	90	180 10
Fitchburg Real Estate and Loan Company,	90 13	72	90 85
Foster Company, Inc.,	268 80	8 07	276 87
Four Seas Company,	69 15	82	69 97
Framingham Commission House, Inc.,	59 60	1 19	60 79
Frank A. Andrews, Inc.,	35 84	09	35 93
Frank A. Arend & Co.,	44 80	09	44 89
Frank J. McGarry & Co., Inc.,	80 64	24	80 88
Frank P. Bennett & Co., Inc.,	129 02	75	129 77
Frank P. Brown Company,	36 55	45	37 00
Frank Ridlon Company,	985 60	4 93	990 53
Franklin Clothing Company,	89 60	45	90 05
Fred A. Loud Company,	202 49	5 90	208 39
Fred D. Sperry Company,	81 53	20	81 73
Frye & Crawford Drug Company,	17 92	08	18 00
Fudge Man Company,	5 37	13	5 50
Fuller Whitney Surveys Corporation,	53 76	35	54 11

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
G. B. Lawrence Company,	$98 91	$0 50	$99 41
G. H. Polley Company,	16 12	53	16 65
G. I. M. Vulcanizing Company,	12 90	06	12 96
G. W. Lord Company,	179 20	79	179 99
G. W. Sammet & Son Company,	482 04	2 89	484 93
Garden City Laundry Company,	80 64	1 61	82 25
Gay Automobile Company,	98 56	82	99 38
George Dietz Company,	21 50	10	21 60
George F. Vester Company,	53 76	54	54 30
George H. Ball Company,	179 20	4 96	184 16
George H. Mason Company,	245 50	2 64	248 14
George H. Sallaway Company,	205 72	1 03	206 75
George H. Sherbert, Inc.,	53 76	1 82	55 58
George T. Horan, Inc.,	224 00	7 61	231 61
George W. Gale Lumber Company,	1,013 37	6 76	1,020 13
Gloucester Gill-Net Fisheries Company, Inc.,	143 00	75	143 75
Gloucester Loan Company,	107 52	65	108 17
Goldman Brothers Company,	44 80	–	44 80
Gordon & Sparrow Company,	241 92	1 25	243 17
Gordon Home, Inc.,	62 72	35	63 07
Gosnold Mills Company,	3,708 09	21 01	3,729 10
Goward's Market Company,	44 80	10	44 90
Graham Company,	53 76	24	54 00
Graustein Company,	241 92	15 06	256 98
Gray-Aldrich Company, Inc.,	185 29	74	186 03
Greendale Gas Engine Company,	112 00	2 08	114 08
Greene & Fish Company,	268 80	81	269 61
Grossman Cap Company,	17 92	–	17 92
Guilford Kendrick & Ladd, Inc.,	381 69	2 23	383 92
Gurvitz-Arbeter Company,	10 75	50	11 25
Guy Furniture Company,	833 67	4 87	838 54
H. & B. Manufacturing Company,	71 05	49	71 54
H. B. Keen, Inc.,	48 06	48	48 54
H. C. Girard Company,	150 62	75	151 37
H. C. H. Fruit Company, Inc.,	35 84	21	36 05
H. Dangel Company,	184 57	–	184 57
H. E. Lindbladh Company,	25 08	48	25 56
H. I. Emmons Company,	4 50	–	4 50
H. M. Kinports Company,	81 69	4 24	85 93
Hall Automobile Specialties Company,	14 33	–	14 33
Hallstone Electric Company,	17 47	16	17 63
Hampden Creamery Company,	135 33	2 70	138 03
Hampden Railroad Corporation,	6,272 00	37 63	6,309 63
Harrington Manufacturing Company,	219 52	1 09	220 61
Harriott Company,	39 04	16	39 20

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Harry Eldredge Goodhue Company,	$89 60	$2 65	$92 25
Hartley Silk Manufacturing Company, Inc.,	704 14	4 22	708 36
Harvard Provision Company,	16 12	–	16 12
Haverhill Construction Company,	64 51	28	64 79
Henry D. Temple Company,	80 64	32	80 96
Henry F. Farrow Company,	156 24	78	157 02
Henry F. Miller & Sons Piano Company,	3,014 23	30 14	3,044 37
Henry Gray Company,	32 25	1 06	33 31
Hertig Furnace Company,	45 69	23	45 92
Hetherston Importing Company,	403 20	13 84	417 04
Hide and Skin Importing Company,	143 36	84	144 20
Hide-ite Leather Company,	689 47	10 34	699 81
Highland Paint and Wall Paper Company,	114 68	92	115 60
Hill Dryer Company,	394 59	1 38	395 97
Hill Press, Incorporated,	5 37	29	5 66
Hills Chair-Couch Manufacturing Company,	26 52	–	26 52
Hilton Express Company,	40 32	87	41 19
Hjorth Lathe and Tool Company,	125 44	1 06	126 50
Hodgson Kennard & Co., Inc.,	1,073 40	10 54	1,083 94
Hollander Motor Company,	109 81	3 59	113 40
Home Dairy Lunch Company,	107 52	60	108 12
Hooper Lewis & Co., Inc.,	322 56	–	322 56
Hooper Printing Company,	62 72	32	63 04
Hotel Empire, Inc.,	179 20	5 55	184 75
Housatonic Water Works Company,	257 15	–	257 15
Howe Stove and Furniture Exchange, Inc.,	34 47	17	34 64
Hoyt Company,	430 08	11 10	441 18
Hub Mattress Company,	29 03	15	29 18
Hudson Printing Company,	35 84	18	36 02
Hunter Stationery Company,	37 75	–	37 75
Huntt's Lunch Company,	404 18	2 43	406 61
Ideal Dental Laboratory, Inc.,	20 42	10	20 52
Ideal Shoe Repairing Company,	90 31	3 05	93 36
Idle Hour Theatre Company,	26 43	53	26 96
Import and Export Associates,	53 76	2 18	55 94
Incorporated Realty Associates,	50 17	1 83	52 00
Independent Button Fastener Machine Co.,	157 21	5 66	162 87
Interchangeable Rubber Heel Company,	172 73	3 44	176 17
International Hide Company,	10 00	06	10 06
Investment and Trust Association,	53 76	27	54 03

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Isaac H. Dinner Company,	$53 76	$0 19	$53 95
J. A. Brenner & Co., Inc.,	272 38	1 36	273 74
J. G. Bridge Company,	154 39	90	155 29
J. G. Walker & Son Corporation,	201 65	1 20	202 85
J. H. Gerlach Company,	67 73	32	68 05
J. H. Green Company,	89 60	1 79	91 39
J. H. Robinson Company,	53 75	43	54 18
J. K. Taylor Manufacturing Company,	412 16	1 17	413 33
J. L. Legein Ice Cream Company,	128 12	86	128 98
J. M. Jameson Company,	22 57	–	22 57
J. Nardi Company,	80 64	–	80 64
J. S. Sieve Company,	135 11	67	135 78
James Barrett Manufacturing Company,	519 68	1 81	521 49
James H. Malone, Inc.,	179 20	1 43	180 63
James J. Loughery Company,	214 50	1 07	215 57
James Miles & Son Company,	89 24	1 72	90 96
Jenkins & Smith, Inc.,	654 20	2 82	657 02
Jeremiah J. McCarthy Company,	16 12	20	16 32
John Cavanah & Son Building Moving Company,	188 16	10 36	198 52
John E. Lynch Hardware Company,	71 68	40	72 08
John F. Johnston Company,	276 12	1 10	277 22
John Foster Company,	1,311 49	5 24	1,316 73
John H. Bryer, Inc.,	16 30	12	16 42
John J. Cluin Company,	44 80	35	45 15
John Quin & Son Company,	322 56	1 61	324 17
Jordan-Goodridge Company,	83 68	75	84 43
Joseph Wilcox Company,	275 96	–	275 96
Kakas Brothers, Inc.,	940 80	4 70	945 50
Kelly Leather Goods Company,	7 31	02	7 33
Keystone Job Print,	36 73	18	36 91
Kilburn Lincoln & Co.,	1,383 74	17 76	1,401 50
Kimball Aeroplane Company,	10 12	–	10 12
King Philip Tavern Company,	36 55	70	37 25
Kinney Heating and Supply Company,	40 89	41	41 30
Kinney Manufacturing Company,	1,254 40	6 27	1,260 67
Klein Manufacturing Company,	16 12	10	16 22
Kleno Manufacturing Company,	17 92	–	17 92
Koerner & Mitchell Company,	101 66	41	102 07
L. A. Williamson Company,	7 50	–	7 50
L. G. Fisk-Mooers Company,	179 20	1 83	181 03
L. K. Husted Company, Inc.,	43 00	23	43 23
L. P. Soule & Son Company,	397 37	2 32	399 69
Lamere & Robinson Company,	44 08	2 20	46 28
Lang & Jacobs Company,	94 08	47	94 55
Lawrence & Stanley Company,	57 73	29	58 02

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Lawrence B. Smith Company,	$404 32	$2 02	$406 34
Lawrence Fruit and Grocery Company,	13 08	–	13 08
Lawrence Market Company,	64 51	1 60	66 11
Lawrence Motor Mart, Inc.,	18 81	10	18 91
Lawrence Wholesale Drug Company,	268 80	1 82	270 62
Leavitts Scotch Polish Company,	23 56	2 10	25 66
L'Echo Publishing Company,	402 57	1 21	403 78
Leominster Electric Company,	35 84	18	36 02
Levy Bros., Inc.,	59 13	2 11	61 24
Lewis F. Small, Inc.,	17 92	08	18 00
Liberty Paper Company,	215 04	1 08	216 12
Lincoln Leather Goods Company,	67 20	–	67 20
Linscott Motor Company,	396 92	3 18	400 10
Linscott Supply Company,	345 13	2 36	347 49
Lion Raincoat Company,	55 55	31	55 86
London Harness Company,	806 40	6 77	813 17
Lovells (Inc.),	64 51	1 29	65 80
Lunt Moss Company,	738 75	4 43	743 18
Lyn Home Company,	17 92	08	18 00
Lynch Heel Company,	80 64	1 64	82 28
Lynn Manufacturers and Merchants Mutual Fire Insurance Company,	156 62	79	157 41
Lynn Photo Chemical Company,	10 75	26	11 01
Lyon Company,	197 69	1 00	198 69
Lyric Amusement Company,	49 28	39	49 67
M. & C. Hat Company,	50 17	25	50 42
M. D. Malbon Company,	496 18	2 48	498 66
M. Marks Company,	62 72	25	62 97
MacLean Produce Company,	62 72	36	63 08
Magee Furnace Company,	1,692 41	8 46	1,700 87
Maine Ice Cream Company,	67 20	54	67 74
Maine State Creamery Company,	17 93	–	17 93
Majestic Company,	215 04	1 15	216 19
Malden Leather Goods Company,	110 38	47	110 85
Manhattan Collar Company,	89 60	30	89 90
Manhattan Grocery and Provision Company,	1,247 23	7 28	1,254 51
Mansfield Drug Company,	44 80	22	45 02
Manufacturers Outlet Company,	17 92	06	17 98
Mark Motor Supply Company,	53 90	32	54 22
Mason Manufacturing Company,	12 54	36	12 90
Massachusetts Investment Company,	17 31	14	17 45
Massachusetts Loan Society, Inc.,	97 19	48	97 67
Massasoit Company,	539 03	10 78	549 81
Matchless Heater Company,	84 36	2 53	86 89
Matthew F. Sheehan Company,	412 16	3 74	415 90

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Mayfair Manufacturing Company,	$95 87	$0 48	$96 35
Mayflower Laundry Company,	116 48	2 56	119 04
Maykel Automobile Company,	35 84	27	36 11
Mellish & Byfield Manufacturing Company,	152 32	88	153 20
Mellor Manufacturing Company,	44 80	1 35	46 15
Melville Pharmacy, Inc.,	107 52	72	108 24
Melvin Bancroft Company,	26 88	12	27 00
Merchandise and Laundry Tag Company,	58 54	23	58 77
Methuen Granite Company,	6 25	03	6 28
Metropolitan Laundry Company,	507 85	7 10	514 95
Middlesex Drug Company,	81 05	41	81 46
Miles Patents Company,	80 31	24	80 55
Miller Brothers, Inc.,	388 86	1 36	390 22
Millers River Box Company,	87 80	51	88 31
Milton Laundry Company,	21 50	3 32	24 82
Model Laundering Company,	95 87	2 11	97 98
Monarch Valve and Manufacturing Company,	782 92	17 74	800 66
Morse McDonald Company,	86 01	44	86 45
Mosely & Maschin, Inc.,	197 12	1 12	198 24
Motor Specialties Company,	89 99	1 79	91 78
Munroe & Arnold-Merritt Express Company,	499 96	2 00	501 96
Murphy Boot and Shoe Company,	543 69	27 18	570 87
Murphy Coal and Wood Company,	297 47	1 83	299 30
Murphy Cone Company,	5 37	02	5 39
Myrlite Company of America,	90 00	1 35	91 35
National Druggists Supply Company,	322 14	11 56	333 70
National Games Company,	89 60	2 65	92 25
National Investment and Securities Company,	614 97	5 24	620 21
National Knitting Company,	179 20	86	180 06
National Manufacturing Company,	260 07	1 28	261 35
National Matzo Company of Boston,	19 03	12	19 15
National Metallic Bed Company,	238 33	4 76	243 09
Nelson Color Company,	112 89	2 07	114 96
New Bedford Clothing and Jewelry Company,	71 68	72	72 40
New England Cold Storage Company,	860 16	4 30	864 46
New England Converting Company,	35 84	–	35 84
New England Directory Company,	28 70	–	28 70
New England Discount Company,	1,364 93	11 24	1,376 17

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
New England Hardware Company,	$44 80	$0 55	$45 35
New England Office Furniture Company,	89 60	53	90 13
New England Reed Company,	346 17	1 73	347 90
New England Supply Company,	136 59	–	136 59
New York Mattress Company,	329 72	16 48	346 20
Newport Provision Company,	24 00	–	24 00
Newport Transfer Express Company,	7 50	06	7 56
Niagara Laundry Company,	7 16	–	7 16
Nickles Cranberry Company,	31 18	07	31 25
Nobscot Mountain Spring Company,	258 04	75	258 79
Non-Corrosive Metal Manufacturing Company,	54 47	–	54 47
North Shore Breeze Company,	17 92	35	18 27
North Shore Red Granite Company,	125 44	2 50	127 94
Northampton Printing and Binding Company,	47 12	24	47 36
Norton Water Motor Company,	22 57	15	22 72
Novelty Dress Company,	29 38	15	29 53
Oak Street Garage, Inc.,	61 82	31	62 13
Ocean Mills Company,	132 94	66	133 60
Olympic Theatre Company,	17 92	06	17 98
Omiros Cigarette Company, Inc.,	117 19	59	117 78
Ovington Aviation School of Correspondence,	5 16	–	5 16
Oxford Rubber Company,	669 58	6 92	676 50
Oxidite Manufacturing Company,	31 18	16	31 34
P. Creedon Company,	322 56	1 61	324 17
P. F. Wood Boiler Works, Inc.,	161 28	1 00	162 28
Palmer Hunter Lumber Company,	492 80	2 87	495 67
Palmer Renting Company,	62 72	3 44	66 16
Pamott Mines Company,	80 00	80	80 80
Panama Canal and Amusement Company,	465 92	2 02	467 94
Park Theatre Amusement Company,	12 90	24	13 14
Parker Brothers Iron Company,	64 65	–	64 65
Parsons Manufacturing Company,	412 16	13 60	425 76
Payson Mitchell Company,	53 76	26	54 02
Peerless Welding and Manufacturing Company,	148 73	8 06	156 79
Pemberton Sales Company,	116 48	58	117 06
Peoples Drug Store Company,	24 19	19	24 38
Perkins & Co., Inc.,	250 88	3 21	254 09
Perkins Appliance Company,	52 41	–	52 41

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Perlmuter Brothers Company, Inc.,	$35 84	$0 18	$36 02
Perry & Ayers (Inc.),	7 16	–	7 16
Perry Mason Company,	6,318 59	30 54	6,349 13
Persian Rug Loft, Inc.,	74 17	3 63	77 80
Picture Shop, Inc.,	43 00	17	43 17
Pierce & Barnes Company,	17 92	39	18 31
Pierce & Chesworth Company,	16 12	–	16 12
Pierce, Macomber Meat and Grocery Company, Inc.,	33 97	19	34 16
Pine Croft Orchard Company,	11 46	05	11 51
Pine Grove Floral Corporation,	7 52	08	7 60
Pinkham Press,	82 55	3 30	85 85
Plymouth Auto Company,	5 37	05	5 42
Plymouth Manufacturing Company,	89 60	54	90 14
Pope-Hartford Company of Boston,	890 62	9 63	900 25
Post Office Pharmacy, Inc.,	53 76	29	54 05
Presbrey-Field Company,	358 40	2 08	360 48
Prescott Auto Parts Company,	46 59	19	46 78
Progress Rubber Company,	89 60	40	90 00
Prospect Auto Company,	57 34	65	57 99
Providence Scenic Theatre Company,	72 09	40	72 49
Purity Confectionery Company,	62 72	1 38	64 10
Queen Manufacturing Company, Inc.,	94 97	40	95 37
R. B. Mason Company, Inc.,	515 20	2 10	517 30
R. C. Goudey Company,	68 43	36	68 79
R. F. Dodge Company,	26 88	1 08	27 96
R. T. Todd Company,	387 07	2 29	389 36
R. T. Sullivan Company,	276 41	1 14	277 55
Rayolite Company,	63 63	2 73	66 36
Re-New Lamp Company,	487 42	1 38	488 80
Reading Custom Laundry, Inc.,	41 21	24	41 45
Regal Laundry Company,	53 76	18	53 94
Revere Boat Company,	8 52	85	9 37
Rex Wrench Company,	46 12	30	46 42
Riverside Park Amusement Company,	159 93	69	160 62
Roackdale Woollen Company,	10 21	–	10 21
Robt. Cook & Sons Company,	110 74	–	110 74
Robert R. McNutt, Inc.,	67 20	3 42	70 62
Robinson Bramley Company, Inc.,	26 88	–	26 88
Robinson-Brockway Manufacturing Company,	138 75	89	139 64
Rosengard Furniture Company,	168 44	85	169 29
Ross Brothers Company,	1,344 00	25 08	1,369 08

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Royal Furniture Company,	$266 64	$15 96	$282 60
Royal Laundry Company,	16 12	08	16 20
Royal Shoe Company,	142 64	81	143 45
Rutland Cade Company,	17 92	–	17 92
Ryan & Duffee, Inc.,	179 20	90	180 10
S. E. Cassino Company,	102 50	2 00	104 50
S. M. Howes Company,	2,279 42	7 22	2,286 64
S. W. Loomis Company,	114 36	57	114 93
St. Clairs' (Inc.),	216 41	1 30	217 71
St. Louis Rubber Company,	344 06	1 70	345 76
Sally's Embroidery and Cleansing Company,	31 16	16	31 32
Samuel Ward Company,	2,329 60	6 98	2,336 58
Sanitary Paper Cup Company,	49 28	2 16	51 44
Saskatchewan Investment Company,	44 79	13	44 92
Sawyer Drug Company,	73 38	37	73 75
Scandinavian Co-operative Grocery Union,	64 49	37	64 86
School Arts Publishing Company,	159 73	1 33	161 06
School Street Piano Storage Company,	64 51	1 29	65 80
Seth W. Fuller Company,	69 47	1 80	71 27
Shadduck and Normandin Company,	111 22	55	111 77
Sheedy Amusement Company,	71 68	2 37	74 05
Sheldon Brothers Company,	7 16	05	7 21
Shortstory Publishing Company,	46 16	23	46 39
Show Card Shop, Inc.,	8 60	25	8 85
Shultz-Goodwin Company,	684 99	5 14	690 13
Silas Peirce & Co., Ltd.,	2,128 98	6 39	2,135 37
Silox Pure Water Company of New England,	66 07	33	66 40
Silver Lake Ice Company,	216 49	1 00	217 49
Simmons Cranberry Company,	7 52	15	7 67
Simplex Automobile Agency, Inc.,	101 06	2 16	103 22
Slattery Brothers Automobile Company,	179 20	1 07	180 27
Small Maynard & Co. (Inc.),	1,344 00	5 06	1,349 06
Smith Tablet Company, Inc.,	250 88	1 25	252 13
Smithmade Suspender Company,	71 68	21	71 89
Somerset Coal Company,	8 60	10	8 70
Somerset Raincoat Company,	26 88	13	27 01
Soule Art Publishing Company,	41 21	15	41 36
South End Motor Car Company,	198 58	2 50	201 08
Southgate Press — T. W. Ripley Company,	466 36	2 72	469 08
Specialty Leather Goods Company,	50 76	15	50 91
Specialty Shop,	119 34	36	119 70

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Springfield Ice and Coal Company,	$2,610 94	$14 80	$2,625 74
Springfield Manufacturing Company,	192 46	1 00	193 46
Springfield Office Supply Company,	241 92	1 46	243 38
Standard Dyewood and Extract Company,	28 67	–	28 67
Standard Handle and Lumber Company,	6 30	11	6 41
Standard Motor Car Company,	98 56	–	98 56
Standard Scale and Equipment Company,	289 83	–	289 83
Standard Supply Company, Inc.,	95 85	47	96 32
Sterns & Waterman Company,	43 00	22	43 22
Steel Specialties Company,	71 68	32	72 00
Stockbridge Water Company,	174 72	1 07	175 79
Stoddard Ice Cream Company,	11 28	02	11 30
Stoddard Union Company,	482 94	4 02	486 96
Stones Express, Inc.,	268 80	1 50	270 30
Story Simmons Company,	112 89	68	113 57
Stratton Automobile Company,	7 16	14	7 30
Suffolk Manufacturing Company,	31 18	16	31 34
Sullivan & Daly Company,	224 00	8 28	232 28
Sunnymeade Farms, Inc.,	26 88	15	27 03
Sylvester Brothers Company,	5 37	–	5 37
Sylvester Tower Company,	1,465 85	8 79	1,474 64
T. D. Borst Company,	62 84	31	63 15
T. H. O'Donnell & Co., Inc.,	107 52	2 15	109 67
T. Shea, Inc.,	224 00	1 12	225 12
T. T. Connolly Company,	7 52	04	7 56
Tarr's Structural and Marine Paint Company,	21 71	–	21 71
Taunton Co-operative Grocery Company, Inc.,	31 89	16	32 05
Taunton Evening News,	161 28	1 24	162 52
Taunton Spindle Company,	17 92	08	18 00
Taylor Chemical Company,	483 64	14 16	497 80
Telepost Company of Massachusetts,	17 92	45	18 37
Tenney Worcester Company,	52 41	52	52 93
Therapeutic Publishing Company,	20 85	65	21 50
Thermolac Manufacturing Company,	62 54	50	63 04
Thissell Company,	35 84	18	36 02
Thomas D. Gard Company, Inc.,	64 51	31	64 82
Thomas J. Hind, Inc.,	28 42	–	28 42
Thompson Snow & Davis Company,	601 28	3 51	604 79
Thorn Medicine Company,	53 76	27	54 03

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Tichnor Brothers, Inc.,	$259 84	$1 46	$261 30
Times Company,	13 44	–	13 44
Torrey-Epstein Company,	7 16	04	7 20
Totem Manufacturing Company,	228 30	4 57	232 87
Transcript Press, Inc.,	71 68	20	71 88
Transfer Pharmacy, Inc.,	12 54	10	12 64
Tribune-Enterprise, Inc.,	5 37	–	5 37
Trimount Laundry Company,	56 44	23	56 67
Trombly Jewelry Company,	206 40	2 27	208 67
U. T. Hungerford Brass and Copper Company of Boston,	89 60	36	89 96
Union Avenue Hospital, Inc.,	22 22	12	22 34
Union Commercial Paper Company,	60 69	40	61 09
Union Curled Hair Company,	7 16	04	7 20
Union Furniture Company,	295 08	1 48	296 56
Union Raincoat Company,	86 01	69	86 70
Union Seal Company,	78 84	78	79 62
Union Supply Company,	160 34	64	160 98
Union Trading Stamp Company,	6 45	03	6 48
United Cleanser Company,	61 64	4 42	66 06
United States Snuff Company,	59 24	35	59 59
Universal Manufacturing Company,	8 06	18	8 24
Utley's, Inc.,	165 70	1 27	166 97
Vail Galvanizing Plant, Inc.,	96 76	39	97 15
Van Tassel Leather Company,	805 50	65 24	870 74
Vesuvio Drug Company,	17 92	08	18 00
Victor Shoe Machinery Company,	286 72	12 32	299 04
Victoria Aeroplane Automobile and Amusement Company,	24 76	1 08	25 84
Viets Company,	18 24	38	18 62
Vulcan Manufacturing Company,	163 23	82	164 05
W. A. Jefts Company,	82 96	77	83 73
W. Bert Lewis Shoe Company,	312 84	1 08	313 92
W. C. Bates Company,	48 38	24	48 62
W. C. Welch Company,	98 00	54	98 54
W. E. Greene Amusement Company,	8 96	–	8 96
W. George Greenlay Company,	38 70	1 15	39 85
W. H. Marble Automobile Company,	215 04	1 19	216 23
W. M. McDonald Company, Inc.,	220 41	2 42	222 83
W. M. Young Regalia Company,	29 74	–	29 74
W. P. B. Brooks & Co., Inc.,	74 38	27	74 65
W. P. Goode Brush Company,	112 89	68	113 57
W. Pence Mitchell Hat Company,	17 92	–	17 92

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Wachtel-Pickert Company,	$225 75	$11 15	$236 90
Wade Machine Company,	170 24	85	171 09
Walbuck Crayon Company,	32 25	18	32 43
Ward, Drouet & Foster, Inc.,	541 18	14 61	555 79
Warren-Allen Carpet Company,	161 28	82	162 10
Washburn Brothers Company,	183 50	57	184 07
Washburn Realty Trust, Limited,	174 07	99	175 06
Waterhouse Welding Company,	35 84	72	36 56
Watson Blood Company,	116 48	1 17	117 65
Wellington Rubber Company,	179 20	1 91	181 11
Wells-Burrage Company,	241 92	–	241 92
West Lynn Lithuanian Co-operative Market, Inc.,	17 05	08	17 13
Western Massachusetts Essenkay Company,	51 60	–	51 60
Western Oil Company,	51 60	1 70	53 30
White Automobile Company,	77 46	58	78 04
White Motor Car Company,	86 58	50	87 08
White Store (Inc.),	163 43	–	163 43
Whiting Manufacturing Company,	242 81	7 79	250 60
Whitney Law Corporation,	292 04	3 46	295 50
Whittier Woodenware Company,	537 60	12 36	549 96
Wilbert E. Welch Company,	39 06	1 88	40 94
Wilkenda System, Inc.,	168 71	1 15	169 86
William Allens Sons Company,	281 34	1 50	282 84
William C. Norcross Company,	319 88	1 65	321 53
William F. Bryan Waste Company,	80 64	2 66	83 30
William Gilligan Company,	114 68	92	115 60
William J. McCarthy Company,	50 17	15	50 32
William J. Rafferty Company,	35 84	16	36 00
William L. Browne Electric Company,	111 46	46	111 92
William Porter & Son, Inc.,	60 00	23	60 23
Williamstown Glass Sales Company,	444 61	2 22	446 83
Willis C. Bates Company,	99 68	3 18	102 86
Willsite Flooring Company, Inc.,	20 00	–	20 00
Winchester News Company,	25 26	23	25 49
Witch City Tanning Company,	354 86	–	354 86
Woodward-Reopell Company,	208 58	4 98	213 56
Worcester Automobile Company,	94 08	47	94 55
Worcester Co-operative Market Company,	82 61	–	82 61
Worcester Hay and Grain Company,	173 82	90	174 72
Worcester Paper Box Company,	26 88	13	27 01
Workingmen's Loan Association,	2,464 00	–	2,464 00
Wright Cutter Company,	503 87	5 04	508 91

	Collected on Account of Corporation Tax for 1913.	Interest.	Totals.
Wright Illustrative and Engraving Company,	$140 33	$0 70	$141 03
Wyco Products Company,	53 76	27	54 03
Wyn-Croft Company,	17 92	08	18 00
Yo Yo Beverage Company,	107 52	2 15	109 67
Young & Follett Company,	22 40	11	22 51
Zetterman Machinery Company,	44 80	1 47	46 27
Total,	$201,275 93	$1,966 11	$203,242 04

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, 1914, 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.
1914.					
Jan. 1	New Jersey,	Charles W. Hoffman,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 3	Mississippi,	Leroy S. Ricker,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 8	Alabama,	John P. Bagley,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 9	Wisconsin,	Frederick Hatch,	Larceny,	Suffolk,	Lawful and in proper form.
Jan. 9	Pennsylvania,	Tullio N. Antonucci,	Desertion,	Suffolk,	Lawful and in proper form.
Jan. 15	New York,	Angelo Ralli,	Assault and battery,	Plymouth,	Lawful and in proper form.
Jan. 24	New York,	John F. Hall, *alias*,	Fraudulently procuring entertainment at an inn.	Suffolk,	Lawful and in proper form.
Feb. 3	New York,	M. Bergman, *alias*,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 4	Ohio,	John E. Peck,	Nonsupport of minor children,	Plymouth,	Lawful and in proper form.
Feb. 4	Maine,	James N. Hilton,	Desertion,	Essex,	Lawful and in proper form.
Feb. 5	New Hampshire,	John H. Bain, *alias*,	Forgery,	Suffolk,	Lawful and in proper form.
Feb. 11	New York,	Jacob Hurwitz,	Larceny,	Suffolk,	Lawful and in proper form.
Feb. 12	New York,	Gabriel Shupeck, *alias*,	Assault with dangerous weapon,	Hampden,	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.
Feb. 13	New York,	George W. Glines,	Nonsupport of wife and minor children.	Norfolk,	Lawful and in proper form.
Feb. 14	British Crown, Colony of Gibraltar.	Gaetano Razetto, *alias*,	Abduction,	Suffolk,	Lawful and in proper form.
Feb. 16	New Jersey,	James F. Drake,	Desertion,	Suffolk,	Lawful and in proper form.
Feb. 19	New York,	Daniel Watts, *alias*,	Desertion,	Suffolk,	Lawful and in proper form.
Feb. 20	New York,	Bartholomew Ruggivio,	Desertion,	Middlesex,	Lawful and in proper form.
Feb. 26	New York,	Duchie Richards,	Violation of parole,	Worcester,	Lawful and in proper form.
Mar. 2	New York,	Daniel Toomey, *alias*,	Breaking and entering,	Suffolk,	Lawful and in proper form.
Mar. 10	New York,	Morris Zolna,	Larceny,	Suffolk,	Lawful and in proper form.
Mar. 10	New York,	Ira G. Ross,	Obtaining signatures by false pretences.	Bristol,	Lawful and in proper form.
Mar. 11	New York,	Frank E. Walker,	Desertion,	Hampden,	Lawful and in proper form.
Mar. 19	Illinois,	Boyce Wilton Knight,	Polygamy,	Suffolk,	Lawful and in proper form.
Mar. 24	New York,	Harry Moore,	Larceny,	Suffolk,	Lawful and in proper form.
Apr. 13	Rhode Island,	William D. Chase,	Desertion and nonsupport,	Barnstable,	Lawful and in proper form.
Apr. 13	New York,	Louis B. Stanton,	Breaking and entering,	Middlesex,	Lawful and in proper form.
Apr 27	Pennsylvania,	Frank H. Ganong,	Desertion,	Middlesex,	Lawful and in proper form.
Apr. 30	New York,	Carl C. Brolund,	Desertion of minor child,	Suffolk,	Lawful and in proper form.
May 4	Nevada,	Harry L. Patch,	Desertion and nonsupport,	Middlesex,	Lawful and in proper form.
May 5	New York,	Morris Hircovitz,	Larceny,	Suffolk,	Lawful and in proper form.
May 18	Missouri,	Charles G. Hopkins and Mary G. Moore,	Conspiracy and larceny,	Suffolk,	Lawful and in proper form.
May 18	Maine,	James E. York,	Nonsupport of minor children,	Suffolk,	Lawful and in proper form.

May	21	New York,	William J. F. Price,	Larceny,	Suffolk,	Lawful and in proper form.
May	21	Maine,	Fred L. Blinn,	Desertion and nonsupport,	Essex,	Lawful and in proper form.
May	29	New Jersey,	John A. Hirst,	Larceny,	Essex,	Lawful and in proper form.
May	29	New York,	Salvatore Salica,	Larceny,	Suffolk,	Lawful and in proper form.
June	1	Illinois,	Guiseppe Montaldo,	Desertion,	Essex,	Lawful and in proper form.
June	2	California,	Joseph Snyder, *alias*,	Forgery,	Suffolk,	Lawful and in proper form.
June	4	New York,	Charles Garone,	Stealing,	Hampden,	Lawful and in proper form.
June	8	New York,	George W. Salvage, *alias*,	Incest,	Middlesex,	Lawful and in proper form.
June	8	New York,	Frank E. Watson, *alias*,	Larceny and bigamy,	Essex,	Lawful and in proper form.
June	9	New Jersey,	Leonard Shinbey, *alias*,	Forgery and larceny,	Suffolk,	Lawful and in proper form.
June	13	New York,	Frank Parone,	Murder,	Hampden,	Lawful and in proper form.
June	16	New York,	William G. Whitcomb,	Larceny,	Norfolk,	Lawful and in proper form.
June	18	Rhode Island,	Joseph A. Lawson,	Nonsupport of minor children,	Worcester,	Lawful and in proper form.
June	18	New York,	John J. Cameron,	Desertion,	Suffolk,	Lawful and in proper form.
June	24	New York,	Joseph H. Feldman,	Desertion,	Suffolk,	Lawful and in proper form.
July	1	New York,	Jussas Marcelionis, *alias*,	Desertion,	Worcester,	Lawful and in proper form.
July	2	Maine,	Manuel Magellan,	Assault,	Middlesex,	Lawful and in proper form.
July	7	New York,	Norman Blight,	Desertion and nonsupport,	Middlesex,	Lawful and in proper form.
July	17	New Jersey,	Gaetano De Vaio and Virginia Barbato,	Murder,	Essex,	Lawful and in proper form.
July	30	Delaware,	Carume Roberts, Guiseppe Perillo and Antonio Perillo.	Manslaughter,	Worcester,	Lawful and in proper form.
July	30	Connecticut,	James DeCere, *alias*,	Assault with dangerous weapon,	Norfolk,	Lawful and in proper form.
Aug.	5	New York,	N. M. Marshall,	Larceny,	Suffolk,	Lawful and in proper form.
Aug.	6	Minnesota,	Wheeler Mills,	Murder,	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.
Aug. 11	New York,	August Dahlquist,	Breaking and entering,	Suffolk,	Lawful and in proper form.
Aug. 12	New York,	Charles Pieredia,	Desertion,	Middlesex,	Lawful and in proper form.
Aug. 14	New York,	John Alberts,	Nonsupport,	Essex,	Lawful and in proper form.
Aug. 17	Pennsylvania,	Samuel B. Roberts,	Larceny,	Middlesex,	Lawful and in proper form.
Aug. 20	New Jersey,	Tobias Greenberg, *alias*,	Stealing,	Hampden,	Lawful and in proper form.
Aug. 20	Pennsylvania,	Charles H. Norton,	Desertion,	Suffolk,	Lawful and in proper form.
Aug. 31	New York,	Ohvannas Vartanian,	Larceny,	Suffolk,	Lawful and in proper form.
Aug. 31	New York,	Francesco Luizzi,	Murder,	Middlesex,	Lawful and in proper form.
Sept. 9	New York,	Edward O. Fuller and Walter Rattello,	Breaking and entering,	Hampden,	Lawful and in proper form.
Sept. 9	New York,	Alexander Budginas,	Desertion and nonsupport,	Middlesex,	Lawful and in proper form.
Sept. 14	Rhode Island,	George W. Collins,	Larceny,	Suffolk,	Lawful and in proper form.
Sept. 14	Connecticut,	John Stebbins, *alias*,	Breaking and entering,	Suffolk,	Lawful and in proper form.
Sept. 17	New York,	Frederick I. Rivard,	Desertion,	Worcester,	Lawful and in proper form.
Sept. 21	New York,	William Moffatt, *alias*,	Larceny,	Suffolk,	Lawful and in proper form.
Sept. 23	Vermont,	Arthur McNally,	Desertion,	Essex,	Lawful and in proper form.
Sept. 24	Pennsylvania,	Robert Eldredge,	Larceny,	Worcester,	Lawful and in proper form.
Sept. 29	New York,	Richard P. Condon, Jr.,	Desertion,	Norfolk,	Lawful and in proper form.
Oct. 3	New York,	Frank W. Laskowski,	Arson,	Worcester,	Lawful and in proper form.
Oct. 5	Ohio,	Frank Fisher,	Robbery,	Suffolk,	Lawful and in proper form.
Oct. 13	New York,	Alonzo Bell,	Murder,	Bristol,	Lawful and in proper form.

Oct.	19	Vermont,	Thomas Manning,	Stealing and violating parole,	Franklin,	Lawful and in proper form.
Oct.	20	Secretary of Navy,	Nathan Karshav,	Carnal abuse,	Middlesex,	Lawful and in proper form.
Oct.	22	New York,	Levi T. Barney,	Larceny,	Middlesex,	Lawful and in proper form.
Oct.	26	New York,	George F. Vittum,	Nonsupport,	Middlesex,	Lawful and in proper form.
Oct.	26	New York,	Charles W. Clark,	Nonsupport,	Suffolk,	Lawful and in proper form.
Oct.	27	New Jersey,	James Bridgman,	Larceny,	Hampshire,	Lawful and in proper form.
Oct.	29	New York,	Homer Nicholson,	Getting Ebba Challberg with child,	Worcester,	Lawful and in proper form.
Oct.	30	New York,	Joseph Nugent,	Abduction,	Hampden,	Lawful and in proper form.
Nov.	9	New York,	Joe Bionda,	Larceny,	Worcester,	Lawful and in proper form.
Nov.	9	New Hampshire,	Fred Berthianne,	Larceny and violating parole,	Worcester,	Lawful and in proper form.
Nov.	11	New York,	Harry Williams, *alias*,	Larceny and violating parole,	Suffolk,	Lawful and in proper form.
Nov.	13	New York,	Henry C. Miles, *alias*,	Larceny,	Norfolk,	Lawful and in proper form.
Nov.	16	New York,	Frederick Spear,	Larceny,	Suffolk,	Lawful and in proper form.
Nov.	16	New York,	James E. Dempsey,	Desertion,	Suffolk,	Lawful and in proper form.
Nov.	18	New York,	Joseph Miller, *alias*,	Breaking and entering,	Suffolk,	Lawful and in proper form.
Nov.	19	New York,	G. F. Moran, *alias*,	Larceny,	Berkshire,	Lawful and in proper form.
Dec.	3	New York,	Charles Lourette, William Trainor, *alias*, and John Trainor, *alias*.	Breaking and entering, and larceny,	Middlesex,	Lawful and in proper form.
Dec.	12	New York,	Walter Esleig,	Rape,	Berkshire,	Lawful and in proper form.
Dec.	16	Rhode Island,	Harry Sheard,	Desertion,	Essex,	Lawful and in proper form.
Dec.	16	Illinois,	Libono Costa,	Larceny,	Suffolk,	Lawful and in proper form.
Dec.	22	Illinois,	Harold Feldman, *alias*,	Breaking and entering,	Suffolk,	Lawful and in proper form.
Dec.	24	New York,	Peretz Lebovitch, *alias*,	Nonsupport,	Suffolk,	Lawful and in proper form.
Dec.	30	New York,	Maurice C. Hart, *alias*,	Larceny,	Suffolk,	Lawful and in proper form.

The following requisitions upon His Excellency the Governor for the surrender of fugitives from the justice of other States have been referred by him to this department during the year ending Dec. 31, 1914, for examination and report thereon: —

Date of Reference.	State making the Requisition.	Name of Fugitive.	Crime charged.	Report.
1914.				
Jan. 28	Pennsylvania,	Frank Sucre,	Highway robbery,	Lawful and in proper form.
Feb. 13	New York,	Charles F. Rase,	Desertion of minor children,	Lawful and in proper form.
Apr. 2	Illinois,	Russell P. Jones, *alias*,	Forgery,	Lawful and in proper form.
Apr. 15	Illinois,	Harry Eng Hong,	Murder,	Lawful and in proper form.
May 20	New York,	Harry Wakefield,	Grand larceny,	Lawful and in proper form.
May 27	New Hampshire,	G. M. Thompson,	False pretences,	Lawful and in proper form.
May 28	Georgia,	T. V. McAllister,	Forgery,	Lawful and in proper form.
June 1	Pennsylvania,	George Davis, *alias*,	Violation of parole,	Lawful and in proper form.
June 3	Pennsylvania,	Harry C. Donagher,	Desertion,	Lawful and in proper form.
June 10	Tennessee,	Howard J. Rogers, *alias*,	Housebreaking,	Lawful and in proper form.
June 12	Illinois,	Melkiset Manookian,	Murder,	Lawful and in proper form.
June 30	Pennsylvania,	Albert A. Benjamin,	Forgery,	Lawful and in proper form.
July 6	Illinois,	Anton Lasberg,	Larceny,	Lawful and in proper form.
July 13	Michigan,	Lewis Smith,	Grand larceny,	Lawful and in proper form.

July	16	New Jersey,	Nicholas LaForge,	Desertion,	Lawful and in proper form.
July	23	West Virginia,	Joseph H. Duddy,	Grand larceny,	Lawful and in proper form.
Sept.	9	California,	E. L. Donnelly,	Drawing check on bank without sufficient funds,	Lawful and in proper form.
Sept.	28	New York,	William Smith,	Larceny,	Lawful and in proper form.
Oct.	6	Iowa,	Charles Dormeter,	Cheating by false pretences,	Lawful and in proper form.
Oct.	22	California,	Ada Weickart,	Embezzlement,	Lawful and in proper form.
Nov.	7	Connecticut,	Frank Schmidt,	Robbery,	Lawful and in proper form.
Dec.	31	Ohio,	Joseph Guyatt,	Nonsupport,	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.