REPORT

OF THE

Attorney General

OF

PENNSYLVANIA

FOR THE

Two Years Ending December 31, 1900.

WM. STANLEY RAY,
STATE PRINTER OF PENNSYLVANIA.
1901.

REPORT

OF THE

Attorney General of Pennsylvania.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 1, 1901.*

To the Senate and House of Representatives of the Commonwealth of Pennsylvania:

As required by law, and in obedience thereto, I have the honor to submit to the Legislature the report of the official business transacted by the Attorney General during the two years ending on the thirty-first day of December, A. D. 1900.

The duties of the Attorney General are increasing from year to year. A large part of his work consists in the collection of delinquent claims certified to him by the Auditor General, and it becomes his duty to represent the Commonwealth in all cases of appeals taken by corporations from settlements for taxes made by the Auditor General and State Treasurer. During the past two years six hundred appeals have been taken and in nearly all of the cases arising upon them verdicts have been rendered. There are a few pending either in the Court of Common Pleas of Dauphin county, or in the Supreme Court.

A very important part of the work of the Attorney General's Office is the hearing of parties who wish to have quo warranto proceedings instituted against corporations. In such cases it is customary for the person in interest to present a petition reciting the facts on which he relies to move the Attorney General to have quo warranto proceedings instituted against the corporation complained of. A hearing is then granted in all cases and all par-

ties in interest are given an opportunity to be present before final action is taken. When the Attorney General is satisfied that there is merit in the matters complained of, and that the corporation should have its franchises forfeited either on account of misuser or non-user, he files a suggestion in the proper court, stating the grounds upon which he relies to ask for such forfeiture. Many cases of this character were presented during the past two years and a number of the important ones are referred to in this report.

Very frequent applications are made by persons desiring to have mandamus proceedings instituted in the name of the Commonwealth under the provisions of the act of 1893. This is especially true where it is sought to procure the enforcement of a public duty.

The performance of these duties, taken in connection with the work that the Attorney General is required to do as a member of the Board of Pardons, Board of Property and the Board of Public Accounts keeps his Department busy the greater part of the year. The Attorney General is also frequently called upon to give opinions to the various Departments of the State Government upon questions of public interest.

The work of the Department during the past two years will hereinafter be given in greater detail.

The number of claims, appeals and suits placed in my hands by the Auditor General during the years 1899 and 1900 was 947. From these I have collected and paid into the State Treasury $851,956.85. In some cases suits are pending in the Court of Common Pleas of Dauphin County or in the Supreme Court. A schedule of all these claims is hereto appended, and marked "Exhibit A," showing the disposition made of or the present status of each one, as it appears on the records of this office.

My term of office began on the seventeenth day of January, A. D. 1899, that being the date of the expiration of the term of my predecessor. His last report including the official business transacted until the first of January, 1899, makes it necessary to include in this report the business transacted upon the days intervening between the date of his report and the expiration of his term of office. It is only proper to state in this connection that the work of this Department during the term of my predecessor was so nearly finished that but few cases remained open or unsettled in the courts. The few cases that were still pending in the courts have since been argued and disposed of. The work of the Department during the past two years, therefore, has been almost entirely made up of cases that have arisen or claims that have been certified for collection or appeals taken since the beginning of my official term. During the past two years there has been a special effort made for the

collection of all taxes from delinquent corporations. The Auditor General has been untiring in his efforts to collect all such taxes, and when he failed to collect the taxes in such cases after proper notification to the delinquent corporations, he certified them to the Attorney General for collection, as required by law.

An examination of "Schedule A," attached to this report, will disclose in detail the operations of this Department with regard to these delinquents. It will there be seen that many of the delinquent corporations are insolvent and at the present time in the hands of receivers. These claims are not now collectible by adverse legal proceedings, but must await final distribution of assets by the courts. Many of these corporations are defunct, which denotes that there are no officers upon whom service of process can be made, and no tangible assets. The age of many of the claims has also militated against their collection because many of the corporations defendant live a precarious life.

Suits have been promptly brought against all defendants where there was any reasonable prospect of a recovery of the claim. This statement is made in order to explain why many of the claims set out in "Schedule A," already referred to, remain uncollected. The great majority of the good claims are promptly paid to the State Treasurer when due. When repeated notices from the Auditor General fail to bring about payment, the claims become delinquent and are certified to the Attorney General for collection, who thus has the tardy, defunct and insolvent corporations to deal with, and consequently collections are comparatively slow, meagre and indeed very often absolutely impossible.

For these reasons the work of the Department with regard to delinquents does not show the large results which might be expected by one unacquainted with the fact that the majority of them are absolutely uncollectible.

At the special term of Court of Common Pleas of Dauphin County, beginning November 29, 1899, there were upon the list for trial nearly five hundred cases. In some instances continuances were asked and granted, but practically the entire list was disposed of.

From the following summary of the business transacted in my office from January 1, 1899, to December 31, 1900, it will be seen that there have been almost one thousand claims, suits and appeals prosecuted by the Commonwealth. Many of these cases were adjusted after a hearing before the Auditor General and State Treasurer in conjunction with the Attorney General, and verdicts taken for the amounts agreed upon, but they all involved research and examination by our Department.

SUMMARY OF BUSINESS OF THE ATTORNEY GENERAL'S DEPARTMENT FROM JANUARY 1, 1899, TO DECEMBER 31, 1900.

Appeals from settlements of Auditor General and State Treasurer for taxes,	634
Claims for collection certified by Auditor General *et al.*, not included in actions of assumpsit,	272
Actions in assumpsit instituted,	75
Quo warranto proceedings,	46
Mandamus proceedings,	34
Equity proceedings,	2
Cases argued in Supreme Court of Pennsylvania,	26
Cases argued in Supreme Court of United States,	None.
Proceedings against insolvent insurance companies and building and loan associations,	19
Formal opinions written,	37
Insurance company charters approved,	9
Bridge proceedings under Act of June 3, 1895,	1
Cases pending in Supreme Court of Pennsylvania,	3
Cases pending in Supreme Court of United States,	None.
Total collections (exclusive of commissions),	$851,956 85
Total commissions collected,	24,657 99
Grand total,	$876,614 84

QUO WARRANTO CASES.

CALEDONIA COAL COMPANY.

On the 28th of March, A. D. 1895, a petition was presented to the Attorney General by Samuel F. Wheeler, stating that The Caledonia Coal Company was incorporated in 1893 for the purpose, primarily, of mining coal; that, after its incorporation, the company acquired lands and mineral rights in Clearfield and Elk counties; and that it thereupon entered upon the business for which

it was incorporated. It was further alleged that the business was not a profitable one; that no dividends had ever been earned or declared; that the property of the company had been sold for taxes by the treasurers of the respective counties; and that, since 1896, no business had been transacted by said company; and that it was not the intention of said company again to exercise the franchises granted to it by the Commonwealth. The petition asked that a writ of quo warranto in the name of the Commonwealth should be instituted, and that the rights, privileges and franchises of the corporation should be declared null and void.

Upon the presentation of these facts a hearing was fixed so that the company might be represented by counsel to make answer to the facts alleged, and the company, through its counsel, having accepted notice thereof and no sufficient answer have been made, a suggestion for a writ of quo warranto was filed in the Court of Common Pleas of Dauphin County, to No. 13 Commonwealth Docket, 1899. The company having filed an answer to the suggestion for a writ of quo warranto on the 5th of April, 1899, and the matter having been heard in the court, a decree of ouster was filed on the 11th day of April following.

SYCAMORE STREET RAILWAY COMPANY.

On May 11, 1899, the Pittsburgh and Birmingham Traction Company through its attorneys presented a petition to the Attorney General, asking that he file in the proper court a suggestion for a writ of quo warranto to test by what right and warrant the Sycamore Street Railway Company claims to have and exercise the franchise of a street passenger railway company so as to construct its lines over the Monongahela Bridge in the city of Pittsburgh. The petitioning company alleged that it became the lessee of the Pittsburgh and Birmingham Passenger Railway Company on the 19th day of November, 1899, under a lease for the term of 999 years. It was further alleged that a part of the route of the street railway company was for many years from the intersection of Smithfield and Water streets, in the city of Pittsburgh, over the Monongahela Bridge and its approaches to Carson street on the South Side; that it had been in the enjoyment of its privileges and franchises over said bridge without interruption during all the years it operated and controlled the lease in question; and that, on the 20th of April, 1899, articles of association were filed in the office of the Secretary of the Commonwealth for the creation of a street passenger railway company to be known as The Sycamore Street Railway Company, which said newly incorporated company had part of its route over the said Monongahela bridge. It was contended by counsel

for petitioners that the Pittsburgh and Birmingham Traction Company, being the lessee of the Pittsburgh and Birmingham Passenger Railway Company, had the exclusive right to the use of said bridge for street railway purposes.

On the seventeenth day of May the Sycamore Street Railway Company filed its answer and a full hearing was given all parties in interest. The respondent admitted the facts alleged in the petition, but denied that the Pittsburgh and Birmingham Passenger Railway Company, or its lessee, the Pittsburgh and Birmingham Traction Company, had the exclusive right to the use of said bridge for street railway purposes. The respondent alleged that it was not its purpose to use any part of the bridge occupied by the lessee of the Pittsburgh and Birmingham Passenger Railway Company, but that it was the intention of the respondent company to widen said bridge so that an additional track could be laid on the new and added portion of the bridge, on which the tracks of the Sycamore Street Railway Company would be laid. All of these facts were supported by affidavits duly filed with the Attorney General at the time of the hearing.

On the 30th day of June following, after a full hearing and due consideration, it was ordered that a suggestion be filed in the court of Common Pleas of Dauphin County for the purpose of determining the issues involved in the controversy. A suggestion for a writ of quo warranto against the Sycamore Street Railway Company was accordingly filed, to No. 238 Commonwealth Docket, 1899. The respondent filed an answer thereto and the whole matter was heard by the court. On the second day of April, 1900, the president judge of said court filed an opinion directing judgment to be entered in favor of the defendant and against the contention of the petitioners. The learned judge held that the lessee of the Pittsburgh and Birmingham Passenger Railway Company did not have such an exclusive use of the bridge in question as to deny the right of the respondent company to erect an addition thereto, with the consent of the bridge company, so as to lay its tracks and connect other portions of its contemplated lines. On the 19th day of May following the petitioners by certiorari removed the proceedings to the Supreme Court where the case is now pending.

HENRY J. TRAINOR.

On the second day of June, 1899, a petition was presented to the Attorney General, signed by several citizens of the Commonwealth, residents of and qualified electors in the Third ward of the city of

Philadelphia, stating that on the twenty-first day of February, 1899, Henry J. Trainor had been elected as a member of the Select Council from the Third ward of the city of Philadelphia, and on the third day of April following was duly sworn in as a member of Select Council for said ward; and that, in violation of law, he usurped and was then holding said office contrary to the acts of Assembly in such case made and provided. It was alleged by the petitioners that for more than eighteen months prior to his election from the Third ward as a member of Select Council in said city, the said Henry J. Trainor had resided at No. 1513 South Broad street in said city, said residence being in the Twenty-sixth ward thereof; that he had removed his family from his former home in the Third ward some eighteen months prior to his election; and that, since he had removed his family to said Twenty-sixth ward, he had resided there and was not a resident and qualified elector of the Third ward, as required by the Constitution and acts of Assembly. It was therefore contended that, not being a resident of said Third ward, he had no right to hold the office of member of Select Council.

Upon this presentation of facts a hearing was fixed, so that all parties in interest might have an opportunity of appearing before the Attorney General prior to the institution of an proceedings. By consent of counsel the hearing was fixed for the fifteenth day of June, 1899, at which time counsel for respondent made answer, denying all the material facts upon which the petitioners relied as a ground for instituting proceedings by a writ of quo warranto to oust the said Trainor from the exercise of the duties of his office.

The respondent denied that he removed from said ward, asserting that his residence had been and was at that time in the Third ward of said city. Upon oath he stated that the taking of his family into another portion of the city was only temporary and on account of sickness of certain members thereof. He further alleged that his place of business was in the Third ward, which he had always claimed as his place of residence; that he was registered there according to law; that he was not registered in any other ward in said city; that he had always voted in said Third ward, and has no intention of changing his residence; and he therefore denied the right of the petitioners to have proceedings instituted for the purpose of ousting him from the exercise of his office. Evidence was taken bearing on the facts in controversy. Residence being a question of intention, and the undisputed facts being that it was the intention of the respondent to continue his residence in said ward; and no sufficient testimony having been offered to show that he had changed his place of permanent residence, the writ was refused.

CLEARFIELD TRACTION COMPANY.

On the second day of June, 1899, Tempest Slinger and A. J. Graham, two reputable citizens, resident in the counties of Centre and Clearfield, and in the region traversed by the line of electric railway controlled and intended to be operated by the Clearfield Traction Company, presented a petition stating that the Philipsburg and Houtzdale Passenger Railway Company had been incorporated in 1892 for the purpose of constructing and operating a passenger railway from Philipsburg, in Centre county, by way of Chester Hill, Osceola Mills and Sterling, to connect with Houtzdale, in the county of Clearfield. The capital stock of said company was fixed at $100,000, of which it was alleged ten per centum had been paid in money. It was further alleged that in 1894 letters patent were granted to the Philipsburg Suburban Electric Railway Company, for the purpose of constructing and operating a passenger railway between Philipsburg, in the county of Centre, and Munson, in the county of Clearfield. The capital stock of this company was fixed at $100,000, of which $10,000 was alleged to have been paid in cash at the time of the incorporation. It was further alleged that in the year 1894 letters patent were granted to the Houtzdale and Suburban Electric Railway Company for the purpose of constructing and operating a passenger railway between Houtzdale and Ramey, both in the county of Clearfield. The capital stock of said company was fixed at $100,000, of which, it was alleged, ten per centum had been paid in money at the time of the incorporation. It was also alleged that at a subsequent date letters patent were granted to the Clearfield Traction Company, under the act of March 22, 1887, (P. L. 8), for the purpose of the construction and operation of cables, motors, electric appliances and other machinery. The capital stock of this company was fixed at $10,000, of which ten per centum was alleged to have been paid in cash at the time of the incorporation. Subsequently, by a vote of the stockholders of the Clearfield Traction Company, the capital stock of said corporation was increased to $1,500,000. Afterwards the Clearfield Traction Company became the lessee of the three street railway companies hereinbefore named.

It was further alleged that the Clearfield Traction Company had made, executed and delivered to the Girard Life Insurance, Annuity and Trust Company, as trustee for bondholders, a mortgage to secure the payment of coupon bonds in the sum of $750,000. It was also alleged that the issue of $1,500,000 full paid stock to the stockholders of the Clearfield Traction Company was fictitious and not based upon property received, having value, nor for labor done nor for property actually received, and that the issue of said full

paid stock, as well as the bonds amounting to $750,000, was in violation of section 7, Article XIV, of the Constitution, as well as the provisions of the act of March 22, 1887.

The petitioners therefore asked that the proper proceedings at law or in equity be instituted to enforce the provisions of the act of 1887 and the Constitution.

The Clearfield Traction Company, through its officers and counsel, made answer, in which all of the material facts set out in the petition were denied. It was alleged that all of the companies in question had been incorporated according to the provisions of law, and that their intentions were *bona fide*, and that great injustice would be done by the institution of proceedings, as contemplated in the prayer of the petitioners.

Under the authority of Cheatham et al. v. McCormick, in 178 P. S., 186, the Attorney General was of opinion that such a *prima facie* case had been made out as required proceedings to be instituted under the provisions of the act of 1887. A bill in equity was accordingly filed in the Court of Common Pleas of Dauphin County, to No. 257 Equity Docket. On the twenty-second day of September the respondents filed an answer, and the whole proceeding has since been pending in said court.

THE PUNXSUTAWNEY WATER COMPANY.

In July, 1899, the town council of the borough of Punxsutawney presented a petition to the Attorney General, asking for a writ of *quo warranto* to be issued against the Punxsutawney Water Company, to show by what authority it claimed to exercise the rights, privileges and franchises of a corporation. It was alleged that said water company had been incorporated under the provisions of the act of April 29, 1874, and its several supplements, for the purpose of supplying water to the public in the said borough of Punxsutawney, and to persons, partnerships and associations residing therein or adjacent thereto. It was further alleged that The Punxsutawney Water Company, in pursuance of the purpose for which it was incorporated, had erected water works in 1887, and had been supplying water to the public and to persons, partnerships and associations residing in said borough for a number of years. It was also alleged that on the third day of March, 1899, letters patent had been taken out by the Lindsay Water Company for the purpose of supplying water to the borough of Clayville, in the county of Jefferson, said borough being adjacent to the borough of Punxsutawney; that the said Lindsay Water Company had illegally and wrongfully entered into a combination with The Punxsutawney Water Company for the purpose of consolidating the Punxsutawney Water Com-

pany into and with the Lindsay Water Company, so that the management and supervision of the rights, privileges and franchises of the Punxsutawney Water Company should be vested in the Lindsay Water Company; that, on or about the month of April, 1899, the franchises, together with all of the business, property and works of the Punxsutawney Water Sompany, had been sold and transferred to the Lindsay Water Company; that, afterward, on the 15th day of April, 1899, the Lindsay Water Company executed a mortgage to the Lackawanna Safe Deposity and Trust Company, in the sum of $175,000, to secure the payment of the bonds of the Lindsay Water Company, which said mortgage included the property and assets of the Punxsutawney Water Company. It was further alleged that, on the first day of July, 1899, in pursuance of the consolidation of said water companies, the pipes of the Lindsay Water Company, in the borough of Clayville, were extended to connect with the pipes of the Punxsutawney Water Company, and since that date the Punxsutawney Water Company had beeen supplying water to the public in the borough of Clayville. It was contended that, under the provisions of clause 7, section 34, of the General Corporation Act of April 29, 1874, the borough of Punxsutawney had the right to purchase the works of the Punxsutawney Water Company, which right the said borough was desirous of available itself of, and was prevented only by the consolidation and sale of its franchises and property to the Lindsay Water Company. By reason of this misuser of its franchises, it was contended that the Punxsutawney Water Company had forfeited its charter privileges and should be ousted from the exercise thereof.

The Lindsay Water Company filed an answer with the Attorney General, denying the material facts in controversy. After hearing the facts presented and a discussion of the law in relation thereto the Attorney General was of opinion that it was a case for determination by the courts. On the 19th day of August following the writ was allowed, and the suggestion was filed in the Court of Common Pleas of Jefferson County, so that all the facts might be heard in the court and a proper decree be made therein. The case was finally heard by said court, wherein it was decided that the contention of the council of the borough of Punxsutawney was not supported and the writ was therefore dismissed.

PHILADELPHIA, MORTON AND SWARTHMORE STREET RAILWAY COMPANY.

On the ninth day of September, 1899, the petition of the Central Electric Railway Company of Philadelphia and Delaware Counties was presented, asking that a writ of quo warranto be issued against the Philadelphia, Morton and Swarthmore Street Railway Company,

to inquire by what right it claimed to exercise the rights, liberties and privileges of a corporation conferred by the act of May 14, 1889, or its supplements, and why its charter should not be declared null and void. The petitioners alleged that it was duly incorporated on the ninth day of May, 1894, and that its extensions from time to time had been made and duly recorded in the office for recording deeds in and for the county of Delaware. It was further alleged that the Philadelphia, Morton and Swarthmore Street Passenger Railway Company was incorporated on the twenty-fourth day of February, 1899; that, upon examination and comparison of the routes of said railway companies, it was learned that the respondent company intended to construct its lines of railway over the same streets and highways that had already been occupied or were about to be occupied by the lines of the petitioning company. It was, therefore, contended that the charter had been improvidently granted to the respondent company; and that it should be ousted from the exercise of any rights, privileges and franchises under its letters patent.

The Attorney General being of opinion that such a *prima facie* case had been made out as should be inquired into by the courts, filed the suggestion in the Court of Common Pleas of Dauphin County, to No. 415 Commonwealth Docket, 1899. The respondent company filed an answer in said court, to which the petitioners filed a demurrer on the fourteenth day of May, 1900, which was overruled by the court and judgment was directed to be entered in favor of the respondent company. On July 2, 1900, a *certiorari sur appeal* was taken to the Supreme Court, to No. 4, May Term, 1901, where the case is now pending.

STEEL-DOTY ELECTION CONTEST.

On the sixth day of December, 1899, a petition signed by sixty qualified electors of the Tenth Judicial District of the Commonwealth of Pennsylvania, composed of the county of Westmoreland, was presented to the Attorney General, stating that at the general election held in said district on the seventh day of November, 1899, the petitioners had voted for the office of judge of said judicial district. It was further stated that the election returns, as certified by the election officers, showed that Lucien W. Doty had received 12,772 votes for the office of judge of said district, and that John B. Steel had received 12,602 votes, and John D. Gill 322 votes; and that the said Lucien W. Doty had therefore been returned as elected by a plurality of 170 votes. It was further alleged that the vote so returned was false, and that the petitioners desired to test the right of the said Lucien W. Doty to hold the

office of judge of said judicial district. The petition stated in general terms that certain illegal votes had been cast in certain districts which were therein designated. The petitioners therefore asked that the Governor be notified thereof, to the end that he should without delay direct the three president judges residing nearest to the court house of the Tenth judicial district to convene without delay the court of common pleas thereof, and to proceed to hear and determine the complaint of the petitioners, and decide which of the said candidates voted for had received the greatest number of legal votes and was entitled to said office.

Lucien W. Doty appeared on the twelfth day of December, 1899, through his counsel, filed a demurrer to the sufficiency of the petition, and asked that he be given a hearing before further proceeding should be instituted. It was alleged by the respondent that the petition had been signed under a misapprehension, and that the petitioners had not been aware that, under the provisions of the act of twenty-eighth April, 1899, they would be required to file a bond in such sum as the court so convened should designate, conditioned for the payment of all costs which might accrue in the election contest proceeding, in case said petitioners by decree should be adjudged liable to pay the same; and that if said bond should not be so filed the petition to test the election should be dismissed. In the meantime, thirty-four of the petitioners presented a petition to the Governor, which was referred to the Attorney General stating that they had signed the original petition under a misapprehension and without sufficient knowledge of the facts to justify them in so doing, and declaring that they would not be willing to file a bond in said court when so convened, conditioned for the payment of such costs as might accrue, and asking that their names be stricken from said petition.

The whole matter having been referred to the Attorney General for investigation and further information thereon, he gave all parties in interest an opportunity for further hearing. On the sixteenth day of January following, all the petitioners and other parties in interest having appeared, either in person or by counsel, and having asked leave to withdraw the petition, and that all further proceedings be discontinued, upon due consideration, the prayer of the petitioners was granted, the petition was permitted to be withdrawn and the proceedings dismissed.

ERIE AND WYOMING VALLEY RAILROAD COMPANY.

On the twenty-first day of February, 1900, the Delaware and Southern Railroad Company made an application for a writ of quo warranto against the Erie and Wyoming Valley Railroad Com-

pany, asking that the Attorney General file a suggestion in the proper court, in the name of the Commonwealth, requiring said latter company to show by what warrant it claims to have and exercise the franchises of constructing, maintaining and operating an additional railroad between Hawley, in the county of Wayne, and Lackawaxen in the county of Pike. The petitioner claimed to be a corporation of the State of Pennsylvania, created November 20, 1899, under the provisions of the general railroad law of April 4, 1868; that it was authorized by its charter to construct, maintain and operate a railroad from a connection of the Erie Railroad, at or near Lackawaxen, with the Jefferson Railroad, at or near Hawley; and that, prior to the twenty-seventh day of November, 1899, it had located its lines of railroad between said terminal points, which route was adopted by the directors of said company on the twenty-eighth day of November, 1899.

It was further alleged that the Erie and Wyoming Valley Railroad Company, a corporation of the State of Pennsylvania, was authorized by its charter to construct, maintain and operate a railroad from a point at or near Port Griffith, in the county of Luzerne, to Lackawaxen, and that, in pursuance of its charter, it constructed a line of railroad from its western terminus, at Port Griffith, to an intermediate point known as Hawley, which is the western terminus or the initial point of the railroad authorized to be constructed by the Delaware and Southern Railroad Company. It was also alleged that, for the purpose of building its line of railroad to its eastern terminus at Lackawaxen, the Erie and Wyoming Valley Railroad Company purchased from the Pennsylvania Coal Company, a railroad, together with the franchises incident thereto, previously constructed by said company from Hawley to Lackawaxen where it connected with the lines of the New York, Lake Erie and Western Railroad Company, thus giving it a continuous line of railroad throughout its entire route from Port Griffith to Lackawaxen. For the purpose of obtaining better transportation facilities for traffic originating on its lines west of Hawley, it leased to the said New York, Lake Erie and Western Railroad that portion of its lines between Hawley and Lackawaxen, which it had purchased from the Pennsylvania Coal Company, for a term of twenty-five years, which lease was still in force.

It was also alleged that the Erie and Wyoming Valley Railroad Company, notwithstanding the fact that it had already constructed and acquired a railroad over its entire route between the terminal points fixed by its charter, proposed, illegally and without warrant of law, to construct another line of railroad between Hawley and Lackawaxen, separate and distinct from the line originally constructed and owned by it between said points. It was further al-

leged that the Delaware and Hudson Canal Company, under sundry acts of Assembly, had constructed and operated a canal along the northern side of the Lackawaxen river, from Lackawaxen to Hawley, and extending thence to Honesdale; that without warrant of law or statute permitting the same to be done, the Delaware and Hudson Canal Company, during the year, 1899, abandoned its canal, including that portion lying between Hawley and Lackawaxen, and on the twenty-fourth day of June, 1899, undertook to sell and convey said portion of its canal, including the canal bed, locks and other appurtenances, to a corporation of the State of New York, under the name of the Cornell Steamboat Company, which corporation, it was alleged, did not have any right to own or acquire title to real estate in Pennsylvania; that, on the eleventh day of March, 1899, the Cornell Steamboat Company undertook to execute and deliver to the Erie and Wyoming Valley Railroad Company a deed purporting to convey to said railroad company all that portion of the Delaware and Hudson Canal Company, situated in the State of Pennsylvania, which commenced at the boundary line between the States of New York and Pennsylvania, at or opposite the borough of Lackawaxen, and ends at the guard-rail upon the eastern bank of the Lackawaxen river at Honesdale; that the Cornell Steamboat Company, never having acquired any title to said canal, was incompetent to convey any title therein to the Erie and Wyoming Valley Railroad Company; and that said railroad, therefore, had acquired no title to that portion of said canal, upon the bed of which it proposed to build and construct an additional railroad from Hawley to Lackawaxen.

The petitioner complained of the facts hereinbefore stated, and suggested that the Erie and Wyoming Valley Railroad Company, in attempting to build the proposed line of railroad between Hawley and Lackawaxen, was abusing its franchises, and was acting without authority of law. It was further contended by the petitioner that the attempted exercise of the franchise to build a railroad between Hawley and Lackawaxen by the Erie and Wyoming Valley Railroad Company is in derogation of the charter rights of the petitioner to build its road between the same points, and asked that a proceeding in the nature of a quo warranto be instituted for the purpose of determining the legal rights of the parties to the controversy.

The respondent company filed its answer on the fourth day of April, 1900, in which the material and controlling facts set out in the petition were denied. It contended in behalf of the respondent company that it had not exceeded its charter rights and privileges; and that it had a right to construct its line of railroad as contemplated, but, inasmuch as an important question of law had been

raised, it was a proper case for adjudication in the courts. A suggestion for a writ of quo warranto on the relation of the Attorney General was therefore filed in the Court of Common Pleas of Dauphin County on the seventh day of April, 1900. On the fourteenth day of April following the respondent company filed its answer. The pleadings have been completed and the case heard before the court on the fifth of May, 1900. The court subsequently directed judgment to be entered in favor of the respondent company, to which judgment exceptions were fined and overruled. On the twenty-third day of October, 1900, a *certiorari* to the Supreme Court was taken and filed, to No. 7 May Term, 1901. The case is still pending in the higher court.

CASE OF HENRY KRAUSKOPF.

On the seventeenth day of May, 1900, John M. Enright and Milton P. Cashner presented their petition to the Attorney General, asking that a writ of quo warranto be issued against Henry Krauskopf, to show by what authority he claims to have and exercise the office of justice of the peace in the borough of South Bethlehem. From the facts stated in the petition it appeared that the petitioners had been duly elected to the office of justice of the peace by the concurrent votes of all the electors of the borough at the preceding February election. The election returns having been certified to the Secretary of the Commonwealth, a commission was issued to each of the justices so elected. Prior to the time when these two justices of the peace were elected by the concurrent votes of all the electors, justices of the peace had been elected in the various wards of the borough. The respondent, Henry Krauskopf, had been elected by the votes of a single ward in February, 1897, and took his office on the first Monday of May following, for a term of five years. The borough of South Bethlehem is composed of five wards and had elected one justice in each of these five wards prior to 1900. Under this statement of facts Henry Krauskopf contended that, having been elected in 1897 for a period of five years, and having been so commissioned, his term of office could not be interfered with by a subsequent election of two justices of the peace for the whole borough. Following the rule laid down in the Mahanoy City and Shenandoah cases, where several ward justices were ousted and justices of the peace elected by the concurrent votes of all the wards had been commissioned, the Attorney General was of opinion that the contention of the petitioners should be granted, and a suggestion was accordingly filed in the Court of Common Pleas of Dauphin County, where it is now pending.

MONONGAHELA BRIDGE COMPANY.

On May 30th, 1900, the Pittsburgh and Birmingham Traction Company, by and through its president, presented a petition to the Attorney General, asking that a suggestion be made to the proper court to award a writ of quo warranto against the Monongahela Bridge Company, to show by what authority said company exercised the liberties and franchises of a corporation, or the rights, liberties and franchises conferred upon it by the several acts of Assembly in relation thereto, and why it should not be ousted from the further exercise of its charter privileges. The petitioner alleged that its line of railway passes over and across the Monongahela bridge, and that with the consent of the city of Pittsburgh, it has constructed two lines of track across said bridge, whereon its cars pass and repass in the conveyance and transportation of passengers over and along its route in the conduct of its business in accordance with its charter. It was alleged that prior to the eleventh day of April, 1896, the bridge in question was owned by the Monongahela Bridge Company, which was incorporated by act of Assembly approved March 19, 1810, (P. L. 101); and that several supplementary acts had been passed bearing upon its rights and privileges. While the bridge was owned and controlled by the private corporation, incorporated as hereinbefore mentioned, its officers entered into a contract with the Pittsburgh and Birmingham Traction Company to allow the laying of the tracks of the traction company over said bridge for street railway purposes, in consideration of which a certain sum of money was to be paid as tolls each year. Subsequently to the execution of this contract, the people of the city of Pittsburgh commenced an agitation which resulted in the transfer of said bridge to the city, and it was made a free bridge for the general use of the public. All the tolls were abolished, and the only charge that is yet exacted is the payment of the amount agreed to be paid by the Birmingham Traction Company and the Monongahela Bridge Company. The contention of the traction company is that this having been made a free bridge, tolls have been abandoned, and the amount which it agreed to pay the bridge company, being in the nature of a yearly toll, it can no longer as a corporation exercise the right to collect the same.

The Monongahela Bridge Company, through its counsel, filed an answer, in which it was set forth that, as a corporation, it was still a legal entity; that it had never surrendered its charter rights and privileges; that a board of directors was still in existence; and that the city of Pittsburgh, having been assigned all of the property and assets of the Monongahela Bridge Company, had a right to insist upon the payment of the annual sum agreed to be paid by the Birmingham Traction Company.

A suggestion for a writ was filed in the Court of Common Pleas of Dauphin County. The writ was awarded, an answer has been filed, and the whole proceedings are now awaiting decision of the lower court.

PORT ALLEGANY WATER COMPANY.

On September 6, 1900, the petition of the chief burgess and members of the borough council of Port Allegany, in the county of McKean, was presented, stating that the Port Allegany Water Company, a corporation of the State of Pennsylvania, incorporated for the purpose of supplying said borough with water, had failed and neglected to supply the public in said borough with water for the extinguishment of fires therein, though it had agreed and contracted with the proper authorities so to do. It was further alleged that the water company had failed and neglected to supply that portion of the borough wherein it had laid its mains and connections with a sufficient suply of water for domestic purposes; that it had failed to supply a large and populous portion of the borough with water and had refused to lay mains, pipes and connections in a large portion of the most populous portions and streets of the borough; and that it had failed and neglected to supply the citizens of said borough with a supply of water for manufacturing purposes. By reason of this refusal and neglect to perform its corporate duties, it was alleged that there had been destructions of property by fire in said borough, and that great inconvenience had resulted to the citizens by reason of the corporation not performing the duties for which it was incorporated.

The Attorney General was asked to institute proceedings in the nature of a suggestion for a writ of quo warranto to forfeit the charter of said corporation on account of failure and neglect to perform its duties and obligations, as required by law. The case was fixed for hearing on the twenty-fifth day of September following, at which time the company, through its attorneys, filed an answer. It was admitted that the company had not been able to meet all the expectations of the citizens of Port Allegany in the matter of giving a proper water supply; that the mains should be extended more generally through said borough; that the water supply had run low during the dry season; and that it would be necessary to get an additional water supply. The company stated, however, that it was already laying additional mains to a new water supply; that it was proceeding with due diligence to correct the matters about which the citizens of the borough had made complaint; and that if proceedings interfering with its corporate rights

and privileges were not instituted, it would within a reasonable time have a supply of water that would be sufficient to satisfy the citizens of said borough.

Upon this presentation of facts further hearing of the case was postponed for a period of sixty days, it being understood that the company would, in the meantime, make diligent efforts to lay its water mains to a new supply and correct those things about which the citizens of said borough had complained. Further proceedings in the case were then stayed.

WILLIAM H. LYNCH, HIGHWAY COMMISSIONER.

Counsel for John A. Fritchey, mayor of the city of Harrisburg, presented a petition to the Attorney General on the eighth day of May, 1899, asking for the use of the name of the Commonwealth in the institution of a proceeding by quo warranto to inquire by what right William H. Lynch claims to have, use and exercise the office, rights and powers of commissioner of highways in and for said city. The petition contained a recital of facts, showing that the city of Harrisburg, by ordinance under the authority of the act of 1874, had, on the twenty-sixth of November, 1888, established an executive department, known as the highway department; that, on the twenty-third day of February, 1898, by virtue of the authority conferred upon him, J. D. Patterson, then mayor of said city, nominated, and by and with the advice and consent of the select counsel, appointed William H. Lynch, the person complained about, to the office of commissioner of highways for a full term of three years; and that, thereupon the said Lynch entered into said office, and from that time to the time of the presentation of the petition was discharging the duties of said office. It was further alleged that an investigation had been instituted into the conduct of the office by the incumbent complained about by the successor to Hon. J. D. Patterson, viz, Hon. John A. Fritchey; and that as a result of that investigation it had been officially ascertained and determined that William H. Lynch had neglected the duties of his office, and thereupon, on the nineteenth day of April, 1899, by virtue of the power and authority vested in him by the Constitution, the laws of the Commonwealth, and the ordinances of the city of Harrisburg, he removed the said William H. Lynch from the office of commissioner of highways, but that the said commissioner of highways refused to recognize the right of the mayor so to remove him, and claimed to exercise the rights and powers pertaining to said office without any warrant of law.

The commissioner of highways, said William H. Lynch, made an

swer to the petition presented to the court, asking for a writ of quo warranto against him, in which all of the material facts alleged in the petition were denied. The commissioner of highways denied that any inquiry, examination or investigation of his official character, fitness or conduct of the office had been made with his knowledge, and that, if any such examination or investigation had been made, it was made without notice to him, and therefore was illegal and void.

The whole matter came up for hearing in the Dauphin County Court, where a decree was entered by the president judge on the tenth day of June, 1899, in which it was ordered and adjudged that the defendant, William H. Lynch, be ousted and altogether excluded from the office of commissioner of highways. The learned court held that, under the act of 1874 and the constitutional provision in reference thereto, the right of removal of officers was lodged in the appointing power. The rule laid down in the case of Houston v. Commonwealth, 100 P. S. 222, was followed.

MILTON WATER COMPANY.

On July 17, 1900, the Milton Water Company, of Milton, Pa., filed a petition asking that a suggestion for a writ of quo warranto issue against the Mountain Water Company, and assigning, as reasons for the issuing of the same, that the Milton Water Company had an exclusive right to the privilege and franchise of furnishing water to the borough of Milton and to persons residing therein and the territory adjacent thereto; that the Mountain Water Company had no source from which to supply water for the purposes of its creation, except as it might obtain the same from the White Deer Mountain Water Company; and that the supplying of water by the White Deer Mountain Water Company to the Mountain Water Company for this purpose would be illegal and an evasion of law, for the reason that the president of the White Deer Mountain Water Company had subscribed for more than three-fourths of the capital stock of the Mountain Water Company, and that the purpose of the organization of the latter company was to enable the White Deer Mountain Water Company, collusively and fraudulently, to furnish water beyond the confines of the district named in its charter, and that the Mountain Water Company was not a *bona fide* corporation within the meaning of the law organizing and creating water companies. The petition further stated that the charter granted to the Mountain Water Company was null and void under the decision of the Supreme Court in Bly v. The White Deer Water Company, in which it was held that a water company could not supply water

in more than one municipal division. For these reasons it was urged that a suggestion issue and a writ of quo warranto be granted to declare the charter of the respondent company invalid.

To this petition the respondent company filed its answer denying the claim of exclusive privileges of the Milton Water Company in the borough of Milton, for the reason that the corporation, notwithstanding that its charter was granted on the eighth of May, 1883, had failed to record it until after the passage of the act of June 2, 1887, and cited Braddock Borough v. The Penn Water Company et al., 189 P. S., 379, where the Supreme Court held that the corporate existence of a water company dates, not from the issue of its letters patent, but from the date of its recording its charter in the place where the chief operations are to be carried on, and, furthermore, that the Milton Water Company had declared dividends equal to eight per centum for five years, and therefore, if it ever had any exclusive privileges, they had ceased to exist. As to the contention that the charter of the respondent company was defective, according to the decision of the Supreme Court in the Bly case, because it embraced more territory than it was entitled to, the answer declared that the charter had been granted prior to that decision, and that the company would at once file an application for an amendment to its charter, limiting its operations to the borough of Milton.

At a hearing in the Department on Tuesday, July 31, 1900, the parties appeared with their counsel, and, after a full and complete presentation of the case by both sides, and a careful consideration, the application for a writ was denied.

MANDAMUS.

CONSTITUTIONAL AMENDMENTS.

At the last session of the Legislature two resolutions were presented to and passed by both branches of the legislative body, proposing certain amendments to the Constitution. One of the proposed amendments was intended to change that provision of section 7, Article VIII, of the Constitution, which requires that a registration of electors shall be uniform throughout the State. The other amendment provided for a modification of section 4, Article VIII, which requires that all elections by citizens shall be by ballot, the intended change being made for the purpose of paving the way

for the introduction of voting machines into our election system. The amendments were introduced separately into the legislature in the nature of joint resolutions. Each resolution was referred to a committee, reported affirmatively, read at length on three separate days, considered and agreed to by both branches of the Legislature. After having passed the Legislature and having been signed by the presiding officers, the proper officials certified them to the Governor, along with other legislation, for his approval or disapproval. Not being satisfied that there was any public necessity or demand for the changes proposed to be made by the amendments, and being informed that the cost and expenses to the State for publication and holding elections for this purpose would amount to a large sum of money, the Governor concluded to exercise what he believed to be his proper prerogative, under the precedents established by his predecessors, by withholding his approval from said proposed amendments. In withholding his approval from one of the amendments he gave his reasons in the following language:

> "It is the purpose of this resolution to provide for the amendment of section 4 of Article VIII of the Constitution, which requires that all elections shall be by ballot. As it now stands, the Constitution provides that every ballot voted shall be numbered, and the number must be recorded by election officers on the list of voters opposite the name of the elector. It also provides that an elector may write his name upon the ticket, or cause the same to be written thereon, so that his right of suffrage may not be interfered with. This provision was intended, not only to prevent fraud in our elections, but to make more easy the detection of the fraudulent voter. So far as I have any knowledge on the subject, this provision of the Constitution has given very general satisfaction to our people and is considered a safeguard in the exercise of the elective franchise. It is the intention of the proposed amendment to strike down these constitutional limitations so that the Legislature may adopt any system of voting it may see fit. While it does not appear in the language of the proposed amendment, it is nevertheless, well understood that its promoters have in view the introduction of voting machines into the many election districts of the State. This would involve the Commonwealth or the counties in the expenditure of large sums of money, and it is very doubtful whether our electors and taxpayers are prepared for such a radical change in the system of voting and to pay the expenses which would necessarily be incurred by the introduction of voting machines.
>
> The question of the right of the Executive to approve or disapprove of a resolution proposing an amendment to the Constitution has been raised, and it may not be deemed improper to state, in this connection, what are the requirements of the Constitution, and the precedents are in this respect. It is quite true that this exact question has not

yet been passed upon by our courts, and it may be properly said that it is not free from doubt. It has, however, been considered by my predecessors in office at least four times since the adoption of the new Constitution.

In 1885 a joint resolution proposing an amendment to the Constitution was passed by the Legislature and presented to the Governor for his approval or disapproval. That amendment was neither approved nor disapproved, but the right of the Governor to pass upon it was recognized in the following language by the then Executive: "And not having been filed in the office of the Secretary of the Commonwealth, with my objections thereto, within thirty days after the adjournment of the Legislature on the twelfth day of June last passed, you are therefore hereby directed to cause it to be enrolled and published."

The question came before the Governor in 1887, in the shape of a joint resolution proposing an amendment to the Constitution of the Commonwealth, prohibiting the manufacture and sale of intoxicating liquor as a beverage. The Governor recognized his right to pass upon such legislation by approving said resolution on the tenth day of February of that year.

The question again came before the Legislature and the Governor in 1889, when a joint resolution proposing an amendment to the Constitution passed the Legislature, and was approved by the Executive on the thirty-first day of January of that year.

Again, in 1891, an amendment was proposed, providing for a constitutional convention. The act providing for a submission of this question to a vote of the people was passed by the Legislature, and approved by the Governor on the nineteenth day of June of that year.

From all these precedents, it appears that the Legislature, as well as my predecessors in office, have acted upon the theory that a resolution proposing an amendment to the Constitution should be treated as the joint act of the legislative body, which must be approved or disapproved by the Governor under section 26 of Article III of the Constitution, which provides:

"Every order, resolution or vote to which the concurrence of both houses may be necessary, except on the question of adjournment, shall be presented to the Governor and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both houses, according to the rules and limitations prescribed in case of a bill."

It seems to me that the reasonable construction is that these constitutional provisions are in pari materia, under the well established rule that such an interpretation should be placed upon a constitution or statute that all of its parts can stand together, unless clearly repugnant to one another. A resolution proposing an amendment to the Constitution requires the concurrence of both houses, as indicated in section 26, above referred to, and would, therefore, seem to require executive approval or disapproval.

> It should not be forgotten in this connection, that this resolution has been presented to the Governor by the Legislature through its proper officers and in the ordinary form, and is upon my table, as a part of the work of the Legislature, for my approval or disapproval. If the power of the Executive to pass upon joint resolutions proposing amendments to the Constitution is doubted it can very properly be raised in the courts where the question should be finally determined.

Persons interested in the proposed amendments denied the authority of the Governor either to approve or disapprove the same. It was contended in their behalf that Article XVIII of the Constitution, providing for future amendments to the fundamental law stood independent of all other provisions of the Constitution, and that nothing was required to be done except as recited in this section; that amendments to the Constitution did not come within the purview of the ordinary legislation mentioned in other sections of the Constitution. Acting on the theory that the action of the Governor was inoperative, the Secretary of the Commonwealth was asked to make arrangements for the publication of the same in the newspapers of the Commonwealth, as required by the Constitution. This officer, however, as certainly was his duty in the absence of any judicial determination of the question involved, accepted the action of the Chief Executive as binding on him, and refused to make publication of the proposed amendments when requested so to do. Not being satisfied with this determination of the controversy, the persons interested presented a petition to the Attorney General, asking that the name of the Commonwealth be used in a mandamus proceeding against the Secretary of the Commonwealth, compelling him to have these constitutional amendments published. Counsel for the petitioners, as well as private counsel for the Secretary of the Commonwealth, appeared before the Attorney General at the time fixed for the hearing. After due consideration, the Attorney General decided to allow the use of the name of the Commonwealth in the proceeding, as requested, and accordingly a suggestion for a writ of mandamus was filed in the Court of Common Pleas of Dauphin County. In deciding to grant the use of the name of the Commonwealth, the Attorney General, among other things, said:

The Governor bases his right to disapprove the proposed amendments upon the twenty-sixth section of Article III, of the Constitution, which provides that:

> "Every order, resolution and vote to which the concurrence of both houses is necessary, except on the question of adjournment, shall be presented to the Governor, and

> before it shall take effect, be approved by him, or being disapproved, shall be repassed by two-thirds of both houses."

Counsel for respondent contends that inasmuch as the article which provides the method of proposing amendments is silent on the subject of executive approval, it is to be read in connection with other sections so that all of the constitutional provisions may be harmonized and stand together. On the other hand it is argued that section 26, Article III, only applies to ordinary legislation and that an amendment to the Constitution is not such ordinary legislation as to come within its meaning.

The question of submitting constitutional amendments to the governor for his approval and the proper practice in reference thereto has not been passed upon by the courts of our State. In the absence of such judicial interpretation it is customary to look to the precedents and decisions of the executive and legislative departments for the best rule of construction in such cases. Courts will be influenced, although not necessarily controlled, by the contemporaneous construction of co-ordinate departments of government on questions peculiarly relating to official and parliamentary duty under the constitution and statutes.

Counsel for respondent has called to our attention a number of precedents, covering a period of more than sixty years, in which legislation providing for amendments to the Constitution and resolutions containing special amendments, have been submitted to the Governor. Governor Ritner approved legislation of this character in 1836 and again in 1837; Governor Bigler in 1854; Governor Geary in 1871, also in 1872, approved a joint resolution containing a special amendment under the same circumstances as the ones passed at the recent session of the Legislature were submitted; Governor Hartranft approved legislation to appoint a commission to amend the Constitution in 1874; Governor Pattison recognized the right of interposing the veto power to such amendments in 1885, when he returned to the Secretary of the Commonwealth a proposed amendment with the following direction, to wit:

> "Not having been filed in the office of the Secretary of the Commonwealth, with my objections thereto, within thirty days after adjournment of the Legislature, you are, therefore, hereby directed to cause it to be enrolled and published."

Governor Beaver approved the amendment to prohibit the manufacture and sale of intoxicating liquors in 1887 and 1889; in 1891 Governor Pattison approved the legislation providing for the calling of a convention for the purpose of amending the Constitution.

On the other hand, the learned counsel for petitioner cites the amendments of 1857 and 1863, also the poll tax amendment of 1887 and 1889, which were not submitted for and did not receive executive approval.

From the precedents above enumerated it is apparent that there has been a difference of opinion on the question involved for many years, but in a large majority of the cases the doubt has been resolved in favor of the right of the Governor to pass upon such legislation or amendments.

While precedents in our own State largely preponderate in favor of the contention of the respondent, counsel for petitioner has cited several decisions of the courts of other states in order to show that the weight of legal authority in other jurisdictions sustains the position taken by him. The question was raised before the courts in the States of Louisiana, Nebraska and Colorado, where it was decided that a resolution proposing an amendment to the Constitution did not require the approval of the governor. In other jurisdictions the opposite view has been held by the courts. Jameson, in his treatise on Constitutional Conventions, sums up the authorities in section 561, in the following language:

> "In New York the propositions of amendments are sometimes incorporated in a bill, providing conditionally in one or more clauses for submission to the people, and in those cases the bill is submitted to the Governor for his approval. The existing Constitutions of Michigan and Minnesota provide that amendments may be proposed by a prescribed majority of the Legislature, after which they are required to be submitted by that body to the people. In the former State, the practice has been to effect this by a joint resolution, and in the latter by a bill; in both cases, however, combining the propositions and the clauses submitting them to the people in a single act. In both cases, this act is presented to the Governor for his sanction. In the Constitutions of Georgia and Rhode Island, amendments are permitted to be made by the action of two successive Legislatures, without submission to the people; and in neither case are the resolutions proposing the amendments presented to the Governor. In the Constitution of Missouri, authorizing amendments to be made in the same manner, the resolutions of the first Legislature are presented to the Governor, and those of the second not. In the Constitution of Maine, finally, amendments may be proposed by the Legislature, which are then to be submitted to the people, the Constitution itself containing particular directions as to the time and mode of holding the election and no action on the part of the Legislature being requisite except by resolution to notify the towns to vote on the proposed amendments as prescribed in the Constitution. It is the practice to present the resolutions embodying the amendments to the Governor."

In a very well considered case under the constitution of Nebraska it was held that the proposed amendment should not be submitted for executive approval, but in delivering the opinion of the court Mr. Justice Maxwell, says:

> "It will thus be seen that there is no uniform practice in the several States in regard to the matter of submitting propositions to amend a constitution * * * * the cases where the propositions have been submitted to the Governor being nearly as numerous as those where they were not submitted to him for his approval." See 25 Neb., page 876.

Black, in a recent edition of his work on American Constitutional Law, in speaking about the question of submitting propositions to amend the constitution to the governor, among other things, says:

> "The proposition or resolution of the Legislature to refer the amendment to the popular vote may take such shape as to fall within the designation of ordinary legislation and so require the assent of the Governor. The practice in dif ferent states in this particular is not uniform."

In legislative practice joint resolutions proposing amendments have always been treated as ordinary legislation in our State. Such resolutions are introduced, referred to committees, read at length on three separate days, signed by presiding officers, and certified to the Governor like ordinary legislation. If article eighteen of the Constitution, which provides for its future amendment, stands independent of all other sections, it must necessarily follow that the legislative practice in connection with resolutions proposing amendments is without authority.

From all precedents and authorities hereinbefore referred to, it clearly appears that there is a diversity of opinion and practice on this question. This being the case, it is only proper that it should be finally determined in the courts, and for this purpose the Attorney General is entirely willing that a proper proceeding shall be instituted."

The suggestion was filed in the court on the third day of August, 1899, and made returnable on the fifth of August. The question was heard on that day. The rule to show cause was discharged, mandamus refused and judgment was rendered in favor of the Secretary of the Commonwealth. The court below, in the opinion filed, said *inter alia*.

> "We are of opinion:
>
> "1. That a proposed amendment to the Constitution of the State must be presented to the Governor for his approval or disapproval. The framers of the Constitution must have intended that its provisions should be har-

monious and uniform in their operation upon any given subject. This uniformity can best be attained by reading the provisions of section 26, Article III, and Article XVII into each other. The only exception in section 26 to the mandate that 'every order, resolution or vote, to which the concurrence of both Houses may be necessary * * * * shall be presented to the Governor' for his action, is that relating to 'the question of adjournment;' and if it had been intended to exempt a proposal to amend the Constitution from the operation of that section, it could have been readily accomplished by making it read, 'every order, resolution or vote, to which the concurrence of both Houses may be necessary, except on the question adjournment,' '*and future amendments to the Constitution*' shall be presented to the Governor,' etc. That section provides further that the order, resolution or vote contemplated by it shall, in the event of 'being disapproved * * * * be repassed by two-thirds of both Houses acocrding to the rules and limitations prescribed in case of a bill.' These rules and limitations are specifically prescribed in section 4, Article III, in these words: 'And no bill shall become a law unless on its final passage the vote be taken by yeas any nays, the names of the persons voting for and against the same being entered on the journal, and a majority of the members elected to each House be recorded thereon as voting in its favor.' The requirements of Article XVIII, regulating proposed amendments to that instrument are almost identical with those of section 26, Article III, as limited by section 4, Article III, in case of disapproval by the Governor of a concurrent resolution and a re-passing it notwithstanding such disapproval. Article XVIII is simply silent upon the question of the Governor's action upon a proposed amendment, and as section 26 of Article III and Article XVIII should be read into each other, silence, according to our view, is not the equivalent, and has not the force, of an exception, which is itself a mandate as authoritative as a positive enactment. The omission in Article XVIII, requiring presentation of proposed amendments to the Governor for consideration and action, is significant; but the omission to except such amendments in section 26, Article III, from its operation, if that section was not intended to apply to and regulate their creation so far as relates to executive action, carries with it still greater significance and leads us to the conclusion that the provisions of section 26 were to apply alike to proposed amendments to the Constitution and other orders, resolutions and votes. The proceedings to adopt an amendment to the Constitution are legislative in their nature and character. The resolution, the agreement thereto by the members elected to each House, the entry on their journals of the proposed amendment, the yeas and nays taken thereon, are all legislative in character. And finally, after the General Assembly chosen next after that which adopted the amendment, has, agreed thereto, it shall, after publi-

cation, 'be submitted to the qualified electors of the State in such manner and at such time, at least three months after being so agreed to by the two Houses, as the General Assembly may prescribe.' Even the manner of its submission is legislative, and it is not doing violence to the rules of construction or interpretation to make section 26 of Article III go hand in hand with Article XVIII. The sovereignty of the people is not called into requisition until the required legislative proceedings are enacted, and the Governor is an essential factor in all matters relating to legislation. Legislation and amending the Constitution seems to us to be alike important and closely interwoven, and it is belittling that instrument to characterize legislation authorized by it, as ordinary, and amending the Constitution, by some higher designation. No satisfactory reason has been presented why this view should not obtain. Nothing can be predicated upon the fact that the mode or procedure to amend that instrument is in a separate Article. The method to bring an amendment into being is by a resolution to be agreed to by a majority of the members elected to each House, and the same method is prescribed in section 26, Article III, to repass an order, resolution or vote disapproved by the Executive. In both instances and cases the vote must be taken by yeas and nays and entered on the journals of the respective Houses. This construction tends to preserve the unity and continuity of the Constitution, and provides, in requiring executive action upon every resolution, that which is certainly a praiseworthy feature—an additional safeguard against hasty and possibly ill-considered legislatior and amendments."

On the twenty-third day of October following, the petitioners, by *certiorari sur appeal*, carried the case into the Supreme Court, to No. 8, May Term, 1900. The case was heard while the Supreme Court was sitting in Philadelphia, and an opinion was handed down in Dauphin county at the May term. The Supreme Court reversed the court below, and decided that Article XVIII of the Constitution, providing for its future amendment, stood alone and provided all the machinery that is necessary to be followed in the amendment thereof. The opinion of the Supreme Court settles for all time the practice in reference to the approval or disapproval of constitutional amendments by the Executive. It has been a disputed question for a long term of years, and we have taken this much space in our report to give the details of the litigation in order that the whole matter may be spread on record for the future guidance of those having to pass on similar questions.

PUBLICATION OF MERCANTILE APPRAISERS' LIST.

Frank P. Cannon, Jacob L. Baugh and Charles W. Devitt, constables in certain wards in the city of Philadelphia, presented a pe-

tition to the Attorney General on the 26th of April, 1900, asking that he proceed by mandamus against the Auditor General of Pennsylvania and the city treasurer of Philadelphia to require said public officers to direct that the mercantile appraisers' list and classification be published in four newspapers of the city of Philadelphia, as required by law. The petitioners contended that the Mercantile License act of May 2, 1899, taken in connection with the act of twentieth of April, 1887, made it mandatory upon the Auditor General and city treasurer to make publication of the mercantile appraisers' lists in cities of the first class. It was alleged that the Auditor General and treasurer of the city of Philadelphia had refused to direct that the said list and classification shall be published in said city, as contemplated by the act of Assembly. It was further alleged that the petitioners were legally and beneficially interested in having the Auditor General and city treasurer direct publication to be made, because they, being constables, had certain fees dependent upon the publication of the lists as provided by law.

A hearing was held on the first day of May, 1900, at which time counsel for petitioners appeared and presented their case. On the fifteenth day of May following the application was refused, the Attorney General being of opinion that the question involved was one primarily for the Auditor General and treasurer of the city of Philadelphia to decide, and that it was not one for the intervention of the Attorney General. It was further held that the petitioners were not persons beneficially interested within the meaning of the act of 1893, which gave them a right to apply for a writ of mandamus. The petitioners in their own right then presented a petition to the Court of Common Pleas of Dauphin County, asking that a writ of mandamus should be awarded against the Attorney General, compelling him to proceed by mandamus against the Auditor General and treasurer of the city of Philadelphia to require a publication of the mercantile appraisers' lists according to law. An alternative writ was awarded, to which the Attorney General made answer and return on the eighteenth day of June following. The case was then heard by the court and decided against the contention of the petitioners on the seventh day of September, 1900. The court held that the petitioners did not have such a beneficial interest as was contemplated by the act of Assembly in asking for a manadamus against a public officer. The learned court, in passing upon the question of the publication of said lists, said *inter alia*:

> "It may be that these officials have satisfactory reasons for not observing the plain mandate of the Act requiring publication and advertisement of the lists, but as they are not before us, no opinion is expressed as to their duty in this particular behalf.

> "The rule to show cause why command should not be made by the Court upon the Attorney General of the Commonwealth to proceed by mandamus against the Auditor General of the State and city treasurer of Philadelphia to compel them to make publication of the lists and classification of dealers in merchandise returned to and certified by the mercantile appraisers as required by law, is discharged at the costs of the petitioners."

This decision leaves the question of the enforcement of the law primarily in the hands of the Auditor General and city treasurer in cities of the first class.

LUDWIG v. MEDICAL COUNCIL OF PENNSYLVANIA.

On the seventh day of February, 1899, the petition of George W. Ludwig was presented to the Dauphin County Court, praying that a writ of mandamus be issued by that court, directing the Medical Council of Pennsylvania to issue to George W. Ludwig a license to practice medicine in this Commonwealth. The petition recited that Mr. Ludwig was regularly graduated from the Medical Department of the University of Maryland, and that he had received his diploma, showing such graduation, and that subsequently thereto he was summoned before the Board of Medical Examiners of Maryland and regularly licensed by that Board to practice medicine and surgery in that State. The petitioner contended that, under the thirteenth section of the act of Assembly of the eighteenth of May, A. D. 1893, he was legally entitled to a license from the Medical Council of Pennsylvania, to practice his profession in this State, upon the presentation to the Medical Council of his license to practice medicine and surgery in the State of Maryland and the payment of the fee of fifteen dollars, as required by the above recited act of Assembly. The petition further stated that the Medical Council refused to issue the license to Mr. Ludwig, on the ground that the standard of requirements in the State of Maryland was not substantially the same as that in vogue in this State and because of this refusal the court was asked to issue a writ of mandamus compelling it to do so. To the rule granted by the court to show cause why the mandamus should not issue, the Medical Council of Pennsylvania made answer that its power in the premises was a discretionary one and could not be reviewed in the courts; that the requirements for licensure under the medical law of the State of Maryland failed to meet the demands of the medical law in this State, and that therefore the applicant must undergo an examination before the Board of Medical Examiners of this State prior to the issuance of a license. Subsequently the case was heard before the Court of Dauphin County,

the Attorney General representing the Medical Council, and after a full hearing of the facts and the argument of counsel, the court sustained the contentions of the respondent and refused the writ.

BRIDGE PROCEEDINGS.

The act of June 3, 1895, (P. L. 130), entitled "An act authorizing the Commonwealth of Pennsylvania to rebuild county bridges over navigable waters and other streams, which have been declared public highways by act of Assembly, where such bridges have been destroyed by flood, fire or other casualty, providing for the appointment of viewers and inspectors, and the payment of the cost of rebuilding such bridges," may become a very important one to counties interested and to the Commonwealth. It was the intention of the act to relieve the counties from the building of bridges over navigable rivers and other streams under certain conditions. The act makes it the duty of the Commonwealth to rebuild all bridges maintained, owned and controlled by the several counties, known as county bridges, erected over and across navigable rivers and such other streams as have been declared public highways by act of Assembly, which may be carried away or destroyed by flood, fire or other casualty. The commissioners of the county or counties interested are authorized to present a petition to the Court of Common Pleas of Dauphin County, setting forth the facts upon which they rely to ask the Commonwealth to rebuild bridges carried away or destroyed, as provided in the act of Assembly. All the details of the necessary proceedings are set out in the act of Assembly, wherein it is provided, among other things, that the letting of the contract shall be under the advice and direction of the Attorney General. It is also made his duty to represent the State in the proceedings before the Dauphin County Court, wherein the petitions asking for the rebuilding of bridges are lodged.

During the term of the present Attorney General there has been but one proceeding of this character before the courts. Under the authority of the act of 1895 the commissioners of Clarion county, on the fifteenth day of May, 1900, filed their petition in the Court of Common Pleas of Dauphin County, stating the necessary facts relied upon to bring them within the provisions of said act. It showed that the petitioners were the commissioners of Clarion county; that the stream over which it was desired to have a bridge constructed had been declared a public highway; that the old bridge had been destroyed by casualty, as contemplated in the act of Assembly, and asking for the appointment of five viewers, one of whom shall be a civil engineer, to view and inspect the location of the proposed bridge, and to make report of the same to the court, as di-

rected by law. On the same day the court appointed five viewers to proceed to view the location and make report to the court on the fifteenth day of June following. On the eleventh day of June the viewers made their report to the court, stating, among other things, that, on the twenty-ninth day of May, they had viewed the location of the proposed bridge, and found that there was immediate necessity for the rebuilding of the same, as prayed for by the petitioners. The viewers went into detail in reference to the kind of a bridge necessary to be rebuilt and made report of the same to the court. On the sixteenth day of July the court made an order, confirming the report of the viewers, and ordered and decreed that the Commonwealth of Pennsylvania rebuild the bridge under the authority of the act of June 13, 1895. The order of the court was referred to the Board of Public Grounds and Buildings, which Board proceeded in conformity with the report of the viewers to have prepared such plans and specifications as were necessary, in order to invite competitive bidding for the rebuilding the bridge. All the provisions of the act of Assembly with reference to plans and specifications and advertising having been complied with, the bids were received and the contract was in due time awarded.

This is the third bridge that has been built under the provisions of the act of 1895. The first was the one over the North Branch of the Susquehanna river at Catawissa, in the county of Columbia. The proceedings in this case were instituted in July of 1896, and the bridge was built some months thereafter. The second bridge was rebuilt over the Little Juniata river, near Birmingham, in the county of Huntingdon. The proceedings in that case were instituted in the fall of 1897 and the bridge was completed the following year. Up to this time the State has not been required to expend a very large sum of money in the construction of bridges under this act, but, as the opportunities to place the expense of rebuilding bridges upon the State, become more generally known, the number of cases in which the State will be asked to rebuild bridges carried away or destroyed by what is known as "any other casualty" will very largely increase. The provisions of this act should be strictly enforced, so that the State may not be imposed upon by the local authorities.

THE CASE OF CLARENCE M. BUSCH, STATE PRINTER.

My predecessor in office called attention in his last report to the mandamus proceeding instituted by the former State Printer, Clarence M. Busch against the Superintendent of Public Printing and Binding, asking the court to direct him to audit the account in order that payment might be received from the Treasurer of the

Commonwealth. At the time of the writing of that report the case was pending in the Court of Common Pleas of Dauphin County, before Judge McPherson. The learned judge, in an exhaustive and able opinion, decided against the contention of the petitioners and in favor of the Commonwealth. He entered a decree refusing the mandamus and directed the plaintiff to pay the costs. In said opinion the court said, *inter alia*:

> "There is force in the relator's contention that he was not bound to inquire what kind of order came into the hands of the Superintendent of Public Printing, and that the public printer's concern is simply with the orders that he may receive from the Superintendent. It was no part of his duty, he avers, to see that the law was complied with by the persons that gave orders to the Superintendent; neither was he bound to exercise a censorship over the manuscript that came into his own hands, and to decide whether it contained irrelevant matter, or was too profusely or too expensively illustrated. We are disposed to agree with this position. If the printer does not know the contents of an order lodged with the Superintendent, he is not bound to inquire; the difficulty here is, that the relator had knowledge of the particular paper now being considered. It was delivered to him, and he knew that it was signed, not by the head of a department, as required by the act, but by two subordinates, who had no legal power to bind the State by such a paper. He must have known also that it contained no particular description of additions and changes, and he cannot escape the consequence of his knowledge upon these two points. He was bound to take note of the commands of the statute; and, so far as he knew that these commands were being disobeyed, it was his duty to refuse compliance. This is the fundamental defect in his case, and it is not cured by the fact that he received afterwards a formal order from the Superintendent, based upon the illegal paper and merely repeating its contents."

The plaintiff appealed from the decree of the lower court, and the case was carried to the Supreme Court, and will be found at No. 27 May Term, 1899. The case was argued at length before the higher court, the Commonwealth relying upon the opinion of the lower court and pointing out wherein great injustice had been done the State in the publication of the pamphlet, on account of which the claim was pressed. Mr. Justice Fell, on July 19, 1899, handed down the opinion of the Supreme Court, in which the decree of the lower court was reversed and a peremptory mandamus awarded. In concluding the opinion the learned justice expressed his view of the case in the following language:

> "If there had been fraud or collusion the case would be different, but there is not the slightest evidence or even sug-

gestion of either. The only irregularity was that the order to the department of printing was not signed by the chief of the Department of Agriculture, but by his subordinates. Of this fact we do not find that the relator had actual knowledge, or that there is ground for imputing knowledge to him. The Legislature ordered the printing to be done. It was done in a satisfactory manner, and apparently, as far as the relator was concerned, in the regular and orderly course of business. The Commonwealth got what it had ordered. If the cost was unduly increased, it was because unlimited discretion was given to the authors to make changes and additions. The consequences of such loose and inconsiderate legislation should rest where they belong, and not be visited upon a contractor who appears to have acted faithfully." Commonwealth v. Jones, 192 P. S., 472.

Under the authority of this decision it is apparent that the Public Printer is a mere contractor, subject to the Superintendent of Public Printing and bound by his contract to obey the orders of that officer; and that he is under no duty to inquire if an order addressed to him by the Superintendent of Public Printing is based upon a proper order from the head of the Department for which the printing is to be done. As a result of this decision the responsibility for the printing of public documents rests very largely in the discretion of the heads of departments, and therefore great care and due diligence should be exercised by the heads of the various departments in the orders given for the public printing, in order that the interests of the State may be properly protected and that no greater amount of the public funds be expended therefor than is absolutely necessary under the authority of law.

MERCANTILE TAX.

David W. Cotterell, a merchant of the city of Harrisburg, refused to pay his mercantile license tax under the provisions of the act of May 2, 1899 (P. L. 184). His counsel alleged that the act in question was unconstitutional, first, because the act taxes the property of the appellant and is in violation of section 1, Article IX, of the Constitution of Pennsylvania, requiring uniformity of taxation; and, second, that the act is unconstitutional because it is in violation of section 7 of Article III of the Constitution, which requires that the General Assembly shall not pass any local or special law regulating the affairs of counties, cities and townships. Other questions were raised affecting the validity of the act under which the tax was claimed, and the whole question was brought before the Court of Common Pleas of Dauphin County, to No. 91 Commonwealth Docket, 1900, by a case stated.

The treasurer of Dauphin County, being the officer required by the provisions to make collection of the same, was the plaintiff in

the case, and David W. Cotterel, defendant. On the seventeenth day of April, 1900, judgment was directed to be entered in favor of the plaintiff for the amount of the mercantile tax, and an opinion was filed by President Judge Simonton sustaining the constitutionality and validity of the mercantile tax law of 1899. In the meantime several merchants of the city of Philadelphia had instituted a proceeding in equity, praying for an injunction against the treasurer of said city, restraining him from the collection of the mercantile tax and alleging that the act of 1899, under which he claimed his authority to act, was unconstitutional. In that case the court also denied the prayer of the petitioners and refused to grant the injunction, but did not file an opinion. The defendant in the Dauphin county case took an appeal to the Supreme Court, and the plaintiffs in the equity case in Philadelphia county asked leave to join in the argument of the case before the Supreme Court. This privilege was granted and the two cases were heard and argued before the Supreme Court, sitting in Dauphin county, at the May term. The case was of great importance to the Commonwealth, because, under authority of the act in question, upwards of one million dollars annually will be collected as revenues due the Commonwealth. After full presentation and argument before the Supreme Court, the case was decided in favor of the Commonwealth and the officers were directed to proceed with the collection of the tax under the act of 1899. The decision of the Supreme Court in this case sets at rest all the constitutional questions that can be raised against the Mercantile Tax Act of 1899, and will be found in 196 Pa. S. 614.

BUILDING AND LOAN ASSOCIATIONS.

The beneficial influence of these institutions has become so apparent that they have grown greatly in number and assets. The late Hon. Thomas J. Powers, Commissioner of Banking, realizing the lack of legislative restrictions and the fact that many pernicious practices not expressly prohibited by the existing laws had crept into the management of some of these institutions, began and carried out a systematic and thorough investigation in order to protect the vast number of shareholders throughout the State. In this work of weeding out the unsafe and unsound concerns and throwing proper safeguards about the management of others, this Department earnestly co-operated. The building and loan associations doing business exclusively on the domestic or co-operative plan were found generally to be safely and conservatively managed and in a satisfactory condition. Those conducted along what is known as National lines were found, in some instances, to have wandered from the conservative methods essential to safety, and to require

restrictive measures. Proceedings were begun against the chief offenders and many hearings were held, and when, in the opinion of the Department, such extreme steps were necessary, receivers were applied for and appointed to protect the interests of the shareholders. These proceedings were usually contested in the courts by the officers of the associations, but the action of the Department was sustained in every case so brought.

The case of the Penn-Germania of Philadelphia is fairly illustrative of the conditions disapproved of by the Department. This company was incorporated in 1897 on the national plan, and at the time that proceedings for a receiver were instituted, on March 7, 1900, it had assets of only about $15,000, with liabilities approximating $20,000, and an annual expense for office rent and employes of approximately $3,000. It appeared at the hearing that the officers of the company had, without the knowledge or consent of the shareholders, entered into a contract with the general manager of the company, whereby the entire expense fund created by its by-laws was assigned perpetually to him in return for which he was to pay the expenses of the management. A large proportion of the monthly payments made was diverted from the loan fund and placed in the expense fund, no part of this sum being placed to the credit of the shareholder. The Banking Commissioner insisted that the management was unsafe and unsound, the association insolvent and the action of the directors in making the expense contract *ultra vires*. The application for a receiver to wind up the affairs of this company was vigorously contested before the court. After several hearings and argument by counsel in the case, the court sustained the action of the Banking Department and made the receivership permanent in an opinion which severely criticised and condemned the practices complained of.

The right of building and loan associations to issue prepaid or full-paid shares of stock having been referred to the Attorney General by the Banking Commissioner, several hearings were given to the associations interested and their counsel, and on September 21, 1899, an opinion was given to the Banking Department by the Attorney General, in which the following conclusions appear:

> "1. The primary and principal business of every building and loan association incorporated under the act of 1874 must be the issuance of instalment stock.
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> "2. Full-paid and prepaid stock may be issued to a limited extent, and as incidental to the principal business of the association issuing the same; that is to say, where the best interest of those holding instalment stock will be served by issuing a sufficient amount of full-paid and prepaid stock to enable the association to meet the demands of its borrowing members, it may be done without violating any charter rights;

"3. The issuance of full-paid and prepaid stock should not at any time be permitted to become the principal business of the association, and at no time should there be more full-paid and prepaid stock than there is instalment stock outstanding.

The question of the right of building and loan associations, conducted on the national plan, to set aside for expenses a certain amount of money paid in monthly by the shareholders, was also referred by the Banking Commissioner for an opinion, and on July 19, 1899, an opinion was given by the Attorney General to the Hon. Thomas J. Powers, Commissioner of Banking, to the effect that the creation and maintenance of such an expense fund was contrary to the true intent and purpose of the act of 1874 creating these institutions, and that the practice should be abolished.

It is perhaps only just and fair to state that these worthy institutions for the most part are honestly and efficiently managed, and have afforded opportunity for many struggling persons to own their own homes in this Commonwealth. Their popularity and the confidence of the investors in their management are best attested by the fact that there are at present more than eleven hundred of such institutions chartred under the laws of this State, with an aggregate of assets amounting in 1899 to $112,120,436.64. The abuses which have crept into the management of some of these associations can be best attributed probably to the lack of proper legal restrictions in keeping with the increased business of these institutions, and, in this connection, I desire to call the attention of the Legislature to the necessity for the passage of well-considered and explicit legislation defining the powers and rights of the associations, and providing such restrictive safeguards as will best conserve the interests of the many thousands of shareholders. The establishment of a Bureau of Building and Loan Associations under the Department of Banking, with a sufficient number of examiners to make careful semi-annual investigations of the management and affairs of these institutions; the requiring of a deposit with the Banking Department of a sufficient sum of money to protect the share-holders of this State by all foreign building and loan associations desiring to do business in this State; requiring the agents of foreign building and loan associations to procure licenses from the Banking Department, and a provision for the payment of expenses incidental to an examination of the management and affairs of foreign building and loan associations by examiners appointed by the Banking Commissioner, are among the many things which ought to receive the earnest consideration of the Legislature. There are at present nearly fifty foreign building and loan associations conducted entirely on the national plan, doing business in this State,

in which many thousands of our citizens are largely interested, which, under the present laws are practically exempt from the examination and supervision of the Banking Commissioner.

INSURANCE COMPANIES.

This Department has given hearty support to the zealous and laudable efforts of the Hon. Israel W. Durham, Insurance Commissioner, to protect the citizens of the Commonwealth from unsafe or inadequately conducted insurance companies incorporated under the laws of this Commonwealth, which have resulted in eight of these institutions being placed in the hands of receivers and their business wound up. Some of these concerns have given the State authorities trouble for a number of years, but, owing to legal technicalities, it has been impossible to stop them altogether. It is believed, however, that the efforts of the Departments have finally brought about a condition in these institutions which insures the public against further deception and loss.

APPROPRIATIONS TO THE COMMON SCHOOLS.

Section 1 of Article X of the Constitution ordains that "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein the children of this Commonwealth, above the age of six years, may be educated, and shall appropriate at least one million dollars each year for that purpose." The Constitution thus fixes the minimum appropriation to be made in support of the common schools annually to be one million dollars, and made this provision mandatory. It is, therefore, binding upon the Legislature and the Executive. Following the mandate of the Constitution, the Legislature made an appropriation of one million dollars from 1874 to 1887. At the session of 1887 the appropriation to the common schools was increased to $1,500,000 annually. In 1889 a further increase of a half million dollars a year was made, thus providing for an appropriation of two million dollars annually for the support of the public schools. In 1891 the Legislature increased the annual appropriation to five million dollars, and in 1893 a further increase to five million five hundred thousand dollars was made. In the sessions of the Legislature succeeding 1893 an annual appropriation of five million five hundred thousand dollars was made down to and including 1899. The Legislature of 1899 inserted an item in the General Appropriation Bill, making an appropriation of eleven million dollars for the two school years beginning the first day of June,

1899, and ending the first day of June, 1901. At the time this appropriation was made, the Governor had called the attention of the Legislature to the condition of the State Treasury, which, at that time, showed a practical deficit of about three million dollars. In his inaugural message, the Governor suggested one of two remedies—either that the Legislature should provide additional revenue or make a reduction in the amount of appropriations to the various institutions receiving State aid. When the Legislature adjourned and the bills were presented to the Governor, it was found that, instead of making a reduction in the amount of appropriations, they had been increased over the amount asked for two years before. It was also found that no provision had been made for additional revenue. The Governor therefore found it necessary to reduce the appropriations made by the Legislature, so that the deficit of the State Treasury could be paid and the credit of the Commonwealth maintained. He therefore approved the appropriation made to the common schools in the sum of ten million dollars, being at the rate of five million dollars annually, and withheld his approval in the sum of one million dollars, being five hundred thousand dollars annually. In dealing with this question the Governor, among other things, said:

> "These large and magnificent appropriations to the common schools have gone on from year to year until our treasury is left in a condition of financial embarrassment, and we are now confronted with the practical question whether or not we can continue to make these appropriations without seriously affecting the credit of the Commonwealth. I am proud of our common school system, and in hearty sympathy with every movement that has for its purpose the betterment of our schools. If a large deficit did not already exist in our treasury on account of these appropriations, and if the anticipated revenues of the State would justify their continuance, I should most cheerfully give my approval to this section of the General Appropriation Bill. I cordially commend the intelligent purpose and patriotic devotion of our citizens to the common schools of the State, but every honest man must concede that it is impossible for the State to give away more money than it receives, no matter how worthy the purpose for which the money is expended. It is absolutely necessary to reduce the appropriations made by the Legislature, and it has seemed to me that, since free text-books have already been provided and paid for out of the general appropriations made since 1893, the annual appropriations could be reduced $500,000 a year without doing any injustice to the schools."
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> "The authority of the Governor to disapprove part of an item is doubted, but several of my predecessors in office have established precedents by withholding their approval

from part of an item and approving other parts of the same item. Following these precedents, and believing that the authority which confers the right to approve the whole of an item necessarily includes the power to approve part of the same item, I, therefore, approve of so much of this item which appropriates $5,000,000 annually, making $10,000,000 for the two years beginning June 1, 1899, and withhold my approval from $500,000 annually, making $1,000,000 for the two school years beginning the first day of June, 1899."

The question of the right of the Governor to reduce an item in a general appropriation bill has been raised at different times, but the practice during the past twenty years has been for the Executive to exercise this right when it was necessary to safeguard the treasury and protect the public.

On the twenty-sixth day of September, 1900, the board of school directors of Lower Providence township, Montgomery county, through its counsel, presented a petition to the Court of Common Pleas of Dauphin County, in which it was stated that the Legislature, during the session of 1899, had made an appropriation of eleven million dollars for the support of the common schools for the two years beginning the first day of June, 1899, and ending the first day of June, 1901, and calling attention to the fact that the Governor had approved this appropriation in the sum of ten million dollars and withheld his approval for one million dollars. It was further alleged by the petitioners that the school district, in whose behalf the petition was presented, had complied with all the precedent conditions necessary to ask for the appropriation, and that the State Treasurer and Superintendent of Public Instruction had neglected or refused to make any further payments to said district. It was admitted that the sum of one thousand dollars had already been paid on account of the appropriation for the school year. It was contended that the withholding by the Governor of his approval for the amount of one million dollars was inoperative and void, and that the payment of the appropriation should be made to the school district on the basis of five million five hundred thousand dollars annually. An alternative writ of mandamus was the same day awarded as prayed for, to which the Superintendent of Public Instruction and the State Treasurer made answer and return.

In the answer and return it was contended:

1. That the appropriation under the act of 1899 was for the two years in question, and that no time was designated when the appropriation was to be made, except that the State Treasurer was given the authority to designate the amount to be paid, and was

required to notify the Superintendent of Public Instruction, in writing, when there were sufficient funds in the State Treasury to pay the same.

2. That the mandamus proceedings were instituted for the purpose of enforcing the performance of a public duty, and that, under the authority of section 4 of the act of June 8, A. D. 1893, (P. L. 345), it was necessary to prosecute the mandamus in the name of the Commonwealth on the relation of the Attorney General.

3. That the time when such appropriations should be made was fixed by the discretion of the State Treasurer at the time when there should be sufficient money in the Treasury to pay the same, and that he could not be compelled by mandamus to exercise that discretion in a particular way, and his discretion should not be interfered with at all, unless it was shown that he had arbitrarily and unreasonably refused to make payments to several school districts of the State, as contemplated by the act of Assembly.

4. That the Superintendent of Public Instruction could not be compelled by mandamus to issue a warrant which he had never refused to issue, and which he was not in position to issue until the State Treasurer had first designated the amount to be paid and notified him in writing that there were sufficient funds in the State Treasury to pay the same.

5. That the State had already paid the complaining district on account the sum of one thousand dollars, and that the State Treasurer and Superintendent of Public Instruction were willing to pay any additional sum to said district that might be made to appear necessary on account of the appropriation made by the act of 1899.

Afterwards, the officers, against whom the mandamus proceedings were instituted, being of opinion that said district might need more of the appropriation, paid an additional five hundred dollars on account of the general appropriation. It was therefore contended that the petitioning school district had received as much or more money than it claimed to be entitled to at that time, and therefore there was no reason why the mandamus proceedings should be sustained.

It was earnestly contended before the court by counsel for the petitioners that the Governor, under the provisions of the Constitution, did not have the right either to approve or disapprove an item in the general appropriation bill in part. The petitioners relied upon the ground that the Governor must either approve the bill as a whole or disapprove it as a whole. Counsel for the respondents took the position that the power conferred upon the Governor by the Constitution to disapprove the whole of an item necessarily includes the power to veto part of the same item, this contention being

based on the principle that the greater necessarily includes the lesser power. It was contended that this construction was rendered necessary by the peculiar provisions of the Constitution in reference to school appropriation. The section of the Constitution, which provides that at least one million dollars shall be appropriated annually to the support of the common schools, is binding upon the Executive, and therefore he could not disapprove of the whole item making appropriation of five and one-half million dollars because of the Constitutional limitation just stated. Section 15 of Article IV of the Constitution requires that all bills which shall have passed both Houses of the Legislature, shall be presented to the Governor for his approval or disapproval, and under this provision he is required to pass judgment upon all bills passed by the Legislature and presented to him. It was therefore contended that if the Governor could not veto the item making appropriation to the common schools as a whole, because of the one million dollar limitation; that if he had not the power to disapprove of part of an item making an appropriation to the common schools; and that he was yet required to either approve or disapprove of it, he would then be in the anomalous position of being compelled by the Constitution to exercise a discretion, and yet, by the peculiar limitations in reference thereto, he would either have to approve it as a whole or not act on it at all. Such a construction would deny the Governor any discretion in passing on school appropriations, and would make his approval thereof a perfunctory and ministerial act. Acting on the authority of precedents established by his predecessors for a period of almost twenty years, and because of the depleted condition of the public treasury, the Governor decided the doubtful question in favor of his right to disapprove of part of the item and did so approve of ten million dollars and disapprove of the additional appropriation of one million dollars.

In this connection it is not without profit and interest to refer to the veto messages of the Governors of Pennsylvania, wherein they have exercised the right to disapprove of part of the items in General Appropriation Bills.

On June 9, 1885, Governor Pattison took into consideration section 5 of the appropriation bill, which had just been passed by the Legislature, which section appropriated the gross sum of $133,887.50 for the expenses of the Senate. He disapproved of the amount of this appropriation because it included certain items of extra pay in the lump sum, and reduced it by striking off therefrom the sum of $35,550. Another item in the same section appropriated $450 for the salary of the Chaplain. He disapproved of this amount to the extent of $150, cutting that amount off, and letting the item stand at $300.

He did precisely the same thing with section 6, which appropriated the sum of $406,476.10 for the expenses of the House of Representatives, by cutting off from an item of $48,750 the sum of $16,250, allowing the rest to stand. And he also reduced the appropriation of $450 for the salary of the Chaplain, by cutting off therefrom the sum of $150, letting the item stand at $300.

Again, on July 19, 1885, Governor Pattison, in considering the appropriation of a sum of $5,000 to the Home for Old Ladies in Philadelphia, cut off $2.500 of the appropriation, and allowed it to stand for the remaining sum of $2,500.

On June 4, 1887, Governor Beaver, in considering an act making appropriation for the benefit of the Reform School at Morganza, Pa., cut down the appropriation of $99,856.43, by disapproving thereof to the extent of $38,500, allowing the appropriation to stand for the sum of $61,356.43, and on the same day, in considering an appropriation to the Wilkes-Barre City Hospital, of the sum of $20,000, which was to be paid in quarterly payments of $2,500 each, he disapproved of the appropriation to the extent of cutting off therefrom the sum of $10,000, allowing the appropriation to stand in the sum of $10,000, and put it upon the express ground of the great excess of appropriations over and above the estimated revenues of the Commonwealth.

On June 13, 1887, Governor Beaver, in considering an appropriation of the sum of $50,000 to the Hospital Department of the Hahnemann Medical College of Philadelphia, reduced the item in part in the following language:

> "Approved the thirteenth day of June, A. D. 1887, to the extent of the sum of $25,000, to be paid out of the treasury during the year 1888, and disapproved as to the balance on account of excess of appropriations over estimated revenues."

On May 25, 1889, Governor Beaver, in considering a bill appropriating $30,000 to the Pennsylvania Working Home for Blind Men, for each of the fiscal years 1889 and 1890, approved the appropriation for one year, and disapproved as to the other.

On May 29, 1889, Governor Beaver reduced an appropriation of $50,000 to the Hahnemann Medical College, by cutting of $25,000 therefrom, allowing the appropriation to stand at $25,000.

On the same day he, in like manner, reduced an appropriation of $20,000 to the Jefferson Medical College, by cutting off one-half of the amount, and did the same thing with regard to an appropriation to the University of Pennsylvania, by reducing an appropriation of $50,000 to $25,000.

On January 22, 1891, Governor Pattison, in considering an appropriation of $15,000, specifically appropriated to the Women's

Homeopathic Association of Pennsylvania, reduced the amount of the appropriation by cutting off therefrom the sum of $10,000, leaving the appropriation to stand at the sum of $5,000.

On July 30, 1897, Governor Hastings, in considering an item in section 4, which provided for the payment of the salaries of the officers and employes of the Senate, the sum of $54,976, disapproved of this appropriation to the extent of cutting off therefrom the sum of $7,266, and left the appropriation to stand at the sum of $47,710.

At the same time, in considering an item in the same bill appropriating the sum of $75,404 for the payment of salaries and employes of the House, he disapproved thereof to the extent of striking off $12,350, allowing the appropriation to stand at the sum of $63,054.

Several other school districts, on the relation of the directors thereof, filed petitions for mandamus in the Court of Common Pleas of Dauphin County against the Superintendent of Public Instruction and the State Treasurer, requiring them to make a distribution on the basis of $5,500,000 annually. In each case the respondents made answer that the cases were improperly instituted for the reason that the mandamus act requires that when a writ is sought to procure the enforcement of a public duty it must be in the name of the Commonwealth on the relation of the Attorney General.

On the nineteenth day of December, 1900, the school directors of Patton township, Centre county, through their counsel, made application to the Attorney General for the use of the name of the Commonwealth in instituting a mandamus proceeding against the State Treasurer to require him to notify the Superintendent of Public Instruction, in writing, that there were sufficient funds in the State Treasury to pay the school appropriation on the basis of $5,500,000 annually and to designate the proper amount to be paid said district. A hearing was fixed for the thirty-first day of December, but, by consent of parties in interest, it was adjourned until the eighth day of January, 1901. All the parties in interest, either being present or being represented by counsel at that hearing, the Attorney General concluded to allow the use of the name of the Commonwealth in order that the question might be properly determined. Counsel for petitioners asked that the proceedings be instituted in the Court of Common Pleas of Centre County, and the respondent consented. According to this agreement the proceedings were instituted in that county. The whole question was argued in said court, where it is now pending, and no doubt it will be carried to the higher court where the vexed question may be finally settled.

APPOINTMENT BY THE GOVERNOR TO FILL A VACANCY IN THE OFFICE OF UNITED STATES SENATOR.

The full term of the Hon. Matthew Stanley Quay, senior United States Senator from Pennsylvania, expired on the third day of March, A. D. 1899, while the Legislature was in session. Under the act of Assembly of January 11, 1867, regulating the election of United States Senators, the Legislature proceeded to ballot on the third Tuesday of January, 1899, prior to the expiration of the term of Senator Quay. On account of Members and Senators absent and not sworn in it required one hundred and twenty-six votes to make the majority necessary to elect. The balloting proceeded from day to day, but, no one having received a majority of all the votes cast, the session adjourned without making an election. The Legislature having thus adjourned without making an election, and a vacancy in the office of United States Senator continuing to exist by reason of this failure of the Legislature to elect, the Governor, believing that the State was entitled to full representation in the United States Senate under the provisions of section 2 of Article II of the Federal Constitution, appointed Mr. Quay, on April 21, to fill the vacancy until the next meeting of the Legislature. This appointment brought up the whole question of the right of the Governor to appoint a person to fill a vacancy which had occurred during a legislative session, and when the credentials of the appointee were presented to the United States Senate they were referred to the Committee on Privileges and Elections. This committee fixed a day for a hearing of all parties in interest. Believing that our State was entitled to its full representation in the upper branch of Congress, either by election or by appointment in the case of a vacancy, I appeared before the committee as the legal officer of the Commonwealth to contend for full representation in that body. A copy of my opinion, addressed to the members of the United States Senate, on the question of the right of the Governor to make an appointment to fill a vacancy existing under such circumstances, will be found attached to this report under the heading of "Opinions of the Attorney General."

JOHN P. ELKIN,
Atorney General.

OPINIONS OF THE ATTORNEY GENERAL.

STATE BOARD OF HEALTH—POWER OF, TO EXPEND MONEYS FOR THE SUPPRESSION OF AN EPIDEMIC.

Expenditure of money is within discretion of Board of Health for purposes provided for under act of 22d July, 1897 (P. L. 315).

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 27, 1899.*

HON. WILLIAM A. STONE, *Governor:*

Sir: I have before me yours of 25th inst., in which you ask to be advised as to the power of the State Board of Health to expend moneys for the suppression of an epidemic of small-pox in Bedford county and for what purposes such moneys may be used.

The power of the State Board of Health to expend moneys for the above purpose was fully reviewed and set forth in an able opinion by former Attorney General Henry C. McCormick, under date of December 14, 1898, a copy of which I herewith enclose.

The purposes for which such moneys may lawfully be used are enumerated in the act of 22d July, 1897 (P. L. 315), which provides *inter alia* that the money shall be placed "in the hands of the treasurer of the State Board of Health, to be used for the purposes set forth in the resolution approved as aforesaid and for no other purpose."

This would seem to leave the disposition of the money with the above restriction chiefly within the discretion of the Board of Health to be exercised as its knowledge of the facts may seem to warrant.

I return herewith all papers submitted.

Very respectfully,
FREDERIC W. FLEITZ,
Deputy Attorney General.

1--23--1900

BUREAU OF MINES—COSTS OF ARBITRATION—Act of June 2, 1891.

The act of June 2, 1891, fixes the liability for the costs of arbitration in unambiguous language as follows: "And the party against whom the award is given shall pay the costs attending the same."

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *February 2, 1899.*

HON. ROBERT BROWNLEE, *Chief Bureau of Mines, Harrisburg, Pa:*

My Dear Sir: In answer to your communication of the 31st ult. addressed to the Attorney General, and asking for an opinion upon the construction of that part of section one of article 16, of the act of June 2, 1891, P. L. 176, which relates to the payment of costs of arbitration, I beg leave to say that the act fixes the liability for the costs in the following unambiguous language:

"And the party against whom the award is given shall pay the costs attending the case."

Under the statement of the facts as contained in your letter, I respectfully suggest that the proper way for the arbitrators to proceed to collect their fees would be by the usual method of bringing suit in the local courts.

I return herewith all papers submitted.

Very respectfully yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

BUREAU OF MINES—RIGHT OF A COAL COMPANY TO RE-CONSTRUCT A BREAKER BUILT PRIOR TO PASSAGE OF ACT OF JUNE 2, 1891 (P. L. 176).

Opinion of Judge Smith cited ruling that a coal company has a right to reconstruct a breaker (built prior to passage of said act) which has been partially destroyed by fire, without complying with section two of article five of said act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *February 2, 1899.*

HON. ROBERT BROWNLEE, *Chief Bureau of Mines, Harrisburg, Pa:*

Sir: In answer to your communication of the 31st ult., addressed to the Attorney General, and asking for an opinion upon the question of the right of a coal company to reconstruct a breaker which was built prior to the passage of the act of June 2, 1891 (P. L. 176), and which since the passage of said act has been partially destroyed by fire, upon the original site without complying with section two of

article five of said act, which provides that "It shall not be lawful to place any boiler or boilers for generating steam, under nor nearer, than 100 feet to any coal breaker, or any other structure in which persons are employed in the preparation of coal: Provided, That this section shall not apply to boilers or breakers already erected." I beg leave to say that this question has been squarely decided in the able opinion of Judge Smith, in the case of Commonwealth ex rel. Roderick v. Vipond et al. (14 C. C. Reports, 357), in which the court in construing the above section says *inter alia* "By its proviso, boilers and breakers already erected are taken entirely out of its operation. To all intents and purposes they remain as if the restriction had never been enacted. Their freedom from this restriction necessarily extends to subsequent repairs, alterations and renewals: otherwise it might become impossible to carry on the operations for which they were erected. To hold that they might not be restored, replaced or rebuilt, if damaged or destroyed is to leave the right to continue these operations dependent from freedom from accidents, or natural wear or at the mercy of the elements. The exclusion of boilers and breakers already erected from the operation of the section, by its proviso logically implies the right to maintain them as they then existed."

As the facts in the above case are the same as in the case before us, we see no reason for differing from the conclusion set forth in the above opinion.

I herewith return all papers submitted.

Very respectfully yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

QUARANTINE STATION, PORT OF PHILADELPHIA—Act of June 5, 1893. The second section of the act of June 5, 1893 (P. L. 294) invests the Governor with full power to acquire by eminent domain or otherwise any land necessary to the establishment and maintenance of a quarantine station for the port of Philadelphia.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 17, 1900.*

BENJAMIN LEE, M. D., *Secretary State Quarantine Board:*

SIR: In answer to your communication of the 10th inst., inquiring as to the power of the Governor to condemn and acquire by right of

eminent domain land necessary to the establishment and maintenance of a quarantine station for the port of Philadelphia, I have the honor to submit the following opinion:

The second section of the act of Assembly of June 5, A. D. 1893 (P. L. 294) provides that: "To the end that the quarantine station contemplated in this and the last preceding section shall be established at as early a date as practicable, the Governor of this Commonwealth is authorized and empowered to negotiate for and purchase, lease or acquire by eminent domain, on Reedy Island, or failing that at some suitable place on the waters of the Delaware river or bay either within or without the territorial limits of the State, if a concession from a State bordering on Delaware bay shall be obtained, land sufficient and suitable for the purpose, etc." It is clear from the language of this section that the Legislature intended to invest the Governor with full power to acquire by eminent domain or otherwise any land necessary to carry the act into effect, and, as this authority has never been withdrawn it is my opinion that the Governor can exercise it whenever it may be necessary for the above purpose.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

COUNTY SURVEYORS—Act of April 9, 1850 (P. L. 434).

There is no legal authority for requiring county surveyors to give bonds for the faithful performance of their duties.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 17, 1899.*

HON. ISAAC B. BROWN, *Deputy Secretary of Internal Affairs:*

Sir: Your letter of recent date, to the Attorney General, asking if county surveyors elected under the provisions of the act of Assembly of April 9, 1850 (P. L. 434) must give bonds to the Commonwealth for the proper discharge of their duties, has been referred to me.

You state that it has been the custom of your Department to require them to do so because the act of Assembly of April 8, 1785 (Smith's Laws, Vol. 2, p. 321), creating the office of deputy surveyors, provides *inter alia* that they shall give bond to the Commonwealth, with two securities, in the sum of one thousand pounds, etc., and that the act of 1850, *supra*, says that county surveyors "shall do and perform all the duties and have and receive all the emoluments now pertaining to the respective deputies of the Surveyor General." If the giving of a

bond were one of the duties of the deputy surveyors, this reasoning would be sound, but, as it is not a duty pertaining to the office, but a condition precedent to entering therein and one of the steps toward properly qualifying therefor, it seems to be fallacious.

I have given the question careful consideration and find that the act of April 9, 1850 (P. L. 434), by which the office of county surveyor was created, is a very full and complete act, setting forth clearly the manner in which the county surveyors shall be elected, fixing the term of office, prescribing their duties, providing the method of qualifying, and for their removal for certain causes, but nowhere does it make any mention of a bond to be given for the faithful performance of the duties of the office. If the Legislature had deemed a bond necessary it could easily have made provision for it. For these reasons I am clearly of the opinion that there is no legal authority for requiring county surveyors to give bonds for the faithful discharge of their duties.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

BUILDING AND LOAN ASSOCIATIONS.

Under the act of June 22, 1897, P. L. 178, building and loan associations are required to pay a State tax upon monthly payment stock which has matured, but which for any reason has not been paid and upon which the association is paying interest at the rate of six per cent. per annum.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 27, 1899.*

HON. LEVI G. MCCAULEY, *Auditor General:*

SIR: Yours of recent date, to this Department, asking whether building and loan associations are required, under the act of 22d June, 1897 (P. L. 178), to pay a State tax upon monthly-payment stock which has matured, but which, for various reasons, has not been paid and upon which the association is paying interest at the rate of six per cent. per annum, has been referred to me for reply.

The first section of the act provides as follows:

"Upon all full paid, prepaid and fully matured or partly matured stock in any building and loan association, incorporated under the laws of this State or incorporated under the laws of any other State, and doing business within this State, and upon which annual, semi-annual, quarterly or monthly cash dividends of interest shall be paid,

there shall be paid a State tax equal to that required to be paid upon money at interest under the general tax laws of this State."

I understand from your letter that some of the building and loan associations take the ground that monthly-payment stock, which is wholly matured, but which, for some cause, cannot be paid at maturity without encroaching upon the loan fund, is not liable to the tax imposed by the above act, even though, by an agreement with the shareholders, the association pays interest on such stock until such time as it can be paid in full. They base this contention upon the proviso, which reads as follows:

"Provided, however, That nothing in this act shall be taken to require the payment of any tax upon any unmatured stock of building and loan associations upon which periodical payments are required to be made or upon such stock after it has matured and is in process of payment."

This view of the law is, in my opinion, erroneous. The distinguishing feature is the payment of interest, and all stock of whatever kind or nature, upon which the association pays any rate of interest whatsoever, is, it seems to me, under this act, clearly liable to the State tax and should be returned.

I enclose herewith all papers submitted.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

CONSTRUCTION OF STATUTES—ACTS OF 1893 AND 1897—COMPENSATION FOR SERVICE RENDERED HEADS OF DEPARTMENTS.

It is clearly the duty of the Auditor General to fix such reasonable compensation for services called for, from and rendered by county officials to the heads of departments of the State Government in accordance with the provisions of the act of April 17, 1897, P. L. 22, as such services may warrant. The act of 1897, has nothing whatever to do with the act of June 3, 1893, P. L. 283. It does not repeal said act, nor does it permit the Auditor General to consider any claims for services rendered under its provisions.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 27, 1899.*

HON. LEVI G. MCCAULEY, *Auditor General:*

Sir: In answer to your letter of recent date, asking generally for a construction of the act of Assembly of April 14, 1897 (P. L. 22), and particularly if it repeals the act of June 3, 1893 (P. L. 283), I have the honor to submit the following opinion:

The act of April 14, 1897, reads as follows:

"It shall be the duty of the county officials of the various counties of this Commonwealth to furnish, on application therefor, to the head of any department of the government of this Commonwealth, such information and copies of such records or documents contained in the respective offices of such county officials as, in the opinion of said head of department, may be necessary or pertinent to the work of his respective department; the official so furnishing information shall receive for his services in copying and forwarding the same such reasonable compensation as the Auditor General may determine and be paid by the State Treasurer out of moneys not otherwise appropriated upon warrant from the Auditor General."

The language of the act clearly indicates that the intention of the Legislature was to provide for the furnishing of certain necessary information to the various heads of departments of the State Government to facilitate the business of the departments, and makes it the duty of any county official in the State to furnish such information upon request, and very properly places the expenses or charges for furnishing such information upon the State, providing how such compensation shall be fixed and how such payment shall be made. It in no way refers to any other act in existence, neither is there any repealing clause attached.

The act of 1893 (P. L. 285) is an amendment to an act, entitled "A supplement to an act, entitled 'An act to create a Board of Public Charities,'" etc., and provides:

"It shall be the duty of the said inspectors, sheriffs and other persons to make return of the statements required by the first section of this act to the said Board of Public Charities within ten days after the first day of January, April, July and October in each year, if required by said Board, for each of which statements the officer making the same shall receive the sum of ten dollars, to be paid out of the county funds of the county for which said statements shall be made, and upon neglect or refusal to make statements in the manner and at the times required by this act, such inspector, sheriff or other person, so neglecting or refusing, shall forfeit and pay a fine of not more than one hundred dollars, to be sued for and collected by the general agent in the name of the Board of Public Charities for the use of the Commonwealth."

This is a specific act directing the specific performance of a public duty, naming the county officers who are required to comply with its provisions in order to carry out the former act with reference to the Board of Public Charities of the State, providing a penalty for its violation as well as fixing the compensation of the officer making the report, and it places the expense of making such reports upon the proper county.

I have given these acts careful consideration and am of the opinion that they do not conflict in any way, and that they both can and do consistently stand without interference of any kind. Your Department, therefore, has nothing whatever to do with the act of 1893, nor can it consider any claims for services rendered under the provisions of that act. On the other hand, the act of 1897 comes entirely within the purview of your Department and it is clearly your duty to fix such reasonable compensation as the services rendered may warrant, in accordance with its provisions.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

FIRE WARDENS—Act of March 30, 1897 (P. L. 9).

No county shall be liable to pay for services in extinguishing forest fires in any one year an amount exceeding five hundred dollars.

The better practice in making payment for such services is for county commissioners to make payment at the close of the year.

The Fire Warden has no legal authority to appoint a Deputy.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 4, 1899.*

J. T. ROTHROCK, *Commissioner of Forestry:*

Dear Sir: Yours of the 27th ult., to the Attorney General, enclosing a letter from the county commissioners of Bedford county, relative to the act of Assembly of March 30, 1897 (P. L. 9), entitled "An act making constables of townships ex-officio fire wardens for the extinction of forest fires, etc., received and the same has been referred to me.

In reply to the first question, as to the maximum amount which any county may legally expend for services rendered in extinguishing forest fires, the proviso to the first section of the act which reads as follows: Provided, "No county shall be liable to pay for this purpose in any one year an amount exceeding five hundred dollars," seems to me to be a direct and unambiguous answer. The county is liable to the extent of five hundred dollars only. This is of course exclusive of the amount paid by the State.

The second and fourth questions relating principally to the time of payment for services rendered may be answered together. This is largely discretionary with the county commissioners, but it seems to me that the better practice would be not to pay any claims until the close of the year and then, if they should exceed the maximum

amount which could be used under the law to pay them, it might possibly be necessary to pay them prorata, although that is a question which must be met when it arises. It is the practice of the Auditor General's Department to refuse to pay out any money under this act until the close of the year, and upon the rendition of all the bills, and if the Commissioners of the various counties follow this course it would avoid confusion. I therefore recommend it.

In answer to the third question, asking whether or not the fire warden, in case he should be unable to be present at any fire may appoint a deputy who shall be entitled to receive fifteen cents per hour, I desire to say that the act makes no provision for such appointment, and therefore I am clearly of the opinion that no such right exists in the fire warden.

I enclose herewith letters submitted.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

JUSTICE OF THE PEACE—OAKDALE BOROUGH, ALLEGHENY COUNTY.

In a dispute between two claimants to the office of Justice of the peace, the courts of the Commonwealth, not the office of the Secretary of the Commonwealth, is the proper tribunal to decide the matter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 11, 1899.*

HON. LEWIS E. BEITLER, *Deputy Secretary of the Commonwealth:*

Sir: Your letter of the 6th inst., asking whether or not, under the statement of facts which you present, a commission as justice of the peace for Oakdale borough, Allegheny county, should issue to Charles J. Vance, who has been certified by the prothonotary of that county as elected and accepting as a justice of the peace for said borough, has been carefully considered.

It appears from your communication and an inspection of the records in your office, that on April 16, 1898, commissions were issued to G. W. Land and J. C. McEwen, to serve as justices of the peace of Oakdale borough for the period of five years, computing from the first Monday of May following. There is nothing to show that either of these officers have died, resigned, removed or in any other way vacated the offices for which they were commissioned; neither is there anything of record showing that either of them was removed, as provided by law; and therefore, as there is no claim that the bor-

ough is entitled to more than two justices of the peace, it seems to me clear that no commission can be issued to Mr. Vance.

Mr. Vance is asking for a commission on an election held to fill an alleged vacancy in the office now occupied by Mr. McEwen; but there is no evidence before us to sustain the contention that any such vacancy has occurred. On the other hand, you have Mr. McEwen's denial of any such vacancy existing and his protest against the issuing of a commission to Mr. Vance. It is perfectly well settled, in cases of this kind, that the burden of proof rests upon the party who alleges the existence of a vacancy. However this may be, I beg to remind you that your Department is not a judicial tribunal and that disputes of this kind should be settled in the proper forum—the courts of the Commonwealth.

I therefore advise you, that, under all the circumstances surrounding this case, you would not be justified, in my opinion, in issuing the commission to Mr. Vance.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

HOME FOR DISABLED AND INDIGENT SOLDIERS AND SAILORS.

A fund accumulated by the Board of Trustees for the benefit of the Pennsylvania Sailors' Home from contributions of pensioner inmates, under the rules of that institution, by virtue of act of June 3, 1885, P. L. 62, can be applied at discretion of the trustees to purposes judged by them to be for the greatest benefit of said institution.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 24, 1899.*

HON. LOUIS WAGNER, *Treasurer of the Pennsylvania Sailors' Home, Erie, Pa.:*

Sir: I am in receipt of your communication of recent date, asking for an opinion of the Attorney General upon the question of the right of the trustees of the Home for Disabled and Indigent Soldiers and Sailors to utilize, for the purpose of enlarging and improving the infirmary as well as to aid in the general maintenance of the institution, a fund created under rules established by your Board, requiring pensioners entitled to the benefits of said Home to pay a certain portion of their pension money to the commandant of said institution, who in turn pays the same to the treasurer.

The act of June 3, A. D. 1885 (P. L. 62), provides for the establishment and maintenance of the Home for Disabled and Indigent Sol-

diers and Sailors of Pennsylvania. Under the authority of this act a commission was appointed to select a site and establish a home within the limits of the Commonwealth, and an appropriation was made for the purpose of carrying the provisions of the act into effect. Section six specifies the qualifications or disabilities which entitle soldiers, sailors and marines to admission into the Home. Section seven provides that the commission shall constitute a Board of Trustees which is given power to adopt rules and regulations for the management and government of the Home. This Board is also authorized to fix the compensation and formulate the rules for the admission into the Home of disabled and indigent soldiers, not inconsistent with the qualifications and requirements set out in section six of said act. Under the general powers conferred upon the Board of Trustees for the government and management of said institution, two resolutions in reference to pensioners admitted to said Home were adopted.

The first, adopted in 1892, requires each member of the Home to pay over to the commandant thereof a sum equal to the amount which said pensioner may have drawn in excess of four dollars per month. It was the intention of the Board of Trustees, as I am informed, to create a fund out of these accumulations that could be used for the benefit of those dependent upon the pensioner and for the general welfare of the institution.

The second, adopted in 1893, provides that any member of the Home, failing or refusing to comply with the rule of the Board of Trustees governing pensioners, shall be discharged for violation thereof.

Your communication also conveys the information that there is in the hands of the treasurer of said institution the sum of $34,865.22, which was received from pensioners who were formerly members of the Home, but who were without dependents, and that the Board of Trustees is desirous of making use of this fund for the enlargement and improvement of the institution and the general welfare of those who receive its benefits.

It is now well settled that a Board of Trustees of soldiers' and sailors' homes, established by act of Assembly, has the right to adopt rules similar in kind and character to the regulations above referred to. Mr. Justice Kinne, of the Iowa Supreme Court, in placing a construction upon an act of Assembly very similar to our own, and upon, rules of the same general character relating to the admission of pensioners, uses the following language:

"Under the provisions of the law, the board has ample power to determine the circumstances under which a soldier may be admitted to the home, and to say how much of the income he may be receiving, if any, he shall contribute towards his support while enjoying the benefits of the bounty of the State. While every man who entered the service of his country is entitled to all praise for his loyalty and

patriotism, and while it is proper, just, and humane that the debt of gratitude which the nation owes to its defenders should never be forgotten—while they should not be permitted to want for the necessities or comforts of life—still, it must be remembered that the State is under no legal obligation to this class of its citizens other than rests upon it as to all of its citizens. The Legislature, not standing upon its legal obligations, but prompted by feelings both patriotic and humane, has voluntarily undertaken to provide for the care and support of this class of citizens. The support offered by the State, and given at the Home, is a gratuity, and not based upon any legal duty or contractual relations between the State, on the one hand and the inmates of this Home, on the other; hence it follows that the power which confers the benefaction may, by itself or its agents, determine what the benefaction shall be, and the circumstances which must exist in order to entitle one to share the State's bounty. It has said that if you enter the Home, and if you have an income, from pension or otherwise, which will in part support you, you shall agree to and shall contribute from it towards your support. This deprives the soldier of no rights."—Ball v. Evans, 68 Northwestern Rep., 437.

The same question was raised in the case of Loser v. Board of Managers, 92 Mich., 633. In this case the Supreme Court of Michigan sustained the authority of the Board of Trustees to make a similar rule under the statutes of that State. The principle was very ably discussed in an opinion by Judge Walling, president judge of the several courts of Erie county, in the case of Brooks v. The Trustees and Officers of the Home. The learned judge went into the whole question very exhaustively, and, in my judgment, there is but little further to be said on this branch of the subject. I am clearly of opinion that your Board had the authority to adopt the rules under consideration and that the fund in your hands is subject to the general control of your Board.

There is but a single question for my consideration and determination. The fund in question having been created under the rules above stated, by the payment into the hands of the treasurer of said institution of certain pension moneys by pensioners having no dependents, therefore no one to whom these accumulations could be properly paid, you desire to be informed whether the Board of Trustees has the authority to make use of these accumulations for the general improvement of the institution and the maintenance of its inmates.

This question is not free from difficulty. So far as I have been able to make investigation, the courts have not yet been called upon to decide the exact question herein involved, and until it is settled by the courts it may be said that it is not finally determined. The courts have said, however, that a board of trustees, with powers similar to your own, has the right to adopt all reasonable rules and regulations

necessary for the management, maintenance, discipline and control of inmates of such an institution. I am of opinion, therefore, that, if your Board should adopt a resolution authorizing the setting apart of all or so much of the fund in question as may be deemed expedient, for the purpose of enlarging and improving the Home, so that the general welfare of the inmates and best interest of the institution will be conserved thereby, it would be a reasonable exercise of the authority conferred upon it within the meaning of the act of Assembly and the decisions of the courts.

In this connection it may be proper for me to state that the fund in question in no proper sense belongs to the general revenues of the State. It could not be paid into the State Treasury without legislative authority, and if the authority to pay it in were conferred by act of Assembly, it could not be held there for any specific purpose. An appropriation would have to be made in the general form for such purposes as the institution might require. The fund was accumulated under the management of your Board of Trustees and was intended to benefit the institution into whose treasury it was paid. It seems clear, therefore, that it should be made use of for that purpose, and the Board of Trustees is the best judges of the uses to which it can be applied with the greatest benefit to the institution and the inmates thereof.

All of which is respectfully submitted.

JNO. P. ELKIN,
Attorney General.

LICENSES—Act of May 4, 1899.

Under the provisions of the act of May 4, 1899, relating to the manufacture and sale of oleomargarine and butterine, a license must be taken out for each place of business by one who owes and operates several stores.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 6, 1899.*

MAJOR LEVI WELLS, *Dairy and Food Commissioner:*

Sir: In answer to your communication of recent date, asking whether, under the provisions of the act of Assembly of May 4, A. D. 1899, relating to the manufacture and sale of oleomargarine and butterine, a license must be taken out for each place of business, in case one person owns and operates several stores, or whether one license will cover all the stores owned by one person, I have the honor to submit the following opinion:

It is a well settled rule that acts of Assembly shall be so construed as best to carry into effect the intention of the Legislature, and this is especially true in cases like the one under consideration. I have examined this matter carefully and from the language of the act, especially that used in the third section, it is clear that it was the intention of the Legislature to compel every person who engages in the actual sale of oleomargarine or butterine, either for himself or as agent for another, to take out the license required, and as it is impossible for one man to conduct several places of business at one and the same time, except through the medium of agents, I am of the opinion that a separate license must be taken out for each and every place wherein oleomargarine or butterine is sold. Any other construction would open the door wide to fraud and afford an opportunity for a general evasion of the provisions of this act.

Respectfully yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

INSURANCE—Act of May 8, 1899.

Business transacted by insurance companies not incorporated under the laws of this State must be done by a person who is an actual legal resident of the Commonwealth.

Licenses to do insurance business in this State are issued to individuals without regard to any business connections they may have with other parties residing within or without the State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 6, 1899.*

ISRAEL W. DURHAM, *Insurance Commissioner:*

Sir: Your communication of recent date, asking several questions relative to the first section of the act of Assembly of May 8, 1899, entitled "An act in relation to re-insurance and the transaction of business by fire or marine insurance companies or associations, otherwise than through resident agents, and the transaction of such business by or with unauthorized companies," has been duly considered.

The first section of the act is as follows:

"That no fire insurance company or association not incorporated under the laws of this State, authorized to transact business herein, shall make, write, place, or cause to be made, written or placed, any policy, duplicate policy, or contract of insurance of any kind or character, or any general or floating policy upon property situated or

located in this State, except after the said risk has been approved in writing by an agent who is a resident of this State, regularly commissioned and licensed to transact insurance business herein, who shall countersign all policies so issued, and receive the commission thereon when the premium is paid, to the end that the State may receive the taxes required by law to be paid on the premiums collected for insurance on all property located in this State; and that no person shall pay or forward any premiums, application for insurance, or in any manner secure, help or aid in the placing of any fire insurance, or effect any contract of insurance upon real or personal property within this Commonwealth, directly or indirectly, with any insurance company or association not of this State, or which has not been authorized to do business in this State, unless such person or persons shall first secure a license from the Insurance Commissioner of this State, as now provided by law. Nothing in this act shall be construed to prevent any such insurance company or association, authorized to transact business in this State, from issuing policies at its principal or department offices covering property in this State: Provided, That such policies are issued upon applications procured and submitted to such company by agents who are residents of this State, and licensed to transact the business of insurance herein, and who shall countersign all policies so issued and receive the commission there on when paid: Provided, That no part of this section is intended to or shall apply to direct insurance covering the rolling stock of railroad corporations, or property in transit while in the possession and custody of railroad corporations or other common carriers, or to the property of such common carriers, used or employed by them in their business as common carriers of freight, merchandise or passengers."

In answer to your first question, asking who is a resident of this State within the meaning and intent of the act, and whether a firm, the members of which live in another State, but who have offices established and who have been transacting business in Pennsylvania for many years, could be construed as resident agents, I beg leave to say that it is clear that it was the intention of the Legislature to compel all insurance business, transacted by companies or associations not incorporated under our laws, to be done by a person who is an actual legal resident of this Commonwealth, and it follows that persons living outside of the State can, under no circumstances, transact such business of countersigning policies, etc., without the provisions of this act.

Your second question, asking whether all the members of a firm or copartnership, doing a general insurance business in this State, must be actual residents, or whether one of the members of such firm, being a resident and having general charge of the offices and business in

this State, may issue and countersign all policies, keep all books and records showing the exact amount of business done, and in so doing may use the firm name in transacting such business and in countersigning policies, seems to be to me largely one for your Department to determine. I understand that it has been the practice and policy of your office not to recognize firms or copartnerships in any way, but to issue licenses to individuals and to recognize such individuals as the agents, without regard to any business connections which they may have each with the other; and in view of this policy it seems to me clear that, if the business is actually done by a legally authorized agent having and maintaining an actual residence and office within the State, it is a full compliance with the act, and that any business arrangement he may make with other parties residing either within or without the State is not properly a matter for your Department to consider. The evident intent of the Legislature in passing this act was to cause all insurance risks made by a foreign company to be written by one of the citizens of this State, and to have the books and records of the office within this State so as to be subject to examination by your Department, and if this is done it is clear that the law is complied with.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

FOREIGN INSURANCE COMPANIES—RESIDENT AGENT—Act of May 8, 1899.

Under the act of May 8, 1899, a resident is one actually living or dwelling within the State.

Under the laws regulating insurance, a resident agent is a person residing within the State, duly licensed by the insurance department.

Persons living outside the State can under no circumstances transact insurance business in the State, without violating the act of May 8, 1899.

A duly authorized resident agent may legally form a business arrangement or partnership with parties, resident either within or without the State, and may use the firm name for business and advertising purposes and in countersigning policies, so long as he also countersigns them with his own name as required by law.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 15, 1899.*

ISRAEL W. DURHAM, *Insurance Commissioner:*

Sir: This Department is in receipt of your communication of recent date, requesting answers to the following questions relative to the

construction of the act of Assembly of May 8, 1899, entitled "An act in relation to re-insurance and the transaction of business by fire or marine insurance companies or associations, otherwise than through resident agents, and the transaction of such business by or with unauthorized companies."

1. Who is a resident agent of this State within the meaning and intent of the act?

2. Can a person whose domicile is in another State, or a firm the members of which live in another State, but who have been transacting business in Pennsylvania for many years and have offices established in this State, be construed as a resident agent or agents within the meaning of the act?

3. Must this law be construed as compelling all the members of a firm or partnership to be actual residents of the State, or can a partnership, one member of which is an actual resident living within the State and having an office herein, the other members of the firm living outside of the State, issue and countersign policies through this resident member under the firm name, per the resident member, as the agent contemplated by this act?

By the first section of the act: "No fire insurance company or association not incorporated under the laws of this State, authorized to transact business herein, shall make, write, place or cause to be made, written or placed, any policy, duplicate policy, or contract of insurance of any kind or character, or any general or floating policy upon property situated or located in this State, except after the said risk has been approved in writing by an agent who is a resident of this State, regularly commissioned and licensed to transact insurance business herein, who shall countersign all policies so issued, and receive the commission thereon when the premium is paid, to the end that State may receive the taxes required by law to be paid on the premiums collected for insurance on all property located in this State."

It is also provided by the same section that:

"No person shall pay or forward any premiums, application for insurance, or in any manner secure, help or aid in the placing of any fire insurance, or effect any contract of insurance upon real or personal property within this Commonwealth, directly or indirectly, with any insurance company or association not of this State, or which has not been authorized to do business in this State, unless such person or persons shall first secure a license from the Insurance Commissioner of this State, as now provided by law."

It is further provided that foreign insurance companies or associations authorized to transact business in this State may issue policies at its principal or department offices covering property in this

State only when such policies are issued upon applications procured, approved and submitted to such companies by agents who are residents of this State and licensed to transact the business of insurance herein, and who shall countersign all policies so issued and receive the commission thereon when paid.

It is apparent from the language of the act that it was the intention of the Legislature to compel all applications for insurance by companies or associations not incorporated under the laws of this State, but authorized to do business herein, to be secured and approved by an agent who is a resident of this State, duly commissioned and licensed to transact an insurance business, and that all policies of insurance issued by such companies shall be countersigned by such actual resident agent who shall keep a record of all applications and policies, together with the amount of money paid as premiums to such companies for policies so issued, in order that the books or records may be examined by your Department if deemed necessary to verify the reports which, under the law, must be made to your Department by all foreign insurance companies doing business as aforesaid. The purpose is to protect the people against deception by foreign companies and to effectuate the collection of the taxes required by law to be paid on the premiums for insurance on all property located within our borders. It is the duty of your Department to so administer the law as will best carry into effect the intention of the Legislature. Its provisions are plain and mandatory, and must be strictly complied with.

Having thus briefly considered the act generally, I have the honor to submit the following more specific answers to your queries:

1. A resident is one actually living or dwelling within the State, and, under the laws of this Commonwealth, a resident agent is a person residing within the State, duly licensed by your Department to transact business herein.

2. As stated in the general discussion, it is clear that persons living outside of the State can, under no circumstances, transact insurance business in this State without violating the provisions of this act.

3. I am informed that the precedents of your Department, in construing the laws relating to the licensing of insurance agents, are not to recognize firms or copartnerships in any way, but to issue licenses to agents individually, and that such licensed persons are required to countersign all policies in their individual names. This practice meets with my approval and is undoubtedly correct. It is, therefore, my opinion that a duly authorized resident agent of this State may legally form a business arrangement or partnership with parties resident either within or without the Commonwealth, and may use the firm name for advertising or business purposes and may use

the firm name in countersigning policies so long as he also countersigns them with his own name as required by law.

I herewith return all letters and papers submitted.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

STATE INSTITUTION FOR FEEBLE-MINDED OF WESTERN PENNSYLVANIA, POLK, PA.

Sections 9, 11, 12 and 16 of act of June 3, 1893 (P. L. 289), give general powers to the trustees of State Institutions for Feeble-Minded of Western Pennsylvania sufficient to give them the right to adopt such rules, prepare blanks and require persons desiring admission to make such reasonable contributions as may be agreed upon. A rule requiring the payment of twenty-five dollars annually to the superintendent for clothing seems reasonable.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 16, 1899.*

DR. J. MOORHEAD MURDOCH, *Superintendent State Institution for Feeble-Minded, Polk, Pa.:*

Dear Sir: This Department is in receipt of your communication of recent date, asking whether or not Form No. 3, which has been prepared under the direction of the Board of (Trustees of) your institution and approved by the State Board of Charities, in reference to the admission of feeble-minded persons into your institution, is in conformity with the provisions of law.

I observe that one of the requirements of this blank form is that a sum not exceeding twenty-five dollars annually shall be paid to the superintendent to defray the expenses of providing clothing for the inmates. As I understand your inquiry, some question has been raised as to the right of your trustees to impose this payment upon the overseers of the poor who make application for the admission of indigent persons under their care. It is true that the act of June 3, A. D. 1893 (P. L. 289), which controls the admission of feeble-minded persons into your institution, has no specific provision in reference to this matter, but sections 9, 11, 12 and 16 of said act give very general powers to the trustees in the matter of making such rules and regulations as may be found expedient in the administration of the affairs of the institution. It is provided that all inmates shall be subject to the rules and regulations adopted by the Board of Trustees. It is also provided that the form of application for admission into the institution shall be such as the trustees, with the approval

of the State Board of Charities, may prescribe. It was clearly the intention of the Legislature to authorize the Board of Trustees to make all reasonable rules and regulations about the admission of inmates to this institution. It is a benevolent and charitable institution. It was established for the purpose of providing better care for the unfortunate persons intended to be admitted. The whole work is a gratuity on the part of the State, and it can impose any conditions or burdens it chooses not contrary to law.

For these and other reasons it is clear to my mind that the Board of Trustees has a right to adopt such rules, prepare blanks and require persons desiring admission to make such reasonable contributions as may be agreed upon. The rule in reference to the payment of a certain amount for clothing seems to be reasonable, and I cannot see why it should be questioned by any person or official board desiring the benefits of the institution.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

BUILDING AND LOAN ASSOCIATIONS—REGULATION AND CONTROL OF—POWER OF COMMISSIONER OF BANKING OVER—Act of February 11, 1895.

The practice of setting aside a certain portion of the dues paid on installment stock in building and loan associations, for the purpose of defraying the expenses of the association, known as the "Expense Fund Method" is objectionable from many standpoints and should not be permitted if it can be prevented under existing laws.

In the absence of express legislative restrictions, this evil may be controlled or corrected, under the general powers conferred on the Commissioner of Banking, by act of February 11, 1895, P. L. 4.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 19, 1899.*

TO THE HON. THOMAS J. POWERS, *Commissioner of Banking:*

Dear Sir: I am in receipt of your communication of recent date, asking for an opinion upon the question of the right of building and loan associations to adopt by-laws allowing deductions to be made from the amounts paid in periodically by members, on account of installment stock dues, for the purpose of defraying the current and other expenses of the association; in other words, you desire to be advised as to the duty of the Commissioner of Banking in approv-

ing or disapproving what is known as the "Expense Fund Method" adopted by some building and loan associations.

Under this method it is customary to require a certain sum to be paid periodically on each share of stock and a portion of the sum so paid is set apart in a fund for the purpose of defraying the expenses of the association. As, for instance, if the amount required to be paid each month on account of one share of stock is thirty cents, there should be set apart, for use of the expense fund, four cents, in other words, only twenty-six cents should be applied to the purpose for which the shareholder intended it to be used, the remaining four cents being used by the officers and managers to pay their own as well as other expenses of the association.

It seems to me that this method is objectionable from many standpoints and ought not to be encouraged. I doubt very much whether conservative and well-managed associations look with favor upon this method of conducting building and loan associations. Shareholders have a right to expect and demand that every penny paid into the association on account of installment stock dues shall be applied in such manner as to mature that stock at the earliest possible date. It requires no argument to show that a share of stock will mature in a shorter term of years if the amount required to be paid in periodically is all applied to that purpose than if a certain portion of it is set apart for the purpose of paying the expenses of the association. While the argument may be and is frequently made that every member is presumed to know the provision of the by-laws in reference to the expense fund, and is therefore bound by it and cannot be heard to complain, it is a well known fact that very few of the whole number of members understand the exact application of the funds so collected or how it affects the maturing of their stock. In the illustration above stated, on an investment of thirty cents four cents is set apart to pay the expenses of the persons or association making such investment; in other words, thirteen and one-half per cent. of the entire sum to be invested is deducted for the purpose of paying the expenses of the officers of the association. It is very doubtful whether members of an association would consent to the setting apart of such an unreasonable sum if they fully understood their rights in the premises and how it affected their stock.

Again, I am strongly impressed with the idea that no well-conducted corporate or other business enterprise would impair its capital stock in order to pay the running expenses of its business. In building and loan associations the dues paid on account of the installment stock should be treated as the capital of the association and it should be used in such a way as to mature the stock at the earliest date possible, increase the reserve fund or provide other contingent funds for the benefit of the entire membership. The experience of busi-

ness men clearly teaches that the running expenses of every association or business enterprise should be paid out of the earnings of the business and not deducted from its working capital. No business enterprise, in my judgment, can be said to be conducted on a sound and substantial basis that does not pay current expenses out of the income or profits of the business. If the expenses of these associations are required to be paid out of their income, greater care will be exercised in the management of the business and in the amount of expenses incurred from time to time. The setting apart of a fixed amount of dues for the purpose of creating an expense fund is generally abused by the officers for whose benefit the fund is created. This method encourages extravagance, results in high salaries and promotes unjustifiable outlay. Enough has been said to show that the deduction of the expense fund from the periodical payments made on account of installment stock should not be permitted, if it can be prevented under the provisions of our laws.

The acts of Assembly in this State are silent on the exact question involved in the consideration of this subject. Some States have undertaken to remedy this acknowledged evil by legislation which prohibits the use of an expense fund method in the management of building and loan associations. In the absence of express legislative restrictions in our own State, I am of opinion that this evil may be controlled or entirely corrected under the general powers conferred upon the Commissioner of Banking by the act of Assembly of February 11, A. D. 1895 (P. L. 4).

Section 9 of said act provides, among other things, as follows:

"If from any examination of the papers, books and affairs of any corporation, with or without capital, the Commissioner of Banking shall have reason at any time to conclude that such corporation is in an unsound and unsafe condition to do business, or that its business or manner of conducting the same is injurious to and contrary to the interest of the public, the Commissioner of Banking shall forthwith communicate the facts to the Attorney General who shall forthwith make application to the court of common pleas of the county of Dauphin, or to a law judge thereof, for the appointment of a receiver to take charge of such corporation's property and wind up its business."

In several sections of said act the Commissioner of Banking is authorized to exercise supervision over building and loan associations, as well as other banking institutions, and to require them to conduct their business upon a sound and substantial basis so that the best interests of shareholders, depositors and the public generally may be conserved thereby. Under these provisions of the law it would be your duty, if any institution is transacting its business in an unsafe, unsound, objectionable or illegal manner, to require such in-

stitution to correct the objectionable method of transacting its business, and if it should fail to do so, you can then institute proceedings to have its charter annulled and its business wound up. The same rule applies to building and loan associations. If they adopt unreasonable by-laws, or are transacting their business in a manner which offends sound business principles so as to be prejudicial to the best interests of the shareholders and the public generally, it is not only your right but your duty as well to have the evil corrected.

In conclusion permit me to say that since many associations of this character have heretofore adopted and used the expense fund method, you should exercise discretion about enforcing any new rule in reference to the same. Ample time should be given to the associations to make all necessary changes in their method of doing business so that no hardship will fall upon any of them, all the while keeping in view the ultimate end of doing away with the system.

Very respectfully,

JNO. P. ELKIN,
Attorney General.

August 1, 1899.

IN RE APPLICATION OF GEORGE BURNHAM, JR., TO THE ATTORNEY GENERAL, ASKING THAT A SUGGESTION BE FILED IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY FOR A WRIT OF MANDAMUS AGAINST THE SECRETARY OF THE COMMONWEALTH TO COMPEL THE PUBLICATION OF CERTAIN PROPOSED AMENDMENTS TO THE CONSTITUTION PASSED AT THE RECENT SESSION OF THE LEGISLATURE BUT VETOED BY THE GOVERNOR.

A petition has been presented to the Attorney General on behalf of a citizen of Philadelphia asking that a proceeding in the nature of a suggestion for a writ of mandamus to be instituted against the Secretary of the Commonwealth, to compel the publication of certain proposed amendments to the Constitution, passed at the recent session of the Legislature, but which failed to receive Executive approval. One of the proposed amendments was intended to change that provision of section 7, article 8, of the Constitution, which requires that registration of electors shall be uniform throughout the State. The other amendment provides for a modification of section 4, article 8, which now requires that all elections by citizens shall be by ballot, so that voting machines can be introduced into our election system. The proposed amendments were introduced separately into the Legislature in the nature of a joint resolution. Each resolution was referred to a committee, reported affirmatively, read at length on

three separate days, considered and agreed to by both branches of the Legislature. After having passed that body, the proper official thereof, when they had been signed by the presiding officer of each house, certified them to the governor for his approval or disapproval. The Governor, not being satisfied, that there was any public necessity or demand for the changes proposed to be made by the amendments, and being informed that the costs and expenses to the people for publication, printing and holding elections for this purpose would amount to upwards of two hundred thousand dollars, concluded to exercise what he believed to be his proper prerogative under the precedents established by his predecessors, and a fair construction of the constitutional provisions, by interposing the veto power.

Counsel for petitioner, together with counsel representing the company interested in the voting machine amendment, contend that the disapproval of the Governor is inoperative and should be disregarded by the Secretary of the Commonwealth. This officer, however, as certainly was his duty in the absence of any judicial determination of the question involved, accepted the action of the Chief Executive as binding upon him and refused to make publication of the proposed amendments when requested so to do. Not being satisfied with this termination of the controversy, the petitioner has appealed to the Attorney General, asking that a mandamus proceeding be instituted.

The Governor takes his right to disapprove the proposed amendments upon the twenty-sixth section of article 3 of the Constitution, which provides that every order, resolution and vote to which the concurrence of both houses is necessary, except on the question of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him, or being disapproved, shall be repassed by two-thirds of both houses.

Counsel for respondent contends that inasmuch as the article which provides the method of proposing amendments is silent on the subject of executive approval, it is to be read in connection with other sections, so that all of the constitutional provisions may be harmonized and stand together. On the other hand, it is argued that section 26, article 3, applies only to ordinary legislation and that an amendment to the Constitution is not such ordinary legislation as to come within its meaning.

The question of submitting Constitutional amendments to the Governor for his approval and proper practice in reference thereto has not been passed upon by the courts of our State. In the absence of such judicial interpretation it is customary to look to the precedents and decisions of the Executive and Legislative Departments for the best rule of construction in both cases. Courts will be influenced, although not necessarily controlled, by the contemporaneous construction of co-ordinate departments of government on questions

peculiarly relating to official and parliamentary duty under the Constitution and statutes.

Counsel for respondent has called to our attention a number of precedents, covering a period of more than sixty years, in which legislation providing for amendments to the Constitution and resolutions containing special amendments, have been submitted to the Governor. Governor Ritner approved legislation of this character in 1833 and again in 1837; Governor Bigler in 1854; Governor Geary in 1871, also in 1872 approved a joint resolution containing a special amendment under the same circumstances as the ones passed at the recent session of the Legislature were submitted; Governor Hartranft approved legislation to appoint a commission to amend the Constitution in 1874; Governor Pattison recognized the right of interposing the veto power to such amendments in 1885, when he returned to the Secretary of the Commonwealth a proposed amendment with the following direction, to wit:

"Not having been filed in the Office of the Secretary of the Commonwealth, with my objections thereto, within thirty days after adjournment of the Legislature * * * * you are, therefore, hereby directed to cause it to be enrolled and published."

Governor Beaver approved the amendment to prohibit the manufacture and sale of intoxicating liquors in 1887 and 1889; in 1891 Governor Pattison approved the legislation providing for the calling of a convention for the purpose of amending the Constitution. On the other hand, the learned counsel for petitioner cites the amendments of 1857 and 1863, also the poll tax amendment of 1887 and 1889, which were not submitted for and did not receive Executive approval.

From the precedents above enumerated it is apparent that there has been a difference of opinion on the question involved for many years, but in a large majority of the cases the doubt has been resolved in favor of the right of the Governor to pass upon such legislation or amendments.

While precedents in our State largely preponderate in favor of the contention of the respondent, counsel for petitioner has cited several decisions of the courts of other states in order to show that the weight of legal authority in other jurisdictions sustains the position taken by him. The question was raised before the courts in the States of Louisiana, Nebraska and Colorado, where it was decided that a resolution proposing an amendment to the Constitution did not require the approval of the Governor. In other jurisdictions the opposite view has been held by the courts. In his treatise on constitutional conventions, Jameson sums up the authorities, in section 561, in the following language:

"In New York the propositions of amendments are sometimes incorporated in a bill, providing conditionally in one or more classes

for submission to the people, and in those cases the bill is submitted to the Governor for his approval. The existing constitutions of Michigan and Minnesota provide that amendments may be proposed by a prescribed majority of the Legislature, after which they are required to be submitted by that body to the people. In the former state, the practice has been to effect this by a joint resolution, and in the latter by a bill; in both cases, however, combining the propositions and the clauses submitting them to the people in a single act. In both cases, this act is presented to the Governor for his sanction. In the constitutions of Georgia and Rhode Island, amendments are permitted to be made by the action of two successive Legislatures, without submission to the people; and in neither case are the resolutions proposing the amendments presented to the Governor. In the constitution of Missouri, authorizing amendments to be made in the same manner, the resolutions of the first Legislature are presented to the Governor, and those of the second not. In the constitution of Maine, finally, amendments may be proposed by the Legislature, which are then to be submitted to the people, the constitution itself containing particular direction as to the time and mode of holding the election, and no action on the part of the Legislature being requisite, except by resolution to notify the towns to vote on the proposed amendments as prescribed in the constitution. It is the practice to present the resolutions embodying the amendments to the Governor."

In a very well-considered case under the constitution of Nebraska, it was held that the proposed amendment should not be submitted for Executive approval, but, in delivering the opinion of the court, Mr. Justice Maxwell says:

"It will thus be seen that there is no uniform practice in the several states in regard to the matter of submitting propositions to amend a Constitution; * * * the cases where the propositions have been submitted to the Governor being nearly as numerous as those where they were not submitted to him for his approval." (See 25, Nebraska, page 876.)

Black, in a recent edition of his work on American constitutional law, in speaking about the question of submitting propositions to amend the Constitution to the Governor, among other things, says:

"The proposition or resolution of the Legislature to refer the amendments to the popular vote may take such shape as to fall within the designation of the ordinary legislation and so require the assent of the Governor. The practice in different states in this particular is not uniform."

In legislative practice joint resolutions providing amendments have always been treated as ordinary legislation in our State. Such resolutions are introduced, referred to committees, read at length on separate days, signed by presiding officers, and certified to the Gov-

ernor like ordinary legislation. If article 18 of the Constitution, which provides for its future amendment, stands independent of all other sections, it must necessarily follow that the legislative practice in connection with resolutions proposing amendment is without authority.

From all the precedents and authorities hereinbefore referred to, it clearly appears that there is a diversity of opinion and practice on this question. This being the case, it is only proper that it should be finally determined in the courts and for this purpose the Attorney General is entirely willing that a proper proceeding shall be instituted.

The petitioner, however, insists that a mandamus be issued, compelling the Secretary of the Commonwealth to make arrangements for the publication of the proposed amendments, although disapproved by the Governor. In order that the publication be effective it must first appear on the 7th day of August next, but, as it seems to me, this is an impossibility. Even if the court below should decide the case prior to that date, it would be necessary for one side or the other to take an appeal, so that the controversy could be finally settled by a decision from the highest court. The final decision would come too late to cover the pending cases. Then, again, if the alternative mandamus should issue, and under it the Secretary of the Commonwealth take chances of making the publication, and it were afterwards decided by the courts that he acted without authority, a large amount of expenses would be incurred, for which nobody is responsible unless the Secretary himself.

Again, the respondent, in answer to the prayer of the petitioner, states that, entirely independent of the veto power of the Governor in such cases, it is impossible for him to make necessary arrangements and contracts for the publication of the proposed amendments for the reason that it will cost upwards of fifty thousand dollars, and that no appropriation, general or special, has been made for this purpose. There is no fund provided by law from which these expenses can be paid and he is therefore left without the necessary means to set the machinery in motion, even if he desired so to do. In this connection is cited the constitutional requirement that:

"No money shall be paid out of the Treasury except upon appropriations made by law and on warrant drawn by the proper officer."

In this instance there is no appropriation made by law and no officer authorized to draw a warrant for the expenses incurred. It will not be seriously contended that the Legislature can impose a duty upon a public official, the performance of which involves the expenditure of money, and then compel the performance of the alleged duty, without first having made an appropriation to defray the necessary expenses. As for instance, suppose the Legislature should pass an act requiring

the Board of Public Grounds and Buildings to complete the new Capitol at a cost of not less than three million dollars, and fail to make an appropriation of a sufficient amount to pay for the improvements authorized to be made, no one will contend that the board could be compelled by mandamus to complete the work. It is my opinion that every joint resolution proposing an amendment to the Constitution should be accompanied with a clause making an appropriation to pay the expenses of publication, or, in the absence of such provision in the joint resolution itself, then an appropriation by separate bill, or in the general appropriation bill, should be made at the same time, so that public officers shall be provided with the necessary funds to pay expenses incurred in making contracts in compliance with their duties.

While to my mind this position is sound and a good defense to the proposed proceeding, this and other important questions raised by the controversy are of such a character, there being a diversity of opinion in reference to many of them, that it is proper for the courts to finally determine the issue.

Therefore, a suggestion for a writ of mandamus in the name of the Commonwealth is allowed.

JOHN P. ELKIN,
Attorney General.

BUILDING AND LOAN ASSOCIATIONS—FULL PAID AND PREPAID STOCK—Act of June 29, 1874.

The primary and principal business of building and loan associations, incorporated under the act of 1874, must be the issuing of installment stock.

Full paid and prepaid stock may be issued to a limited extent as incidental to the principal business of the association issuing the same; that is to say, where the best interests of those holding installment stock will be served by issuing a sufficient amount of full paid or prepaid stock to enable the association to meet the demands of borrowing members, it may be done without violating any charter right.

The issuance of full paid and prepaid stock should not at any time be permitted to become the principal business of the association, and at no time should there be more prepaid and full paid stock issued than there is installment stock outstanding.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *September 21, 1899.*

HON. THOMAS J. POWERS, *Commissioner of Banking:*

Dear Sir: In answer to your recent inquiry, asking to be advised upon the the question of the right of building and loan associations, incorporated under and regulated by the laws of our State, to issue

what is known as full paid and prepaid stock, I have the honor to submit the following opinion:

Since the adoption of the new Constitution these associations have been incorporated under the provisions of the act of April 29, A. D. 1874. Clause 2, section 37, of said act provides, among other things, as follows:

"The capital stock may be issued in series, but no such series shall at any issue exceed in the aggregate five hundred thousand dollars, the installments on which stock are to be paid at such time and place as the by-laws shall appoint; no periodical payment of such installments to be made exceeding two dollars on each share, and said stock may be paid off and retired as the by-laws shall direct."

In other sections of said act mention is made of installments due on shares of stock and what privileges the associations can assert in reference to the same.

From these and other provisions of the act relating to building and loan associations it clearly appears that their business must consist primarily in issuing what is known as installment stock. It may, therefore, be laid down as an unvarying rule that no building and loan association, incorporated under the act of 1874, has a right to do business without issuing installment stock. There has been, however, a growth or development in the kind and character of business transacted by these associations until it has become their general policy to issue what is known as full paid and prepaid stock. So far as I am informed, no association has undertaken to issue full paid and prepaid stock to the exclusion of installment stock, but a large number of the strongest associations in the State issue the three different kinds of stock.

It is contended by those who represent building and loan associations in this controversy that full paid and prepaid stocks are the natural evolution of the business transacted by them. Under the old installment stock plan it often happened, when a series matured, that the shareholders did not desire to withdraw their money and the association preferred to keep it invested for them. This resulted in an arrangement being made between those holding matured stock and the association, through which it remained in the treasury for general investment. The holders of certificates of matured stock received interest at a rate agreed upon and fixed in the by-laws, and certain other advantages were also given them. This practice became very general in a large number of these associations, and was found to be helpful in the transaction of this kind of business, as it placed money in the treasury which could be loaned at once to borrowing members. It was but another step from this practice to that of issuing full paid stock. Instead of waiting until installment stock matured and then keeping it in the treasury for the purpose of

loaning to borrowing members, the association said to those members who were in position to advance their shares in full at the beginning, "If you do so the association will pay you interest at the rate fixed in the by-laws and confer certain other privileges therein set out." This plan has met with much favor and is in very general use, not only in our State but in other States. It frequently happened that members were not in position to advance all of the installments so as to take full paid stock, but could make a number of advance payments. Under this plan the member advanced a certain percentage of the face value of his stock—say, fifty—and received a certificate for the same, which matured earlier than the installment stock proper.

The primary object of building and loan associations being to encourage the accumulation of a fund in the treasury by requiring payments of a certain fixed amount to be made periodically, the question very naturally arose as to the right to issue any other kind of stock. The higher courts of our State have not passed on the question, but it has been judicially determined in a number of States. The Supreme Court of Missouri passed upon this question in the case of Hohenshell v. Savings and Loan Association, 140 Mo., 566, wherein it was held that:

"A saving fund, loan and building association, organized under Chapter 42, Article IX, Revised Statutes, 1889 has the authority to issue paid up or prepaid stock, even though the charter is silent as to its authority to do so."

The question was raised in the Court of Appeals in the State of New York in the case of People ex rel., Fairchild v. Preston, 140, N. Y., 554, where, after discussing the whole subject of prepaid and full paid stock, Justice Earl, who delivered the opinion of the court, said:

"It is impossible for us to perceive how this scheme violates the law or any public policy. It does not prevent or defeat equality or mutuality among the members; and if the prepaid stock is to be condemned, then it is not perceived how pre-payment of installments upon installment stock can be upheld. Money must come into the treasury of one of these corporations from the small monthly dues very slowly, and members desiring to borrow the money for the purchase or improvement of homes must wait a long time before they can be accommodated with loans from money thus contributed, but if pre-payment of dues is permitted the ability of the corporation to aid its members by loans is greatly facilitated, and the main purpose of the corporation is thus promoted."

In his work on building and loan associations, Mr. Endlich, after discussing the whole subject of full paid and prepaid stock, draws the following conclusion, in section 464:

"The result of the principles declared and applied in these decisions would seem to be, in the absence of any statutory provision ex-

pressly authorizing or prohibiting it, that building associations may always permit pre-payments of stock subscriptions to be received, with or without rebate or interest allowance in consideration of such pre-payment."

Thompson, in a recent edition of his work on building and loan associations, sums up the result of his investigations in reference to the right of these associations to issue full paid and prepaid stock as follows:

"In the absence of legislative prohibition, the association may lawfully contract with a shareholder to receive payments in advance of the current dues, and pay a reasonable rate of interest thereon.

"And in the absence of statutory prohibition, the association may receive payments to the extent of the full face value of the stock, and pay reasonable cash dividends thereon out of the earnings of the association."

In the case of Heptasoph Building and Loan Association of Pittsburg v. Linhart, 4 District Reports, 620, an opinion was handed down by McIlvaine, P. J., in which the question of the right of Pennsylvania building and loan associations to issue what is known as full paid stock was discussed as follows:

"But the fact that the Legislature required all associations to issue installment stock and limited periodical payments to sums not exceeding $2, does not, in our opinion, carry with it the implication that the Legislature intended to prohibit the issuance of all other kinds of stock or to prohibit the association from contracting with the holders of investment stock for the advance payment of those installments, if some of the installment stockholders wished to make such advance payments and the other installment stockholders were not prejudiced, but benefited thereby. On the other hand, the fact that the Legislature left it, by express enactment, to the association to determine how stock should be paid off and retired, and how it should be withdrawn, either before or at maturity, implies a power on the part of the association to contract with its members for such payments of their dues and such division of the profits as would be equitable to the members contracted with and to the interest of the other members of the association."

From these various authorities we are of opinion that the following principles are fairly well established in so far as the operation of building and loan associations, under the statutes of our own State, are concerned:

1. The primary and principal business of every building and loan association incorporated under the act of 1874, must be the issuance of installment stock.

2. Full paid and prepaid stock may be issued to a limited extent and as incidental to the principal business of the association issuing

the same; that is to say, where the best interest of those holding installment stock will be served by issuing a sufficient amount of full paid or prepaid stock to enable the association to meet the demands of its borrowing members, it may be done without violating any charter rights.

3. The issuance of full paid and prepaid stock should not at any time be permitted to become the principal business of the association and at no time should there be more prepaid and full paid stock issued than there is installment stock outstanding.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

THE ENUMERATION AND ENROLLMENT OF SCHOOL CHILDREN—WHEN MADE.

The provisions of the act of July 15, 1897 (P. L. 271) are mandatory, and in no wise conflict with the act of April 20, 1897 (P. L. 28), which has reference to the triennial assessment of real estate.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *October 10, 1899.*

HON. JOHN Q. STEWART, *Deputy Superintendent of Public Instruction:*

Dear Sir: I am in receipt of your communication of recent date, asking for an opinion upon the question raised by the commissioners of Cumberland county in reference to the provisions of the act of July 15, A. D. 1897 (P. L. 271), which provides for the enumeration and enrollment of school children between the ages of six and sixteen years. The communication points out some differences in the provisions of this act and the act of April 20, A. D. 1897 (P. L. 28), which provides for a uniform date when the commissioners of the several counties shall issue their precepts to assessors to make the triennial assessment of property.

It is not necessary that the two acts should be read together in order to arrive at the meaning of the provisions of the act first named. The act in reference to a more just and equitable method of distributing the school appropriation and providing for the enumeration and enrollment of school children makes a complete system in itself. The provisions of the act are mandatory and should be complied with by the local authorities. The enumeration and enrollment of the school children should be made by the assessors at the time they make their

regular assessments for the purpose of levying county and local taxes. Regular assessments for the purpose of levying county taxes are made annually. The triennial assessments have reference only to the valuation of real estate and do not in any way interfere with the assessments made each year for county and local purposes. The enumeration and enrollment, under the provisions of the first named act, should be made biennially, as therein required.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

PENNSYLVANIA REFORM SCHOOL—"EIGHT HOUR LAW"—Act of May 20, 1891.

The Pennsylvania Reform School at Morganza falls within the provisions of the act of 1891, known as the "Eight hour law." Said act is general in its terms and any exemptions must be strictly construed.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *October 18, 1899.*

HON. WILLIAM A. STONE, *Governor:*

Sir: Your letter, enclosing an application from certain of the employes and under officers of the Pennsylvania Reform School at Morganza for the benefit of the act of May 20, 1891 (P. L. 100), entitled "An act making eight hours as a day's labor in penal institutions under control of the State," and requesting an opinion as to whether or not that institution properly comes within the provisions of the said act, has been referred to me.

The first section of the above act provides that "eight hours of the twenty-four of each day shall make and constitute a day's labor in the penitentiaries and reformatory institutions which shall receive support from appropriations made by the General Assembly of this Commonwealth and by taxes levied and paid by the several counties thereof, in whole or in part." The third section requires the Governor of this Commonwealth to see that the act is carried into effect wherever it is applicable. The proviso to the fourth section reads as follows: "That this act shall not be construed to have reference to any institution wherein the employes are resident."

I have considered this matter carefully and from the petition and evidence adduced at a hearing given the petitioners by this Department, it seems to be settled that the Pennsylvania Reform School is a reformatory institution which receives support from appropriations

made by the General Assembly of this Commonwealth; and further, while some of the employes and under officers are resident in the institution, a large number of them are not. The intent of the Legislature, in passing this act, was clearly to accede to the increasing demand for a reduction of the hours of labor in a working day—a policy which is founded upon correct economic principles and in the interest of the laboring classes. For this reason it ought to receive as favorable a construction as possible and its beneficial provisions extended to all institutions except those plainly exempted therefrom by the express terms of the act itself. This is a general act and any exemptions claimed should be strictly construed. Under this construction the proviso can apply only to the institutions where all the employes are resident, and, inasmuch as this is not the case in the Pennsylvania Reform School at Morganza, I am of the opinion, and so advise you, that this institution comes within the general provisions of the act, and its employes are entitled to its benefits.

In conclusion, permit me to suggest that, as it will undoubtedly cost more to defray the expenses of this institution, operating under the provisions of the act of 1891, than under the system now in force, some arrangement should be made before the change which will prevent the efficiency and usefulness of the institution from being impaired, until the next legislature shall meet and make such additional appropriation as may be found necessary to carry out the provisions of this act.

Very respectfully,
FREDERIC W. FLEITZ,
Deputy Attorney General.

MUTUAL LIFE INSURANCE COMPANIES—POWERS OF UNDER ACT OF JUNE 3, 1887 (P. L. 335)—GUARANTEE FUND—EXPENSES.

A mutual life insurance company organized under the act of June 3, 1887, may use fifty per cent. of its guarantee fund for the payment of the general expenses of such company.

The acts of May 1, 1876 (P. L. 53) and said act of 1887, must be construed together in all of their parts bearing on this question.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *October 18, 1899.*

HON. ISRAEL W. DURHAM, *Insurance Commissioner:*

Dear Sir: I am in receipt of your communication of recent date, asking whether a mutual life insurance company, created and doing business under the act of 1887, with a guarantee fund, can use that fund

in the payment and the advancement in payment of the general expenses of the business.

Section 3 of the act of June 3, A. D. 1887 (P. L. 335), permits life insurance companies, incorporated under the provisions of said act, on the assessment plan, to have a guarantee fund not exceeding $200,000, subject to the provisions, requirements and regulations prescribed in sections 23 and 24 of the act of May 1, A. D. 1876 (P. L. 53); this act provides, among other things, how mutual insurance companies, organized for the purposes therein stated, may have a guarantee fund paid in and invested, and it is further provided that mutual companies so organized "shall have fifty per centum of the guarantee capital paid in and invested, less the necessary expenses of organization." Section 23 provides that every subscriber to the guarantee fund may give his note or obligation to such company "for the unpaid moiety of the guarantee fund so subscribed, which note or obligation shall be liable to assessment or assessments from time to time as may be deemed necessary by the directors of said company for the successful prosecution of its business; and such assessments may be made to meet the losses, expenses, insurance reserve, and other obligations of such company, until the whole amount of such note or obligation shall be paid." This "unpaid moiety of the guarantee fund" must necessarily refer to the fifty per centum not required to be paid in and invested under the provisions of the preceding section. It is therefore clear that the Legislature intended to permit the use of this fifty per centum for the payment of the expenses of the company if deemed necessary. It is my opinion that the acts of 1876 and 1887 must be construed together in all of their parts having a bearing upon this question, so that a proper understanding may be had with reference to the whole guarantee fund therein provided for; and as the guarantee fund permitted by the act of 1887 is governed by the prosions of the act of 1876, and subject to the restrictions and regulations of said act, it is clear that a company, organized under the act of 1887 and having a guarantee fund, may use the fifty per centum therein provided for the payment of the general expenses of such company.

Very respectfully yours,

FREDERIC W. FLEITZ,
Deputy Attorney General

BOARD OF PUBLIC CHARITIES—POWER OF GENERAL AGENT AND SECRETARY TO APPROVE CERTAIN VOUCHERS IN THE CASE OF THE READING REAL ESTATE EXCHANGE AGAINST THE COMMONWEALTH, GROWING OUT OF THE PURCHASE OF A SITE FOR THE ERECTION OF A STATE ASYLUM FOR THE CHRONIC INSANE AT WERNERSVILLE.

The general agent and secretary of Board of Public Charities is advised to approve the vouchers in the above case in accordance with the findings of the arbitrator, Hon. Amos H. Mylin, with the exception of the charge of interest found to be due the Reading Real Estate Exchange. The practice of the Auditor General's Office has been to refsue to pay interest, unless expressly authorized by law, on claims of this or any other character against the Commonwealth. In this case there is no express authorization of law to allow interest, and it would be against good public policy to change the rule.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *November 25, 1899.*

HON. CADWALADER BIDDLE, *General Agent and Secretary Board Public Charities :*

Dear Sir: In answer to your communication of recent date, requesting an opinion upon the question of your right to approve certain vouchers that have been submitted for your approval in the case of the Reading Real Estate Exchange against the Commonwealth, growing out of the purchase of a site for the erection of a State Asylum for the Chronic Insane at Wernersville, I have the honor to submit the following:

Accompanying your communication is a copy of the report submitted by the Hon. Amos H. Mylin, who acted as arbitrator between the contending parties. All of the facts are very fully set out in the finding of the aforesaid arbitrator. It also appears that the representatives of the Reading Real Estate Exchange and the Commissioners appointed to select a site for the asylum entered into an agreement to submit the whole question to the arbitrator whose finding should be final on both parties. Under the terms of this agreement the controversy, in my judgment, is at an end so far as the Real Estate Exchange and the members of the Commission are concerned. All these parties having agreed that the matter should be submitted to the arbitrator and that his finding should be final, they must be bound thereby. While the findings of the arbitrator are binding upon the parties to the agreement, yet I doubt whether it would be necessarily binding upon the Commonwealth. However, I am strongly of opinion that the Commonwealth is fairly bound to respect the findings of its quasi official officer, and, unless some plain provision of law or uniform precedent of the Auditor General's Department is collided, it seems to me that the findings of the arbitrator should be followed.

In this connection I notice that the arbitrator has allowed $780.49

as interest upon the amount found to be due the Reading Real Estate Exchange. The uniform practice in the Auditor General's Office has been to refuse to pay interest, unless expressly authorized by law, on claims of this or any other character against the Commonwealth. In this case there is no express authorization of law to allow interest. I do not think it would be good public policy to change the rule in this case, and I therefore suggest that you do not approve the item of interest to which I have referred. This being a claim that has grown out of the purchase of the site and the erection of a State Asylum for the Chronic Insane, I think the vouchers should be passed upon by you, like the vouchers for any other indebtedness incurred in connection with the purchase of the site and the building of that institution.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

NATIONAL GUARD—CLAIMS FOR DAMAGES TO PROPERTY IN AND ABOUT THE CAMP AT MOUNT GRETNA, IN 1898—PAYMENT OF.

The Military Board may exercise a reasonable discretion in passing upon the question of what is properly included in the expense of the mobilization of the National Guard at Mount Gretna, in 1898, for the purpose of furnishing the quota of volunteers assigned to Pennsylvania under the call of the President, and may allow claims for damages to property in and about the camp. Greatest care must be exercised in passing upon all such claims.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 10, 1900.*

HON. THOMAS J. STEWART, *Adjutant General:*

Sir: Your communication of recent date, asking for an opinion upon the question whether or not claims for expenses incurred in the mobilization of the National Guard at Mount Gretna, in 1898, for the purpose of furnishing the quota of volunteers assigned to Pennsylvania under the call of the President, and the incidental damages to property in and about the camp, may be allowed under the authority of section 52 of the act of April 13, A. D. 1887, as amended by the act of May 5, A. D. 1897, has been received.

Your inquiry contains the information that the ordinary expenses incident to this mobilization were paid by warrants in various sums drawn in accordance with the provisions of law, and that from the general appropriation made for that year there remains an unexpended balance of $7,729.68. It also appears from the facts stated that there are certain claims for damages to the property of persons to the amount of $7,985.07. You desire to know whether these

claims can be properly paid out of this unexpended balance after the Military Board has passed upon the merits of the same.

It is my opinion that the Military Board may exercise a reasonable discretion in passing upon the question of what is properly included in the expense of the mobilization of the National Guard under the circumstances of the case. It was an emergency. The National Government was preparing for war and the President issued a call for troops and made the quota for Pennsylvania 10,800. It was necessary to have the National Guard called together at once, and many expenses were incurred that could not have been anticipated in ordinary cases. The calling together of so large a number of troops, the mobilization in a camp within a few days in inclement weather, necessarily resulted in more damage to the camp and the property in and around the same than would result in the calling together of the National Guard in more propitious weather and at the regular encampments. It seems to me that all expenses of an ordinary or extraordinary character should be paid under such circumstances. Of course the Military Board must exercise the greatest care in passing upon all such claims, but I am of opinion that it has the authority to allow such claims when satisfied that they are meritorious.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

FORESTRY COMMISSION—FOREST RESERVATIONS—PURCHASE OF LANDS BY AGREEMENT—RIGHT OF AUDITOR GENERAL TO DRAW WARRANT IN PAYMENT THEREOF—Act of May 25, 1897.

The Forestry Commission can purchase forest reservations by agreement, and the Auditor General is authorized, under the act of May 25, 1897, P. L., 86, to draw his warrant upon the State Treasurer for the amount of money necessary to pay for the forest reservations selected.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 10, 1900.*

HON. ISAAC B. BROWN, *Secretary Forestry Commission:*

Dear Sir: I am in receipt of your communication of the 5th inst., asking for an opinion upon the question of the power of the Forestry Commission to purchase forest reservations by agreement, and whether a sufficient appropriation is made by the act of May 25, A. D. 1897 (P. L. 86), to justify the Auditor General in drawing his warrant for the amount of money necessary to pay for lands so purchased.

The act in question authorizes the Governor to appoint a Forestry Commission whose duty it is to locate and report to the Governor, or to the Legislature if it be in session, three forest reservations, one of not less than forty thousand acres upon waters which drain mainly into the Delaware river; one of the same number of acres, upon waters which drain into the Susquehanna river; and and one of the same number of acres upon waters which drain into the Ohio river. The act requires that the lands so selected shall be of a character suited to the growth of trees and of an average altitude of not less than six hundred feet above the level of the sea.

The act further empowers the Commission to take by right of eminent domain and condemn the lands so selected for the purpose hereinbefore specified. It is true that the method by which the lands are to be condemned is not definitely stated, but the general power is given. This act is silent upon the question of the right to purchase by agreement, but we must presume that it was the intention of the Legislature, when it conferred the right to condemn by adverse proceeding, to include the right to purchase by agreement without proceeding adversely. This would seem to be well understood because several other acts of Assembly give the right to make purchases by the Commissioner of Forestry within certain limitations. It is my opinion, therefore, that the power to purchase by agreement, as well as the power to condemn by adverse proceedings, is conferred upon the Commission and the Commissioner of Forestry by this and other acts of Assembly.

You also desire to know whether the Auditor General is authorized, under the provisions of the act above mentioned, to draw his warrant upon the State Treasurer for the amount of money necessary to pay for the forest reservations selected as above stated.

Section 4 of said act, among other things, provides: "And all the lands acquired by the State for public reservations by the action of said Commission shall be paid for by the State Treasurer, upon a warrant drawn by the Auditor General of the Commonwealth, after approval by the Governor." Your inquiry necessarily raises the question whether the language just quoted is an appropriation of public moneys within the meaning of the Constitution.

In this connection it may be stated that three different methods of making appropriations have been recognized since the adoption of the new Constitution. The ordinary expenses of the Executive, Legislative and Judicial Departments of the Government are included in the general appropriation bill. Special appropriations are made in special bills for specific purposes. Then there are continuing appropriations from year to year, where the express language of the act of Assembly authorizes such a construction. Attorney General Lear, in 1877, stated the rule in the following language:

"Then, of course, there will be appropriations for current expenses, salaries, etc., to continue for two years, and if it can be done for two it can be done for ten or more years, or it may me perpetual. An appropriation made by law is such a direction to pay money by legislative authority as will inform the proper officer of the amount he shall pay, or upon what basis he shall ascertain it, with a direction, when so ascertained to pay it. It is a legal direction to take a certain sum, or a sum legally ascertainable, from the treasury, and it is as much an appropriation, whether it is directed to be taken but once or periodically or upon a contingency, which may or may not happen, or upon the amount being ascertained by an officer designated. The amount is appropriated when the law directs it to be paid, and the manner of ascertaining it is complied with, and the constitutional requirement is then fulfilled. The object of the section in the Constitution is to prohibit the State Treasurer from paying money out of the Treasury for any sum which has not been designated by legislative enactment, or positively ascertained or so fixed by authority of law that it cannot be exceeded. It is a prohibition against the exercise of the power of the accounting officer of the Commonwealth to ascertain the amount of and pay a claim made by anyone upon a *quantum meruit*, where the law has not previously authorized the services to be rendered or fixed the sum to be paid for them."

The question, in one form or another, has been passed upon many times since the construction first placed upon this constitutional provision by Attorney General Lear, and in every instance his interpretation of the meaning of the Constitution has been followed. The act under consideration makes it mandatory upon the State Treasurer to pay for the forest reservations selected in the manner prescribed by law when a warrant has first been drawn by the Auditor General, after the Governor has approved the amount necessary to make the purchase. I am of opinion that the appropriation herein made is sufficient to bring it within the rule stated by Attorney General Lear, to wit: "An appropriation made by law is such a direction to pay money by legislative authority as will inform the proper officer of the amount he shall pay, or upon what basis he shall ascertain it, with a direction when so ascertained to pay it." Such a construction should be placed upon the act as will make it operative. The Legislature intended to encourage the growth of timber and for this purpose authorized the Forestry Commission to locate forest reservations. If these reservations are purchased and properly cared for much good will result to the State, and I believe that such a construction should be placed upon the Act of Assembly as will most nearly carry out the legislative intention.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

BROKERS' LICENSE—CONSTRUCTION OF ACT OF ASSEMBLY OF MAY 2, 1899.

The act of May 15, 1850 (P. L. 773) with reference to brokers is not repealed or affected by the act of 1899, except that merchandise brokers or dealers who transact business solely at any exchange or board of trade, are required to pay the sum fixed by the act of 1899, for that business and are not subject to the provisions of the act of 1850.

The act of 1841 (P. L. 396), has no bearing on and need not be considered in connection with the act of 1899, and is unchanged.

HON. SAM MATT. FRIDY, *Deputy Auditor General:*

Sir: Your letter of recent date, in which you submit several questions that have been raised in your Department relative to the construction of the act of May 2, 1899, received.

In reply to your inquiry, as to whether or not the last clause of the first section of the above act, which reads as follows: "Each dealer in or vender of goods, wares or merchandise, at any exchange or board of trade, shall pay a mercantile license tax of twenty-five cents on each one thousand dollars worth, gross, of goods so sold," affects or repeals the seventh section of the act of May 15, 1850 (P. L. 773), which provides that "All stock brokers, bill brokers, exchange brokers, merchandise brokers and real estate brokers for their respective commissions or licenses granted shall pay three per cent. upon their annual receipts upon commissions, discounts, abatements, allowances or other similar means in the transaction of their business." I desire to say that, after careful consideration of the language of both acts, I am clearly of opinion that the act of 1850, with reference to brokers, is not repealed or affected by the act of 1899, except that merchandise brokers, or dealers, who transact business solely at any exchange or board of trade, are required to pay the sum fixed by the act of 1899 for that business and are not subject to the provisions of the act of 1850.

You desire further to be advised whether the act of May 27, 1841 (P. L. 396), which provides that "real estate brokers, merchandise brokers, stock brokers, bill brokers and exchange brokers shall not use or occupy at the same time more than one office for the transaction or exercise of the duties, privileges or occupations of either of the aforesaid," affects in any way the above quoted language of the act of 1899. Inasmuch as the purpose of the act of 1841 is simply to limit the places wherein brokers may carry on their business, it has no bearing on and need not be considered in connection with the act under decision. It is evident, from the language of the act of 1899, that the legislative intent was to impose a mercantile license tax upon all persons dealing in or selling goods, wares or merchandise and that the

clause in question was designed to tax those engaged in a business of comparatively recent origin, which was not in existence at the time of the passage of the former acts and, therefore, not provided for therein.

There is nothing in the act, except the language above quoted, which could possibly be construed to apply to or in any degree affect brokers as such, at all. It is therefore plain that the law regulating them remains unchanged.

I return herewith papers submitted.

FREDERIC W. FLEITZ,
Deputy Attorney General.

NEW MERCANTILE TAX LAW—MERCANTILE TAXES—ACT OF MAY 2, 1899—WHO ARE EXEMPT FROM ITS PROVISIONS.

The following persons do not have to pay the mercantile taxes required by the act of May 2, 1899, P. L. 184:

1. Manufacturers who sell their own products at their factories or send them to commission merchants to sell.

2. Butchers who buy and kill their own cattle and sell the same in a shop to their own customers, or from a stall in a public market or from a butcher's wagon.

3. Farmers selling their own produce, or occupying a stall or side walk, or part thereof, or selling in a market produce partly raised by and sold for a neighbor, or selling their own hay or other farm products, and buying the same from their neighbors for the purpose of selling to a dealer or shipper.

4. Farmers selling fertilizers to their neighbors and the fertilizers are delivered from the cars to the persons who purchase the same.

5. Manufacturers who bestow care, skill or labor upon the articles manufactured and sold by them, if the goods are sold at the manufacturing establishment.

6. One who does not have any fixed or permanent place of business, and buys and sells skins and furs during the winter.

7. Farmers who buy a few barrels of oil for their own use, as well as to supply any of their neighbors who choose to purchase the same.

The new law contemplates the payment of mercantile taxes by the same class of dealers who were required to pay under the old law, and it is not necessary, in the publication of the mercantile appraisers' lists, to designate the amount of license to be paid by each dealer.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *February 14, 1900.*

HON. LEVI G. MCCAULEY, *Auditor General:*

Sir: I am in receipt of your communication of recent date, asking for the opinion of the Attorney General on several questions connected with the proper construction and enforcement of the new mer-

cantile tax law. Your inquiry very properly raises the question of what is included in the terms "vendors of" and "dealers in goods, wares and merchandise."

Under the new law each retail vendor of or dealer in goods, wares and merchandise is required to pay a mercantile license tax of two dollars, and one mill on the dollar additional on the volume of sales in the preceding calendar year. Wholesale dealers are required to pay an annual tax of three dollars, and one-half mill additional on the volume, gross, of their sales. I learn from your communication that many questions have been raised about the application of the new law in different parts of the State.

We can better arrive at a proper interpretation of this act by taking into consideration the inequalities of the old law and the evils intended to be corrected by the new act.

Prior to the present year mercantile license taxes were assessed and collected under the provisions of the act of May 4, A. D. 1841 (P. L. 307). The system of requiring dealers in goods, wares and merchandise to pay annual license taxes is much older than the act just mentioned, and dates as far back as 1824. The act of 1841 divided dealers subject to the payment of this tax into fourteen classes. The dealer who transacted a business of not less than one thousand dollars nor more than five thousand dollars was in the fourteenth class and paid seven dollars. Dealers who did a business of between five thousand and ten thousand dollars were in the thirteenth class and paid ten dollars annually; and so on up to the first class, in which dealers who did a business of more than three hundred thousand dollars a year were required to pay two hundred dollars per annum. In 1866 some new classifications were added, and the act of 1841, as supplemented by the act of 1866, remained unchanged until the new law was passed.

The small dealers throughout the State have frequently urged that the mercantile license taxes paid under the old acts discriminated against them, and it was for the purpose of correcting what were thought to be the inequalities of the old law that the new act was passed. Under the old law a dealer who transacted business to the amount of one thousand dollars a year was required to pay a license tax of seven dollars, which represented a tax of seven-tenths of one per cent. on the volume of business transacted, while the large dealer, who did business to the amount of ten million dollars annually, was required to pay only one thousand dollars, which represented a tax of one-hundredth of one per cent. on the volume of business.

It was complained that the inequalities resulting from the operation of the old law offended against that provision of the Constitution which requires uniformity of taxation on the same class of subjects. It will be observed that under the provisions of the new law all dealers are placed on the same basis. Each one is required to pay one mill on

the dollar of the volume of business transacted by him, in addition to the two dollars which every dealer is required to pay. Under the new law the dealer who transacted a business of one thousand dollars pays a mercantile tax of three dollars; two thousand dollars, four dollars; three thousand dollars, five dollars; four thousand dollars, six dollars; five thousand dollars, seven dollars; ten thousand dollars, twelve dollars; twenty thousand dollars, twenty-two dollars; fifty thousand dollars, fifty-two dollars; one hundred thousand dollars, one hundred and two dollars; one million dollars, one thousand and two dollars; ten million dollars, ten thousand and two dollars. In other words, it was the intention of the Legislature, in the enactment of the new law, to require all dealers in goods, wares and merchandise to pay a license tax upon a uniform basis, so that all merchants would be placed upon an equality in this respect.

You desire to know, however, whether the word "dealer" includes every person who buys and sells commodities of any description, or whether it applies only to those persons who have a permanent and fixed place of business.

Mr. Justice Black, in the case of Commonwealth v. Norris, 27 P. S., 494, in passing on a question of this character, said: "A dealer, in the popular, and, therefore, in the statutory sense, is not one who buys to keep or makes to sell, but one who buys to sell again." The rule laid down in that case has been followed ever since it was promulgated.

The question has been raised in many forms under the old acts and nearly all of the former decisions remain in force in the construction of the new act. Under this line of decisions it has been held that a person who manufactures and sells his own goods at his manufacturing establishment is not subject to the payment of the mercantile license tax, but where such manufacturer has a store or warehouse separate and apart from his factory in which he sells his goods, he is considered a dealer within the meaning of the act and subject to the payment of the tax. The courts have frequently held that this tax is upon the mode of business transacted and not upon the individual. To be a dealer, therefore, within the meaning of the new as well as of the old mercantile tax law, there must be a permanent store or warehouse or place of business in which the sales are made.

Many of the sections of the new act confirm this view of the law. Section 6 provides that it is the duty of the mercantile appraiser to personally visit the store or other place of business of dealers. Section 8 provides that, if the mercantile appraiser neglects or refuses to visit the store or other place of business, he shall be subject to a penalty. Section 11 provides that each dealer shall cause to be placed permanently at the entrance of his place of business a sign stating the kind of business in which he is engaged. All the decisions of the

courts, as well as the provisions of the act in question, clearly indicate that a dealer, within the meaning of the mercantile tax law, is one who buys to sell again and who has a fixed and permanent place of business.

To answer more specifically the points which your inquiry raises I have the honor to submit the following:

1. Manufacturers may sell their own products at their factories or send them to commission merchants to sell without being liable to a mercantile license tax. If, however, such manufacturers keep stores or warehouses separate and apart from their manufacturing establishments, where goods manufactured by themselves or others are sold, such dealers, under the decisions of the courts, are subject to payment of the tax.

2. Butchers who buy and kill their own cattle and sell the same in a shop to their own customers are held to be manufacturers, and, as such, exempt from the payment of a mercantile license tax. This has been held to be true even when the meat is sold from a stall of a public market or from the butcher's wagon. If, however, butchers retail meats not slaughtered by themselves, but bought from others and sold to their customers, they become dealers and subject to the payment of the tax.

3. Farmers selling their own produce, or occupying a stall or sidewalk, or part thereof, in any of the markets of a city of the first class, shall not be subject to the payment of the mercantile tax. This is provided in the act of April 18, 1878 (P. L. 26), but before and since the passage of this act it has been held throughout the State that a farmer selling produce in a market is not subject to the tax even when such produce is partly raised by and sold for a neighbor. Under these decisions a farmer who sells his own hay or other farm products and buys the same from his neighbors for the purpose of selling to a dealer or shipper is not subject to the payment of the tax. He is not a dealer within the meaning of the act and has no fixed and permanent place of business where he buys and sells his goods.

4. You also desire to know whether the act applies in the case where a farmer sells fertilizers to his neighbors and the fertilizers are delivered from the cars to the persons who purchase the same.

As I understand the question, it is this: A farmer does not have any fixed and permanent place of transacting business, but orders a car or several cars of fertilizer and makes an arrangement with his neighbors for them to haul the fertilizer direct from the cars to their own homes where it is used. In such a case the law does not apply for two reasons: In the first place, the farmer, under these circumstances, is not engaged in a permanent business and is not therefore a dealer in any proper sense; and, in addition thereto, he has no fixed and permanent place of business where he buys and sells the fer-

tilizers. Of course, if a merchant or farmer or anyone else has a warehouse wherein fertilizers are stored and from which sales are made, and where business is transacted, he is a dealer, and, under these circumstances, would be subject to the payment of the tax.

5. All manufacturers who bestow care, skill or labor upon the articles manufactured and sold by them are exempt from the payment of a mercantile tax, if the goods are sold at the manufacturing establishment. Under this head blacksmiths, tinsmiths, saddlers, wheelwrights, plumbers, carpenters, manufacturers of lumber, undertakers, millers, merchant tailors, milliners and dress-makers should not be rated for a mercantile license in so far as they sell goods upon which they bestow care, skill and labor. Of course, if any of the persons above enumerated buy and sell goods manufactured by other persons, and upon which they do not bestow their own care, skill and labor, they would then become dealers in goods, wares and merchandise to the extent of the sales outside of their manufactured product.

6. You also desire to know whether a person who does not have any fixed or permanent place of business, and who buys and sells skins and furs during the winter season, is a dealer so as to be subject to the payment of the mercantile tax.

There is no possible construction of the law under which such a person could be classed as a dealer. He has no permanent business. He has no fixed place of business. Such persons usually buy the skins and furs in the neighborhood during the proper season, and the whole transaction amounts to but a few dollars a year. It is nonsense to attempt to class such persons as dealers. They are clearly not within the purview of the mercantile license act.

7. You also desire to know whether a farmer, who is in the habit of buying a few barrels of oil for his own use as well as to supply any of his neighbors who choose to purchase the same, is a dealer subject to the payment of the mercantile tax.

Such a person is clearly not intended to come within the provisions of the law. He does not have a permanent business from which he derives a livelihood. He has no fixed place of business such as is contemplated by the act of Assembly. He is not, therefore, subject to the payment of the tax.

The new law contemplates the payment of mercantile taxes by the same class of dealers who were required to pay under the old law. It is true that under the old law dealers who did not transact business to the amount of one thousand dollars a year were not required to pay the tax. The new law imposes a small tax on dealers who do a less amount of business than one thousand dollars annually, but it does not mean that everybody who buys and sells commodities comes within its provisions. The act must have a reasonable and rational interpretation, and only those persons who can be properly classed

as merchants or dealers in goods, wares and merchandise, and who have a permanent and fixed place of business, should be included in the mercantile appraisers' lists.

You desire to know further whether it will be necessary, in the publication of the mercantile appraisers' lists under the new law, to designate the amount of license to be paid by each dealer.

The act of May 2, A. D. 1899 (P. L. 184), in section 10, provides, among other things, "All provisions of the law with reference to the advertising of said lists shall be and remain the same as now fixed by existing law." So the law in respect to the advertising of these lists remains as it was prior to the enactment of the new act. The act of April 20, A. D. 1887 (P. L. 60), which provides for the publication of the mercantile appraisers' lists in newspapers of the respective counties, still remains in full force and effect. Under the authority of this act the publication of the mercantile appraisers' lists is made. Section 1 of this act provides, "That the county commissioners of the respective counties are hereby authorized and required to publish the mercantile appraisers' lists of names and classification of each person subject to license in three papers of general circulation in each county of the Commonwealth." It will be observed that the newspaper publication contains a list of names and classification of all dealers. At the time of the passage of the act of 1887, the classification for mercantile purposes was made under the acts of 1841 and 1866. Under the old law the newspapers published a list of all the dealers belonging to a particular class, the class being designated by the amount of license required to be paid. The new act, however, repeals the acts of 1841 and 1866, and there is, therefore, no such classification under the present law. Under the new law dealers are divided into two classes, wholesale and retail, so that in the printing of the mercantile appraisers' lists it will only be necessary to designate dealers as either wholesale or retail. There will be no necessity to designate in the published list of the amount of mercantile tax paid by each dealer because there is no such classification. The list should contain the name of each dealer, together with his business address and the kind of business he is engaged in. The amount of tax to be paid by each dealer will be certified to the county treasurer and by the county treasurer to the Auditor General, but it is not necessary that it appear in the published mercantile appraisers' lists.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

COLLATERAL INHERITANCE TAX IN THE ESTATE OF GEORGE S. KITSON, DECEASED.

Where the deceased was the father of two illegitimate sons by a woman he afterwards married, the right of the Commonwealth to collect the collatrral inheriterance tax from the sons who claim the estate should be insisted upon until the courts have definitely settled the practice.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *February 28, 1900.*

HON. LEVI G. MCCAULEY, *Auditor General:*

Sir: Your letter of recent date, enclosing a communication from Hon. B. F. Gilkeson, in which he raises the question of the right of the State to collect a collateral inheritance tax in the estate of George S. Kitson, deceased, of which estate he is administrator, received.

It appears that the deceased was the father of two illegitimate sons by a woman he afterwards married, and these sons now claim the right to take the estate exempt from collateral inheritance tax under the provisions of the act of May 14, 1857 (P. L. 507), which reads as follows:

"In any and every case where the father and mother of an illegitimate child or children shall enter into the bonds of lawful wedlock and cohabit, such child or children shall thereby become legitimated and enjoy all the rights and privileges as if they had been born during the wedlock of their parents."

It is clear that under the provisions of this act the sons are legitimated, and therefore can take as distributees or heirs-at-law precisely in the same way as children born in lawful wedlock. The claim that the estate which they so take is not subject to collateral inheritance tax, however, is quite another question, and, it seems to me, rests on entirely different legal ground.

The intention of the Legislature, in passing the act of 1857, no doubt was to encourage the intermarriage of individuals who are bound together by parental ties, and to that end it saw fit to remove all disqualifications from the children born prior to such marriage. The collateral inheritance tax act of May 6, 1887 (P. L. 79), which is a codification of previous legislation on this subject, following the phraseology of the former acts, exempts from its provisions only such estates as may be left "to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, or the wife or widow of the son of the person dying seized or possessed thereof." This is a general law, and anyone claiming the exemption must show that he or she comes strictly within the terms of said exemption.

I find upon examination that the precise point involved in this case has never been passed upon by the courts. In Commonwealth v. Fer-

guson, 137 P. S., 595, the Supreme Court uses the following language:

"It has not yet been decided that an estate descending to a bastard who has been legitimated by an act of Assembly is not subject to the collateral inheritance tax."

From a careful review of the language of the acts and the decisions of the courts in cases somewhat analogous, I am of the opinion that, while the question is a close one, the right of the Commonwealth to collect the collateral inheritance tax in cases of this kind should be insisted upon until the courts have definitely settled the practice. Had the Legislature intended to exempt estates descending to illegitimate children, who should afterward be legitimated by act of Assembly, it could have done so very easily by omitting the words "born in lawful wedlock;" but, having failed to do this, we cannot presume such intention. It cannot be contended that an act of the Legislature can change the meaning of the English language, nor a question of fact. While the act of 1857 undoubtedly operates to legitimate the persons for whose benefit it was intended, it cannot be construed to change the fact that they were not "born in lawful wedlock," and therefore they are not entitled to the exemption in the collateral inheritance tax act.

I herewith enclose papers in the case.

Respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

IN RE WILLIAM THOMPSON MORTGAGE—Act of March 22, 1860, quoted and construed.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *February 28, 1900.*

HON. LEVI G. MCCAULEY, *Auditor General:*

Sir: Your letter of recent date, enclosing petition of E. E. Mitchell, for the satisfaction of a certain indenture of mortgage, given to the Commonwealth of Pennsylvania by one William Thompson under the provisions of the act of Assembly of March 22, 1860, entitled "An act to incorporate the Mifflin County Bank," and asking for information relative to your power in the premises, received.

It appears that William Thompson was one of the original commissioners designated by the above act to establish a bank in the borough of Lewistown, in the county of Mifflin, and, to secure the payment of bills or notes authorized to be issued by said bank, executed a mortgage to the Commonwealth of Pennsylvania, in the sum of $6,500, as required by section 5 of said act, which mortgage was recorded in the office of the recorder of deeds in Centre county, in mortgage book E, page 460, and so still remains a lien upon the real estate

of the said William Thompson, situated in the township of Potter, county of Centre aforesaid. The petition recites that the said William Thompson has long since died, and his estate settled, and that the said Mifflin County Bank has gone out of existence and its notes paid, and the petitioner, who is the heir-at-law and executor of the estate of William J. Thompson, now deceased, the son of the mortgagor, prays that the mortgage be satisfied in accordance with the provisions of sections 17 and 18 of above recited act.

Section 17 of the act provides that upon the death of any party who shall have given and deposited mortgage securities as aforesaid, it shall be lawful for the heirs and devisees to apply to the Auditor General by petition, setting forth the facts, and praying that the securities may be cancelled, and that the Auditor General shall thereupon issue a citation to the bank, etc., to show cause why other mortgage securities should not be substituted and the securities of the deceased cancelled. But as the bank is no longer in existence, it is clear that we cannot proceed under the provisions of this section. The only authority you now have to direct a satisfaction of the mortgage upon the facts set forth in the petition before us is contained in the 18th section of the act, which reads as follows:

"That on settling up of the said bank, either at the expiration of the charter or by consent of the partners, or by failure of the bank, the persons authorized to settle it, after giving notice in one paper published in the county, one in Harrisburg, and one in Philadelphia, to be published six months, giving notice that they are ready to redeem all the notes in circulation, and requesting the holders of them to present them; and at the expiration of two years from the date of the notice, on proof of the notice being published, and all the notes that were presented at the counter were paid, the Auditor General is authorized to issue power of attorney to the register and recorder of the counties in which the mortgaged premises are, to enter satisfaction on all the mortgages held by the Commonwealth as security for the redemption of the notes."

That the bank is no longer in existence seems to be conceded and the presumption that its final settlement was in accordance with the provisions of the above section is undoubtedly strong, but it seems to us that the method pointed out shall be pursued strictly, and that the petition should be accompanied by affidavits showing that the final settling up of the bank was done in strict accordance with the law. When the record is thus completed, it will be your duty to issue power of attorney to the proper parties to satisfy said mortgage.

Enclosed herewith are all papers in connection with this case.

Respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

COMMISSIONER OF FORESTRY.

Where land is purchased by the Commissioner of Forestry at a treasurer's sale for unpaid taxes, the taxes for the two years between the sale and the expiration of the time for redemption must be paid by the State and considered as a part of the purchase money.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 8, 1900.*

J. T. ROTHROCK, M. D., *Commissioner of Forestry:*

My Dear Sir: Yours of recent date, enclosing communications from George R. Bigler, Esq., relative to the act of March 30, 1897, and asking for information concerning the same, received.

I have given the matter careful consideration and am of the opinion that, where land is purchased by the Commissioner of Forestry at a treasurer's sale for unpaid taxes, the taxes for the two years between the sale and the expiration of the time for redemption must be paid by the State and considered as a part of the purchase money. In my judgment, the State occupies the same position as any other purchaser until the expiration of the two years within which the land sold may be redeemed, when, by the express terms of the act, the land becomes the property of the State and exempt from taxation. If the former owner should desire to redeem the land so sold within the two years, he will have to pay the original bid of the State, together with any taxes afterwards paid, and the twenty-five per cent. provided by law.

I am unable to find any authority other than that contained in the act in question for the payment of taxes on State lands, but a fair construction of section 2, which directs "the Auditor General to draw his warrant to the order of the county treasurer upon certificate filed by the Commissioner of Forestry with the said Auditor General" for the purchase money of said lands, would, in my opinion, include the payment of taxes. It is clear that the legislature never intended the multiplication of costs which would necessarily follow a non-payment of taxes by the State upon these lands.

I return herewith the papers submitted.

Very respectfully,
FREDERIC W. FLEITZ,
Deputy Attorney General.

STATE TAXES.

In returning to the county treasurers three-fourths of the net amount received by the State, the net amount has heretofore been considered the amount of taxes collected by the county treasurers less commissions and other expenses of collection, and this is a proper construction.

Under existing law the treasurer of Philadelphia county is entitled to a commission of one per cent. for collection of State taxes, and in paying the taxes into the State he should deduct his commission before making payment, as is done in all the rest of the counties of the State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 31, 1900.*

HON. LEVI G. MCCAULEY, *Auditor General:*

Sir: In answer to your communication of the 21st inst., asking for an opinion upon the question of what portion of the State tax, collected by county treasurers for the use of the Commonwealth, should be paid into the State Treasury, and what portion of the same shall be returned to the respective counties, I have the honor to submit the following:

The exact question raised by your inquiry is whether the whole amount collected by the county treasurer shall be paid into the State Treasury, or whether the whole amount collected, less deduction of commissions and other expenses incurred in the collection of the same, shall be accounted for.

If the county treasurers under the law are required to pay into the State Treasury the whole amount of the collections made in a county, it would require the State to pay all the costs of collections and, in addition thereto, pay three-fourths of the whole amount of the tax collected. If the amount to be returned to the Commonwealth is only that portion of the tax which remains after deductions have been made by the county treasurer, then it necessarily follows that the county is entitled to receive only three-fourths of the net amount of the taxes so collected.

The act of 25th of March, A. D. 1831, section 8 (P. L. 208), is the original authority for the allowance of one per cent. to the county treasurer for collecting taxes for the use of the Commonwealth. It reads as follows:

"And be it further enacted by the authority aforesaid, That it shall be the duty of the treasurer of each county, on or before the tenth day of September in each and every year, to furnish to the Auditor General a statement of the amount received by him for the use of the Commonwealth, in pursuance of this act, and settle his account with the Auditor General in the same manner as public accounts are now settled; and it shall also be the duty of the treasurer of each county, upon the settlement of his accounts as aforesaid, to pay into the State

Treasury the amount so received by him, for which the treasurer of the county shall be allowed one per cent. upon the amount so paid by him."

Under this authority the county treasurers have been allowed one per cent. for the collection of State taxes.

The question was again passed upon the Legislature in the 7th section of the act of June 11, A. D. 1840 (P. L. 614), which provided as follows:

"That it shall be the duty of the treasurer of each county, between the first and tenth days of July and December, in each and every year, to furnish to the Auditor General a statement of the amount received by him, for the use of the Commonwealth, in pursuance of this act, and settle his account with the Auditor General, in the same manner as public accounts are now settled; and it shall also be the duty of the treasurer of each county, upon the settlement of his account, as aforesaid, to pay into the treasury of the Commonwealth the amount so received by him, for which he shall be allowed one per cent. upon the amount so paid."

The latter act is a substantial re-enactment of that portion of the act of 1831, above referred to.

The 16th section of the act of June 1, A. D. 1889 (P. L. 426), provides as follows:

"That one-third of the net amount of tax based on the return of property subject to taxation for State purposes, required to be made to and accepted by the State board of revenue commissioners annually, by county commissioners and the board of revision of taxes in cities co-extensive with counties, that is collected and paid into the State Treasury by a county or city co-extensive with a county, shall be returned by the State Treasurer to such county or city co-extensive with a county, for its own use in payment of the expenses incurred by it in the assessment and collection of said tax: Provided, That in consideration of the return to counties and cities co-extensive with counties of the tax as aforesaid, no claims shall be made upon or allowed by the Commonwealth for abatements, tax collectors' commissions, extraordinary expenses, uncollectible taxes, or for keeping a record of judgments and mortgages."

It will be observed that only one-third of the net amount of tax paid into the State Treasury shall be returned by the State to the respective counties.

The question raised by your inquiry is what construction shall be placed upon the term "net amount." It has been the uniform practice of the board of revenue commissioners, under the provisions of the older and later revenue acts, to hold that the "net amount" to be returned to the State Treasurer is the sum collected, less the amount deducted by the county treasurer for his commissions and other ex-

penses in the collection of said tax. This has been the unbroken practice under the acts of Assembly in the settlement of these taxes in all of the counties of the Commonwealth.

The 16th section of the act of June 8, A. D. 1891, which is a re-enactment of the 3d section of the act of 1889, above quoted, provides as follows:

"That for the year one thousand eight hundred and ninety-two and annually thereafter, three-fourths of the net amount of tax based on the return of property subject to taxation for State purposes, required to be made to and accepted by the State Board of Revenue Commissioners annually, by county commissioners and the board of revision of taxes in cities co-extensive with counties, that is collected and paid into the State Treasury by a county or city co-extensive with a county, shall be returned by the State Treasurer to such county or city co-extensive with a county, for its own use in payment of the expenses incurred by it in the assessment and collection of said tax: Provided, That in consideration of the return to counties and cities co-extensive with counties of the tax as aforesaid, no claim shall be made upon or allowed by the Commonwealth for abatements, tax collectors' commissions, extraordinary expenses, uncollectible taxes or for keeping a record of judgments and mortgages."

Under this provision of the act of 1891 "three-fourths of the net amount" received by the State shall be returned to the respective counties. Under this provision of the act of 1891, and according to the precedents that have always obtained, the State only requires the whole amount collected, less the deductions properly made, to be paid into the State Treasury. After the whole amount of tax collected by each county, less the deductions hereinbefore mentioned, has been paid into the State Treasury, then three-fourths of this "net amount" is returned by the State to the county. The Revenue Commissioners have held that the "net amount" to be paid into the State Treasury is the whole amount collected by the county, less commissions and other expenses, but the only expense allowed is the commissions due the treasurers for making the collection.

Your communication also raises a special inquiry as to the collection of these taxes in the city and county of Philadelphia. It had been the uniform practice to allow the treasurer of the city and county of Philadelphia one per cent. for the collection of these taxes up to the year 1893. The Legislature of that year, on the 6th day of June, passed an act (P. L. 340), entitled:

"To abolish all fees and commissions now allowed and received by the treasurer of any county, coextensive in boundary with a city of the first class, for services rendered in the receipt, collection, payment and disbursement of revenues on behalf of this Commonwealth."

This act abolished the fees and commissions received by the treas-

urer of any county co-extensive in boundary with a city of the first class. The constitutionality of this act was raised in the case of Commonwealth vs. McMichael, No. 877 Commonwealth Docket, 1898 (see District Reports, Vol. 8, p. 157). On the 13th day of February, A. D. 1899, an opinion was rendered by Judge McPherson, in which he held the act to be void because it was special and local legislation and because it had been improperly passed by the Legislature. Since that decision of the Dauphin county court the question of the right of the treasurer of the city and county aforesaid to receive his commissions for the collection of personal property taxes due the State has not been denied. The commissions for the collection of these taxes having always been paid to the treasurer of the city and county of Philadelphia prior to the passage of the act of 1893, and this act having been declared unconstitutional and void, it therefore necessarily follows that the commissions which the treasurer of the county aforesaid had received prior to the enactment of this act should be paid as if the act of 1893 had never been passed. Since the act of 1893 was declared to be inoperative and void by the courts there is no doubt that the treasurer of that county is entitled to receive his commissions just as other county treasurers have always received them.

The only question that can arise under the law is whether the county treasurer of Philadelphia should pay into the State Treasury the whole amount of the tax collected by him, and then have the State issue warrants for his commissions, after which three-fourths of the whole amount shall be returned to the city of Philadelphia.

This is not the practice in dealing with any other county in the State, and, as has been hereinbefore stated, I can see no good reason why the treasurer of the city and county of Philadelphia should be dealt with on a basis different from the treasurer of any other county in the Commonwealth. So far as the payment of commissions to county treasurers is concerned, the practice in Philadelphia must be the same as in the remaining counties. In my opinion the county treasurer in Philadelphia, as well as in the remaining counties of the State, should pay into the State Treasury the net amount of tax collected, which would mean the taxes collected in that county for the use of the Commonwealth, less his commissions for the collection of the same.

In this connection it must not be forgotten that the county treasurer, in the collection of said taxes, is the representative and agent of the Commonwealth and not of the county or municipality which he serves in an official capacity.

Very respectfully,

JOHN P. ELKIN,
Attorney General.

FOREST FIRES—EXTINCTION OF.

Constables and detectives to co-operate in enforcement of acts of March 30, 1897 (P. L. 9) and July 15, 1897 (P. L. 296).

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 17, 1900.*

J. T. ROTHROCK, M. D., *Commissioner of Forestry:*

Sir: Your letter of recent date, to the Attorney General, asking for information relative to the proper construction and method of enforcing the act of March 30, 1897 (P. L. 9), and the act of July 15, 1897 (P. L. 296), has been referred to me.

The act of March 30, 1897, provides that constables of township shall be, ex-officio, five wardens for the extinction of forest fires in their respective bailiwicks, and shall have authority to call upon other persons to assist them in this work. It fixes the compensation of those so employed, and provides how the same shall be paid, limiting the amount to be expended in any one county in the State to one thousand dollars, five hundred of which must be borne by the county and five hundred to be contributed by the State. It provides further that any person refusing to obey the request of the constable to assist in extinguishing the fires, without reasonable cause, shall be liable to a fine and imprisonment.

The third section provides that the constables shall make returns to the court of quarter sessions of all violations occurring within their respective townships. It also empowers the judge of that court to see that these returns are honestly made, to suspend any officer who fails to perform his duty, and direct the district attorney to indict and try him. If he shall be found guilty he is liable to be fined in a sum not exceeding fifty dollars and undergo an imprisonment not exceeding three months, both or either at the discretion of the court.

The importance of the enforcement of this act is so great that every good citizen of the Commonwealth should be interested in seeing that its provisions are properly carried out by the constables of the respective townships, and that any failure on the part of these officials to perform their duty shall be brought to the attention of the court in order that vigorous steps may be taken to punish the offenders. The right of the constables and those employed by them in extinguishing said fires to collect from the respective counties the compensation provided in this act is, to my mind, indisputable.

The act of 15th of July, 1897, is an entirely separate and distinct act, having no connection with the former one in any way. By this act the commissioners of the several counties are authorized and directed to appoint suitable persons as detectives, under oath, whose

duty it shall be to ferret out and bring to punishment all persons or corporations who wilfully or otherwise cause the burning of timber lands within their respective counties, and to take measures to have such fires extinguished, where it can be done. It was evidently the intention of the Legislature that these detectives should co-operate with the constables of the several townships for the purpose of preventing the destruction of the timber lands of the State by fire, and to bring persons guilty of the offense of setting fire to the same to justice.

The commissioners of the various counties should, of their own volition, make these appointments, and on failure to do so, after demand made upon them by the Commissioner of Forestry of this Commonwealth, they shall be deemed guilty of a misdemeanor in office, and, upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars or suffer an imprisonment not exceeding two years, or both at the discretion of the court. The expense incurred in the employment of these persons shall not exceed one thousand dollars in a single county in any one year, one-half of this to be paid out of the treasury of the respective county and the remaining half to be paid by the State Treasurer.

The wisdom of the Legislature in passing these acts and the importance of their strict enforcement are especially apparent at this time when the Commonwealth is expending large sums of money to secure lands to perpetuate the forests which are so rapidly being destroyed, and it is the duty of your Department to see that the officials upon whom is laid the responsibility of carrying them into effect shall do so conscientiously and vigorously, and that failure on the part of either constables or county commissioners shall be visited with the severe penalties provided in such cases.

Very respectfully,
FREDERIC W. FLEITZ,
Deputy Attorney General.

ALIGNMENT OF PUBLIC STREAMS.

The State has no general authority to make alignment of public streams and in the absence of authority cannot make such alignment.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 16, 1900.*

HON. ISAAC B. BROWN, *Deputy Secretary of Internal Affairs:*

Sir: I am in receipt of your communication of recent date, enclosing petition, signed by the engineer and solicitor of the city of Oil City, in the county of Venango, asking that the State of Pennsyl-

vania cause to be surveyed and established the line of property owners abutting on Oil creek within the limits of said city. Your inquiry raises the questions of the authority of the Commonwealth of Pennsylvania to make an alignment of the public streams, as suggested in the petition under consideration.

So far as I am informed, the State has not heretofore been called upon to exercise such authority. I am not familiar with the provisions of an act of Assembly which authorizes or requires the Commonwealth to make the alignment of public streams in the manner suggested. In the absence of legislation expressly authorizing the State to make such a survey, and designating the proper officers to make the same, it is my opinion that such a survey cannot be made for the purpose of making an alignment of the streams in question. It may be that the interests of the public and private owners would be better conserved by having the property lines of public streams ascertained in the manner suggested by the petition enclosed for our consideration, but it will be necessary for the Legislature to pass the proper legislation to enable such alignments to be made.

The Legislature has at different times conferred authority of this kind in special jurisdiction. The act of 16th of April, A. D. 1858 (P. L. 326), provided the method of establishing high and low water lines in the Allegheny, Monongahela and Ohio rivers in the vicinity of Pittsburg. The courts of the county of Allegheny were therein authorized to appoint three discreet and disinterested freeholders as commissioners for the purpose of making a survey and fixing high and low water water marks. If it was necessary for the Legislature to pass an act to authorize the appointment of a commission for the purpose of fixing high and low water marks in the streams named, it would seem to follow that it would be necessary for the Legislature to pass similar acts to cover the other public streams of the Commonwealth, if it is deemed expedient to have the high and low water marks properly defined.

Up to this time all these questions have been adjudicated by the courts in the respective counties in proceedings instituted by private individuals or in the interest of the public. It seems to me that the local authorities, by proceedings in equity, can have all questions in dispute investigated and determined. There is no State officer invested with the power to make or cause to be made a survey such as is contemplated in the petition which you have submitted for the consideration of this Department. It is my opinion, therefore, and I so advise you, that, in the absence of legislative authority, we are unable to grant the prayer of the petitioner and cause the survey to be made.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

DANVILLE INSANE ASYLUM.

An item for the extension of the kitchen and the putting in of a new kitchen range is part of the expense for the proper care and maintenance of the insane and is an item which the board of trustees have a right to approve under the head of appropriations made for care and maintenance.

July 25, 1900.

HON. CADWALADER BIDDLE, *General Agent and Secretary Board of Public Charities, Philadelphia, Pa.:*

My Dear Sir: There has been forwarded to this Department by James Scarlet, Esq., Secretary of the Board of Trustees of the Danville Insane Asylum, your communication in reference to the extension of kitchen facilities for the care of the insane at the institution named.

You desire to know whether an item can be approved by your board for the extension of the kitchen, so as to admit of the placing of a new range therein, large enough to do the cooking for the increased number of patients at that institution. I gather from correspondence submitted to me, that the range has been in use in the institution since 1872, and that it was intended then to do the cooking for seven hundred inmates. Since that time the number of insane persons taken care of at this institution has been increased to about thirteen hundred. It is quite apparent that the long and continued use of this range, taken together with the fact that it does not have sufficient capacity to take care of the increased number of inmates, makes it necessary to provide a new and larger range.

Certainly the expenses of providing the necessary equipments for the proper care and maintenance of the insane at that institution, is an item that your board has a right to approve of under the head of appropriations made for care and maintenance. One of the very first requisites in an institution of that kind, is to provide sufficient kitchen equipment to properly do the cooking for such a large number of people. If the matter rested on the question of the right of the trustees to put in a new range to replace the old one, no one would doubt the right of your board to approve the expenses necessary to make the change. It seems, however, that if a range of sufficient size to do the cooking for thirteen hundred patients, is placed in the kitchen, its walls must be extended and some doubt has arisen as to whether the expense of extending the walls, under these circumstances, is such an item as could properly come under the head of expenses for "care and maintenance."

The opinion of former Attorney General Hensel has been quoted to show that such an expense cannot be allowed. I do not believe that the opinion referred to necessarily involves such a construction. It

would seem to me very much like sticking in the bark, to say that you had the right to approve an item to put in a new and larger range necessary for the care of the inmates of the institution, but that you did not have the right to pay the expenses of extending the walls a few feet in order that room might be made for a range of sufficient size to properly do the work.

In my judgment, it was not the intention of the opinion referred to, to tie the hands of your board in a matter where such imperative necessity seems to exist. I quite agree that moneys appropriated by the Legislature for the maintenance of patients in an insane hospital cannot properly be applied to the purchase of additional lands, the erection of additional buildings or the furnishing of new and expensive equipments not already in use in the institution, but it seems to me that it is absolutely necessary for the care and maintenance of the inmates, that a range of sufficient size to properly cook the food for the patients, should be provided; and the fact that the placing of such a range necessitates the extension of the walls of the institution should not outweigh the greater necessity which apparently exists in this case. In such matters a wise discretion is lodged in your Board. Public moneys should never be used in the adding of new equipments unless the necessity absolutely exists; but where the necessity does exist, then it seems to me that you should not be hampered by a too narrow and limited construction.

In this particular case I am of the opinion that the whole matter is a question for the good judgment of your Board.

Very respectfully,

JNO. P. ELKIN,
Attorney General.

TRANSFER OF LICENSE TO SELL OLEOMARGARINE.

A license to a dealer to sell oleomargarine at a certain place cannot be transferred so as to allow him to sell oleomargarine at any other place.

July 25, 1900.

HON. JESSE K. COPE, *Dairy and Food Commissioner, Harrisburg, Pa.:*

Dear Sir: I am in receipt of your communication of recent date asking for a decision in regard to the question of the right of a person who has been granted a license to sell oleomargarine at a certain place to have his license transferred so as to do the same business in another city or in a different section of the same city.

So far as I am informed, this exact question has not been passed upon either in the administration of the duties of your Department or by the courts.

It is my opinion, however, that in the granting of a license to a person to sell oleomargarine at a particular place, you do not thereby give the person so licensed the right to transact that business at any other place. The license is granted to a person to do business at a particular place. The law requires certain signs to be put up at the place where the business is transacted. The place as well as the man is in contemplation of the act of Assembly in the authority given you to grant a license. When you have granted a license to a person to transact business at a designated place, that authority ends. If the same person desires to transact business at another place in the same or another city, he must take out a new license to do so.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

SOLDIERS' ORPHANS' SCHOOLS.

Under act of April 13, 1899 (P. L. 46) children of honorably discharged soldiers, sailors and marines actually engaged in the Spanish-American war up to the time when hostilities ceased between the two nations and the treaty of peace was ratified by the Government can be admitted to the Soldiers' Orphans' Schools.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *September 12, 1900.*

HON. J. D. PATTERSON, *Chief Clerk Soldiers' Orphans School Commission:*

Dear Sir: I am in receipt of your communication of the 11th inst., addressed to the Attorney General, asking for a construction of the act of April 13, A. D. 1899 (P. L. 46), in reference to the admission of the children of honorably discharged soldiers, sailors and marines of the Spanish-American War to the Soldiers' Orphans' Schools.

The authority of the Commission which you represent is purely statutory. The commission does not have any authority either to grant or refuse admission of children to the Orphans' Schools except such as is conferred by act of Assembly. It is apparent that the legislative intent in the act above referred to was to admit to the Soldiers' Orphans' Schools of our State the children of honorably discharged soldiers, sailors and marines who had engaged in the

Spanish-American War. You desire to know now whether the children of soldiers in the regular army, doing service in the Phillppines since the ratification of the Treaty of Paris closed the Spanish-American War, can be admitted.

I am of opinion that the act in question will admit only the children of honorably discharged soldiers, sailors and marines actually engaged in the Spanish-American War up to the time when hostilities ceased between the two nations and the treaty of peace was ratified by our government. Since that time it cannot be said that there is any Spanish-American War. It is true that the territory which came into the possession of the United States by reason of this war will, to some extent, require the presence of our soldiers, sailors and marines. These, however, belong to the regular army and navy of the United States and are not now engaged in a war with Spain. I have no doubt that when this matter is called to the attention of the Legislature a remedial statute will be passed, so that the children of soldiers, sailors and marines doing service in the Philippines since the close of the Spanish-American War may be admitted just as the children of honorably discharged soldiers, sailors and marines of that war may be admitted. This, however, is a question for the Legislature and not for your Commission. The only question that is raised before you is what the acts of Assembly provide for at the present time.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

PUBLICATION OF REPORT OF BOARD OF TRUSTEES OF THE SOLDIERS' AND SAILORS' HOME.

The report of the Board of Trustees of the Soldiers' and Sailors' Home can be published at the State's expense, when the publication is authorized by the President of the Board.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *December 6, 1900.*

HON. THOMAS J. STEWART, *Secretary Board of Trustees of the Soldiers' and Sailors' Home:*

Dear Sir: I am in receipt of your communication of the 5th inst., asking whether or not the report of the Board of Trustees of the Soldiers' and Sailors' Home, of which the Governor is president, and which home is a State institution, can have its biennial reports printed at the expense of the State.

Every Department of the State Government is authorized and required to publish, at proper intervals, a report of the work done therein in order that the public may be informed as to the acts of its public officials. The publication of reports serves a wise and useful purpose, and I know of no reason why reports which the law requires should not be published at the expense of the State. The question would not arise perhaps were it not for the fact that there may be doubt as to whether the institution in question is one of the Departments of the State Government. It is a State institution and the Governor of the Commonwealth is the president of its Board of Trustees. Its aims and objects are as broad as the Commonwealth, and it seems to me that there is a fitness in having its reports made public. The publication of the report, however, must be authorized by the president of the Board, and when this is done I can see no reason why it should not be printed and published as other public documents.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

UNITED STATES SENATE—VACANCY IN.

THE RIGHT OF THE GOVERNOR TO APPOINT THE HON. MATTHEW STANLEY QUAY TO A VACANCY CAUSED BY THE EXPIRATION OF HIS FULL TERM WHEN THE LEGISLATURE HAD FAILED TO ELECT A SUCCESSOR.

A vacancy "happens," when it "happens to exist," within the meaning of the Constitution, and may be temporarily filled by Executive appointment.

The Constitutional provision "if vacancies happen by resignation or otherwise during the recess of the Legislature," applies broadly to every vacancy in the office of United States Senator that continues to exist from any reason whatever after the Legislature has adjourned.

The words "By resignation or otherwise" are not words of limitation, indicating the kind of vacancy intended to be filled by Executive appointment, but are used in a broad and comprehensive sense.

The clear intention of the framers of the Constitution, as shown by the power to temporarily fill existing vacancies by executive appointment, was that representation in the Senate should always be kept full.

The constitutional provision which authorizes the Governor to make temporary appointments applies to all vacancies that may exist during a recess, whether a session of the Legislature intervened or not.

The Federal Constitution is the supreme law of the land and the paramount authority.

The provision of the Constitution of the Commonwealth of Pennsylvania which provides for the calling of an extra session does not abrogate the provisions of the Federal Constitution in reference to the filling of vacancies.

OFFICE OF ATTORNEY GENERAL,
HARRISBURG, PA., *December 16, 1899.*

TO THE HONORABLE THE MEMBERS OF THE UNITED STATES SENATE:

I.

We are materially aided in arriving at a proper construction of the constitutional provision authorizing the Governor to make temporary appointments by reference to the contemporaneous, executive and other constructions placed upon provisions of the Constitution of similar import by the Attorneys General of the United States and by the Courts. For instance, Clause 3 of Section 2 of Article II of the Federal Constitution provides: "The President shall have power to fill up vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session." At a very early date the question was raised whether or not, under this provision of the Constitution, the President had the right to fill up a vacancy that had occurred by expiration of the full term or in any other manner while the Senate was in session, which vacancy not having been filled, continued to exist during the recess of the Senate.

During the administration of President Monroe, General Swartwout's commission as Navy Agent at New York expired while the Senate was in session. The President nominated another person to fill that vacancy and sent the name to the Senate for confirmation, which was not made before the Senate adjourned. The vacancy continued to exist during the recess and the President asked his At-

torney General whether, under the circumstances, he had the right to fill the vacancy by temporary appointment until the end of the next session of the Senate. Attorney General Wirt, in a well-considered opinion, held that it was a vacancy within the meaning of the Constitution, and that it could be temporarily filled by an appointment by the President. In this connection he discusses the use of the word "happen," and says, among other things:

> "The doubt arises from the circumstance of its having *first occurred* during the session of the Senate. But the expression used by the Constitution is 'happen'; 'all vacancies that may *happen* during the recess of the Senate.' The most natural sense of this term is 'to chance..to fall out..to take place by accident.' But the expression seems not perfectly clear. It may mean 'happen to take place,' that is, '*to originate;*' under which sense, the President would not have the power to fill the vacancy. It may mean, also, without violence to the sense 'happen to exist'; under which sense, the President would have the right to fill it by his temporary commission. Which of these two senses is to be preferred? The first seems to me most accordant with the letter of the Constitution; the second, most accordant with its reason and spirit."

The Attorney General, in his opinion, discusses at some length the question of the proper construction to be applied in the use of the word "happen," and concludes with the following statement of the rules of interpretation which in his judgment were of controlling force:

> "This seems to me the only construction of the Constitution which is compatible with its spirit, reason and purpose; while, at the same time, it offers no violence to its language. And these, I think, are the governing points to which all sound construction looks.
>
> "The opposite construction is, perhaps, more strictly consonant with the mere letter. But it overlooks the spirit, reason and purpose; and, like all constructions merely literal, its tendency is to defeat the substantial meaning of the instrument, and to produce the most embarassing inconveniences."

He held the word "happen" to mean "happen to exist." (See Opinions of Attorneys General, Vol. 1, page 631.)

The question was again raised during the administration of President Jackson in relation to the appointment of a register of the land office for the Mount Salus district in the State of Mississippi. Attorney General Taney held, with his predecessor, that the President had the right to appoint to fill a vacancy which "happened" dur-

ing a session of the Senate but "existed" after it adjourned. In that case it was held to be the intention of the Constitution that offices created by law, and which are necessary to the operations of a government, *should always be full* and that when vacancies "happen" they shall not be protracted beyond the time necessary for the President to fill them. The Attorney General, in placing a construction upon the word "happen," as it appears in the Constitution, states as follows:

> "This appears to be the common sense and natural import of the words used. They mean the same thing as if the Constitution had said, '*if there happen to be any vacancies during the recess.*'" (Opinions of Attorneys General, Vol. II, at page 528.)

Again, in the administration of President Tyler, in 1841, the question was raised and Attorney General Legare took the same view of the Constitution in this connection as his predecessors. He held that the President had the right to make an appointment to fill a vacancy which existed after a session of the Senate had *i ervened*, to which a nomination could have been made. In the syllabus of that opinion the principle is stated as follows:

> "The Constitution authorizes the President to fill vacancies that may *happen* during the recess of the Senate, even though the vacancy shall occur after a session of the Senate shall have *intervened*." (Opinions of Attorneys General, Vol. III, page 673.)

To the same effect is the opinion of Attorney General Mason, who advised President Polk, in 1846, that he had the right to fill by temporary appointment vacancies which had occurred during or before the session of the Senate at which confirmation should have been made. The principle of construction is announced in the syllabus of that opinion in the following language:

> "Even though the vacancy occurred before the session of the Senate, if that body, during its session, *neglected to confirm a nomination to fill it*, the President may fill it by a temporary appointment; and public considerations seem to require him to do so." (Opinions of Attorneys General, Vol. 4, page 523.)

President Lincoln raised the same question with his Attorney General in 1862, on the question of his power to fill a vacancy on the bench of the Supreme Court during the recess of the Senate, which vacancy existed during and before the last session of the Senate. Attorney General Bates makes use of the following language in the discussion of the question involved:

> "Deferring to this practice and to these authorities, I give it as my opinion that you have lawful power, now, in the recess of the Senate, to fill up a vacancy on the bench of the Supreme Court, which vacancy existed during the last session of the Senate, 'by granting a commission which shall expire at the end of their next session.'" (Opinions of Attorneys General, Vol. 10, p. 357.)

The same question in a somewhat different form was again brought before President Lincoln in 1865. On the eighth day of July, 1864, a few days after the adjournment of Congress, a commission was issued to Peter McGough, Collector of Internal Revenue for the Twentieth district of Pennsylvania. This commission expired on the third day of March, 1865, being the same day the regular session adjourned. An extra session was called on the following day, but the name of McGough was not sent to the Senate for confirmation, so that, after the adjournment of the extra session, a vacancy existed in that office. The President, however, following the precedents already established, and the unbroken line of decisions of the Attorneys General, made a recess appointment. The rule of construction is stated in the syllabus of that case in the following language:

> "Where the President made a temporary appointment of a Collector of Internal Revenue during a recess of the Senate, and no nomination was made during the next regular session, or during an extra session called thereafter, it was held that the President, after the adjournment of the extra session, might fill the vacancy by a *second temporary* appointment." (Opinions of Attorneys General, Vol. II, page 179.)

The question was again very exhaustively discussed by Attorney General Stanbery in 1866. He makes a distinction between a *temporary appointment* made by the President without the consent of the Senate and an *appointment for a full term* made with the consent of the Senate. This decision is of importance in the case of an executive appointment to fill a vacancy in the United States Senate, our contention being that the Governor does not give full title to the office, but makes only a temporary appointment until the Legislature can make an election. The following is the language of the Attorney General in this connection:

> "I say by the *temporary appointment* of the President; for, in strict language, the President cannot invest any officer with a full title to the office without the concurrence of the Senate. Whether the President appoints in the session or in the recess, he cannot and does not *fill the office*

> without the concurrence of the Senate. He may *fill the vacancy* in the recess, but only by an appointment which lasts until the end of the next session." (Opinions of Attorneys General, Vol. 12, p. 41.)

The same construction is adopted by Attorney General Williams in 1875, and this was followed by Attorney General Devens in 1877, and again in 1880 the same Attorney General advised the Secretary of the Treasury in question, which was raised by the appointment of John F. Hartranft as Collector of the Port of Philadelphia. The Attorney General seems to have felt called upon to carefully consider the question, because Judge Cadwalader, of the United States District Court, had taken a different view of the law. Having that case before him, the Attorney General still adhered to the construction adopted by all of his predecessors in office.

Attorney General Brewster advised President Arthur to the same effect in 1883. See opinions of Attorneys General, Vol. 17, page 521.

The question was raised in a somewhat new form before President Harrison, and Attorney General Miller, in 1889, wrote an opinion holding that the rule is the same in the case of a new office created but not filled during the session of the Senate which had adjourned. It was held that the President may fill the original vacancy existing therein by a temporary appointment made during the recess of the Senate. It will be noticed that this opinion holds that a vacancy may exist where a new office has been created, but which had not been filled either by election or appointment. In discussing the question the Attorney General, among other things, says:

> "The word 'vacancy' in the Constitution refers to offices, and signifies the condition where an office exists, of which there is no incumbent. It *is used without limitation as to how the vacancy comes to exist.* The vacancy may have occurred by death, resignation, removal, *or any other cause*, but, regardless of the cause or manner of the existence of the vacancy, the power is the same. In the case submitted the law has created the office. The office, therefore, exists. There is no incumbent. There is, therefore, a vacancy, and the case comes under the general power to fill vacancies." (Opinions of Attorneys General, Vol. 19, P. 263.)

The only opinion dissenting from the construction adopted by the Attorneys General was in 1868, when Judge Cadwalader, of the United States District Court of Pennsylvania, took a different

view of the law. This opinion of the District Court has not been followed either by subsequent Attorneys General or by the courts. Some ten years later, in 1880, Mr. Justice Woods, of the United States Supreme Court, while sitting in Georgia, repudiated the position of Judge Cadwalader in a well-considered opinion, in which he states, *inter alia:*

> "The only authority relied on to support the other view is the case decided by the late Judge Cadwalader, the learned and able United States District Judge for the Eastern District of Pennsylvania. It is no disparagement to Judge Cadwalader to say that his opinion, unsupported by any other, ought not to be held to outweigh the authority of the great number which are cited in support of the opposite view, and of the practice of the executive department for nearly 60 years, the acquiescence of the Senate therein, and the recognition of the power claimed by both Houses of Congress. I therefore shall hold that the President had constitutional power to make the appointment of Bigby, notwithstanding the fact that the vacancy filled by his appointment first *happened* when the Senate was in session.

This decision holds that "happens" means "happens to exist," as used in the Constitution. (In re Farrow, 3 Federal Reporter, 112.)

In 1889, the same question was raised before the Supreme Court of the State of New Jersey. Under the provisions of the State Constitution, which provides, "when a vacancy happens during the recess of the Legislature in any office which is to be filled by the Governor and Senate, or by the Legislature in joint meeting, the Governor shall fill such vacancy, and the commission shall expire at the end of the next session of the Legislature, unless a successor shall be sooner appointed." The facts in this case are as follows:

On the fifteenth of February, 1888, a vacancy occurred in the office of President Judge of Hunterdon Pleas by the death of Mr. Sanderson. At the time of his death the Senate was in session and remained in session until the thirtieth day of March, 1888. On the first day of March, 1888, the Governor nominated Richard S. Kuhl to the office of President Judge to fill said vacancy. The Senate held the nomination until the twentieth of March and then refused to confirm it. No other nomination to this office was made by the Governor during the session of the Legislature. In the meantime the Legislature adjourned. After the adjournment, to wit: on the seventh of April following, during the recess of the Legislature, the Governor appointed Mr. Kuhl to fill the vacancy occasioned by the death of Mr. Sanderson. The case was argued before the

Supreme Court of that State, and the opinion delivered by Van Syckel, J., who states the following, among other reasons, for supporting the position that the Governor had the power to make the appointment, no matter how the vacancy occurred or at what time:

> "On the contrary, it may be said that while there is no uncertainty as to the point of time, when the vacancy will occur in such a case, there is uncertainty, whether the Senate will be in session, and therefore a word implying an unexpected event is properly used. It may also be argued that if the uncertainty implied by the word 'happens' is as to the Senate being in session, the vacancy does not happen then, the time of that is certain, but the Senate hapens not to be in session, and that the Constitutional clause should be read as follows: 'When it happens that the Senate is not in session when there is a vacancy.' This would give the Governor power to appoint in all cases of vacancy. These suggestions are made to show that the import of this clause is not free from doubt."

After reviewing the authorities and precedents in such cases, the following rule of construction is laid down:

> "All these opinions are based upon the idea that the power involves the performance of a duty, intended for the public good, and necessary for the effective administration of the government, and they discard the notion that the point of time at which the vacancy occurs has anything to do with the power of the President to make a provisional appointment." The Supreme Court of New Jersey holds that "happens" means "happens to exist" as used in the Constitution. (Fritts v. Kuhl, 51 N. J. Law Reports, 191.

It will be observed that the word "happen" in all of the opinions and cases above cited was construed to be used in the sense of "happen to exist," and that it was held to apply to all kinds of "vacancies," whether the vacancy "happened" or "occurred" by death, resignation, removal, the beginning of the term of a new office where no incumbent had either been elected or appointed, or a vacancy occasioned by the expiration of a term. No distinction was made in the kind of a vacancy to be filled, but it was uniformly held that the power to appoint was complete when the vacancy "happened to exist," without reference to the manner in which or time when the vacancy occurred. It seems to me that these cases conclusively establish the rule of construction set out at the beginning of this point of our argument.

If we were to write into the constiutional provisions for the filling of vacancies in the United States Senate the meaning which has been uniformly applied to the word "happen," it would read as follows:

> "If vacancies '*happen to exist*,' by resignation or otherwise during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies."

There can be no possible question about this being the proper meaning of the provision in question under the rules of construction applicable thereto. It will not be gainsaid that on the twenty-first day of April, A. D. 1899, there "happened to exist" a vacancy in the office of United States Senator from Pennsylvania. On this day the Governor appointed the Honorable M. S. Quay to fill the existing vacancy until the next meeting of the Legislature. It is our contention, therefore, that, inasmuch as a vacancy existed after the adjournment of the Legislature, it was the duty of the Executive, under the provisions of the Federal Constitution, to make a temporary appointment.

II.

In the discussion of this question two theories of the use of the word "happens" have been insisted upon. The opposition to the right of the Governor to make an appointment insists that the word "happens" refers to a vacancy caused "fortuitously," while the other side contend that it is a generic term and is used in the sense of indicating that a vacancy continues to exist. As the argument has progressed it is practically conceded by the opposition that the Governor has a right to make an appointment to fill a vacancy caused by resignation, or death, or removal, or refusal to accept the office, or disqualification to hold the office, but that it does not apply to the case of filling a vacancy caused by the expiration of a full term; in other words, it is contended that a vacancy, within the constitutional meaning, is not created where no incumbent has first been chosen by the Legislature to fill the full term.

I can see no good reason why a vacancy occasioned by the failure of the Legislature to elect at the beginning of a full term, is less a vacancy than one occasioned by any other cause. The great weight of authority and precedent supports the construction which favors the power of the Governor to make appointments in all cases.

Let us see what the word "vacancy" means. Black and Bouvier define the word "vacancy" to be "a place which is empty." Webster defines it as "The state of being destitute of an incumbent." The natural and common sense meaning of the word "vacancy," as applied to an office, is that any office without an incumbent is vacant within any proper legal or constitutional construction.

This question was raised before the Supreme Court of Arkansas, where, in a very able opinion by Smith, J., the following principle is laid down:

> "At the time of the adoption of this instrument, it had been settled in the case of the State v. Sorrel, 15 Ark., 664, under the provisions of the Constitution of 1836, not essentially different from the present Constitution, so far as concerns this question, that, upon the happening of a vacancy the election is for the unexpired portion of the term, and not for a full term of four years. The controversy is thus narrowed to the point, whether upon the creation of an additional circuit, there is a present vacancy in the office of circuit judge. Can a vacancy occur in an office which has never been filled? Vacancy is the state of being empty or unfilled. Vacant lands are unoccupied lands. A vacant house is an untenanted house. A vacant office is an office without an incumbent; and it can make no difference whether the office be a new or an old one. An old office is vacated by death, resignation or removal. An office newly created becomes ipso facto vacant in its creation." (State ex rel. C. W. Smith v. Askew, 48 Ark., 89.)

The word "vacancy," applied to offices was again construed by the Supreme Court of the State of Indiana, in the case of Stocking v. The State, wherein Stewart, J., delivering the opinion of the court, said, inter alia:

> "The vacancy followed as a natural consequence of their doing what they had a right to do—create a new circuit. There is no technical nor peculiar meaning to the word 'vacant,' as used in the Constitution. It means empty, unoccupied; as applied to an office, without an incumbent. There is no basis for the distinction urged, that it applies only to offices vacated by death, resignation, or otherwise. An existing office, without an incumbent, is vacant, whether it be a new or an old one. A new house is as vacant as one tenanted for years, which was abandoned yesterday. We must take the words in their plain, usual sense." (Stocking v. The State, 7 Ind., 329.

The question has been considered at some length by the Supreme Court of the State of Pennsylvania under the provisions of section 8, Article IV, of the State Constitution, which provides for the

filling of vacancies that may happen in any judicial or any other elective office which the Governor is or may be authorized to fill. The facts in the case were as follows: Evans, on the fifth day of November, 1878, was duly elected to the office of county surveyor for a term of three years. On the seventeenth day of April, 1878, an act was passed authorizing the erection of new counties, and on the twenty-first day of August, 1878, Luzerne county was divided and the county of Lackawanna erected therefrom. Patrick M. Walsh was appointed by the Governor on the twenty-first day of August, 1878, to fill the vacancy in the office of county surveyor occasioned by the erection of the new county. The old surveyor claimed the right to hold over and perform the duties of his office on the ground that it was never vacated, and that since the erection of the new county no vacancy within the statutory meaning existed in said office which authorized the Governor to make an appointment. The case was argued by some of the ablest lawyers of our State and taken to the Supreme Court, where Mr. Justice Woodward, one of our most learned jurists, in an opinion delivered in 1879, construing the word "vacant," among other things, said as follows:

> "It meant 'to be empty, void or vacant;' 'to be void of, free from or without, to lack or want a thing.' Vacant lands were described as lands that were 'uninhabited or uncultivated.' The Roman law gave the word precisely the same meaning. Vacant possessions were defined by Ulpian, in the Pandects, to be such as were 'free, unoccupied, ownerless;' Dig. 38, 17.2. And many of the derivatives from the English verb retain the exact meaning of the original Latin word. To be 'vacant,' in its primary sense, is 'to be deprived of contents; empty, not filled.' The first definition of 'vacancy' is 'the quality of being vacant; emptiness.' The words 'vacant lands,' so familiar in the Pennsylvania courts, convey as to description of subject-matter, the precise idea which Caesar conveyed in explaining the public policy of the Suevi. Surrounding their own territories they desired, to as wide an extent as possible, vacare agros. De B. Gal. IV. 3. Usage has warranted the employment of these words in an enlarged and broader sense, but the primary and strictly grammatical meaning which they still retain is identical with their exclusive original signification. The result is that the word 'vacancy' aptly and fitly describes the condition of an office when it is first created and has been filled by no incumbent. The need to strain and torture terms would lie in the opposite direction." (Walsh v. Commonwealth, 89 Pa. St., 425.)

Numerous authorities might be cited in support of the rule of construction hereinbefore stated. In fact, it may be very seriously questioned whether any authority can be cited upon which a lawyer

would be willing to rely that takes a different view of the question. We have already shown, in the first point of this argument, that the word "happens" applies to every vacancy that "continues to exist" after the Legislature has adjourned, and now we contend, in the light of the authorities above mentioned, and numerous others that could be cited, that the word "vacancy" applies to every office without an incumbent, which the Governor has the power to fill, no matter how the vacancy is created; so that the conclusion necessarily forces itself upon us that the Governor has the right to fill any vacancy that happens from any cause, and which exists after the Legislature has adjourned.

The only constitutional authority for the filling of vacancies either by appointment or election, is that contained in the provision: "If vacancies happen by resignation or otherwise during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature which shall fill such vacancies." It will be observed that the vacancy is, in the first instance, to be filled by temporary appointment and then permanently by election by the Legislature. It must not be forgotten that the plain language of the Constitution does not classify vacancies for the purpose of making temporary appointments or permanent elections. The Constitution does not specify that certain kinds of vacancies are to be filled by temporary appointments and certain other kinds by permanent elections. Even a casual reading of the constitutional provision makes it clear that vacancies which can be filled by temporary appointments are the same kind of vacancies that can be filled by permanent elections. The language of the Constitution will not admit of any other construction. It is too plain to be doubted. It is there to be read of all men. "If vacancies happen by resignation or otherwise" the Executive may then make temporary appointments to fill said vacancies until the next meeting of the Legislature "which shall then fill such vacancies." What vacancies can the Legislature fill at its next meeting? The Constitution says all vacancies that the Executive did fill or could have filled by temporary appointments. This is clearly indicated through the whole context of the provision in reference to the filling of vacancies and especially by the use of the adjective "such." "Such vacancies." What vacancies are meant? The vacancies mentioned in the first part of the clause; that is, vacancies that happen "by resignation or otherwise" and which the Executive has the right to fill by executive appointment.

The word "such" is defined by the Century Dictionary to mean;

"1. Of that kind; of the like kind or degree; like; similar.

"2. The same as previously mentioned or specified; not other or different."

So that when the word "such" is used before the word "vacancies" in the latter part of the clause, it means the same kind of vacancies mentioned in the first part of the clause in reference to Executive appointments. Hence it appears that there can be no vacancy filled by the Legislature that could not, in the first instance, have been filled by Executive appointment; or, to put it in other words, every vacancy which the Legislature can fill by election the Governor can fill by temporary appointment. It is admitted that the Legislature can fill all vacancies, no matter how created, and it therefore follows that the Governor can fill by temporary appointment the same kind of vacancies. The vacancies to be filled by Executive appointment are as broad as the vacancies which can be filled by election.

On the question of vacancies and the duty of executives to fill by appointment, Senator Edmunds, of Vermont, in discussing the Bell case in 1879, said:

> "I think the Senator from Massachusetts has pretty nearly demonstrated that the actual decisions of the Senate are not adverse to the claim of Mr. Bell, from New Hampshire, but I think the error into which the public or the governors of the states have fallen is in talking about terms in Senatorial offices. Every Senator has a term; that is true; but the office is a continuous office. The office of two Senators from a State never expires, and it has not any periods in it as respects the office. It has periods as it respects the person who is to fill them, who must go again to his State that is to have the person renewed and again inducted; but the office is perpetual and continuous. Therefore, when the Constitution speaks of a vacancy happening in the office of Senator, it is not speaking of any particular period of six years or of three years, or of one, if the legislature has filled up the vacancy before, but it is speaking of a vacancy in the representation of the State, the filling of which is necessary to fulfill the purposes of the government, and wherever that vacancy occurs or happens from whatever cause, and as the Constitution says, 'by resignation or otherwise,' without specification in any way, it is to be filled."
>
> "The highest mission of Constitutional duty is to have that vacancy filled, until, as the Constitution limits it, the governing power of the State, the Legislature next coming after the occurring of this vacancy, may have an opportunity to fill it, and there the Constitution limits the power of the Executive, because—because it says (if the Senator will pardon me a moment until I finish my sentence) that the Governor may fill until the next meeting of the Legislature.

That having occurred, his power is of course exhausted, and he cannot fill again." (Congressional Record, Vol. 9, Part I, page 188.)

The Senator herein holds that the power of the Governor to fill the vacancy is limited until the next meeting of the Legislature. I do not agree with his construction of the limitation placed upon the Executive in making these appointments. The Governor has the authority to fill the vacancy at all times, but his appointee can hold only until the next meeting of the Legislature. If that Legislature does not elect there is a new vacancy under the authorities and decisions hereinbefore cited. This, however, is of no importance in the discussion of the present case for the reason that the Governor has exercised the authority in the first instance only. Whether or not he can exercise it a second time need not be taken into consideration in this discussion.

III.

Much of the difference of opinion which has existed on this question for upwards of three-quarters of a century has arisen on account of the proper construction to be placed on the words: "By resignation or otherwise." Those who take a technical view of the Constitution hold that the words "resignation or otherwise" are words of limitation, and that the word "otherwise" is intended to indicate a vacancy that happens in some such manner as by resignation. Those who take a broader and more liberal view of the Constitution contend that the word "otherwise" is intended to indicate every other kind of vacancy that may happen to exist than by resignation.

It is a cardinal rule in the interpretation of constitutions that the instrument must be so construed as to give effect to the intention of the people who adopted it. It has been frequently decided that the words used in a constitution are to be taken in their natural and popular sense, unless they are technical legal terms, in which case they are to be taken in their legal signification. The words "resignation or otherwise" are not technical legal terms, and therefore do not come within the purview of the exception to the general rule. The general rule of construction certainly must apply to the words "resignation or otherwise." The popular as well as the philological meaning of the word "otherwise" is "other ways," and if this rule is to be applied, it would seem as though there could be no doubt what the word "otherwise" means as used in the Constitution.

The following extracts taken from the speeches of Senators who have advocated this broad and more liberal construction of the constitutional provision very clearly express what appears to be the rational and reasonable meaning of these words:

Senator Edmunds, in a very able presentation of the Bell case, among many other strong points made, stated the rule as follows:

> "The Constitution is speaking of vacant office and not of the incumbent at all except in the first phrase. There is where the Senator from Georgia and I appear to differ. The Constitution is looking to have each State represented in this body, all the time and by some method the Constitution provides and looks to do it; and therefore when it uses the word 'otherwise' it uses a comprehensive term, so that in whatever way a State ceases to have opportunity to express its full voice here in this council of States, it shall be filled up temporarily by the Governor until the Legislature, the chief and sovereign power in the State next meeting, can have an opportunity to fill it."

Senator Turpie, in discussing the question in the Mantle case in 1893, expresses himself on the use of the words "by resignation or otherwise," as follows:

> "The original draft of the instrument did not contain the words 'by resignation or otherwise.' Having done away with the obstacle in the use of the word 'happen,' the opponents of this construction take refuge in the phrase 'by resignation or otherwise.' They claim that it is a limitation upon the power of the governor, and that the vacancy which happens is one that is occasioned by resignation, or, as they claim it, 'otherwise,' meaning by similar modes to resignation, something like resignation. We of the majority say that 'otherwise' includes every other casualty, by which a vacancy should occur; every other casualty, no matter what it may be. 'Otherwise' means 'other ways.' Gentlemen may examine Johnson, the contemporary authority with the Constitution of the United States, the nearest contemporary, the first of English lexicographers, not the last nor the least in learning. He defines the term 'otherwise' to mean 'other ways,' in another manner, in a different mode or manner, not in a similar way, not in the same way, not in a way like the first named.' And the real question in this debate is not how a vacancy occurred, but whether it exists."

Senator Hawley, in discussing the proper use of these words, in 1893, said:

> "There is no escape, in my judgment, from the conclusion that it is right to seat Mr. Mantle unless you can find it in

the construction of the word 'otherwise.' That is the only escape. Otherwise the Governor has the right to appoint. So it is of some consequence to know what 'otherwise' means. It is of no consequence in dealing with the 999,999 out of the 1,000,000 common people, because they know that 'otherwise' means 'other ways.' It takes a lawyer to find out that 'otherwise' is simply one of the species of 'other;' that it is only practically equivalent to likewise;' that 'otherwise' is something right along in the direction of what you have been at all the while."

Senator Spooner, in the Corbett case, in 1898, puts his side of the controversy very strongly in the following language:

"There are preceding 'otherwise' not particular words of the same nature, but the single word 'resignation.' If the phrase were 'by death, refusal to accept, resignation or otherwise,' the word 'otherwise,' would not be restricted by the specific words, because 'they are not of the same nature.'"

"What word of the same nature as resignation, and taking its meaning from resignation, is covered by 'otherwise'? Is it 'expulsion'? Its nature is manifestly different. Is it 'death'? The same is true as to this word. To attempt to restrict this sweeping and common word as is proposed is certainly a novelty.

"If it had been the purpose of the framers of the Constitution to restrict the power to fill vacancies, as contended, I suspect they would have found an easy way, without using one of the broadest of general words and leaving future generations to 'hold it down' by the application of maxims of construction.

"If they had entertained the purpose imputed to them, it would have been very much easier for them to have said 'by resignation or in a similar manner,' or 'by like causes,' although that would not have left the subject free from embarrassment, regard being had to the difference in nature of the events causing vacancies.

'They certainly could not have intended that the word 'otherwise,' which means, both philologically and popularly a 'different manner,' should be construed to mean a 'different like manner.'"

If the provisions of a Constitution are to be construed in such a manner as to carry out the intention of the people who made and adopted it, it follows that any historical knowledge that we may be able to acquire in reference to the meaning of any of the words used will be of great value in determining what is meant by the use of those words in the Constitution. In this connection we have the authority of James Madison, who is the only person to give

exact information as to why the word "resignation" was used in the constitutional provision in reference to the filling of vacancies. In Vol. V of Elliott's Debates, at page 396, is contained this record:

> "Mr. Madison, in order to prevent doubts whether resignations could be made by Senators, or whether they could refuse to accept, moved to strike out the words after 'vacancies,' and insert the words 'happening by refusals to accept, resignations or otherwise, may be supplied by the Legislature of the State in the representation of which such vacancies shall happen, or by the executive thereof until the next meeting of the Legislature."

On the sixth day of August, 1787, the report of the Committee of Detail was made by Mr. Rutledge, and in reference to the provision for the filling of vacancies in the office of United States Senator, Article V, Section I, provided as follows: "The Senate of the United States shall be chosen by the Legislature of the several states. Each Legislature shall choose two members. Vacancies may be supplied by the Executive until the next meeting of the Legislature. Each member shall have one vote."

The report of the Committee on Detail was then taken up, discussed and amended by the convention. That provision in reference to vacancies, above set out, was amended on the motion of Mr. Madison to read as follows:

> "Vacancies happening by refusals to accept, resignation or otherwise, may be supplied by the Legislature of the State in the representation of which such vacancy shall happen, or by the executive thereof, until the next meeting of the Legislature."

It will be observed that Mr. Madison offered the motion and made use of the word "resignations" in order to prevent any doubt about the right of a Senator to resign. He himself has so stated ir his papers and no one has undertaken to dispute the reason given by him for the introduction of the word "resignations."

After the convention had voted for and agreed to that provision in reference to the filling of vacancies, as completed by the amendments offered by Mr. Madison, a committee on style and arrangement was selected by ballot for the purpose of putting in better form the style and arrangement of the Constitution. It will be observed that the committee on style and arrangement did not have the authority to add new matter or change the substance of the provisions of the Constitution, their office and their only office being to perfect

the style and arrangement of the instrument. When the committee on style and arrangement reported the Constitution, the provision in reference to vacancies read:

> "And if vacancies happen by resignation or otherwise during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies."

The committee on style and arrangement having re-written what had been agreed to by the Convention, must necessarily have adopted the foregoing as the best phraseology to express what the Convention had agreed to upon the motion of Mr. Madison. To express it in other words, the committee on style and arrangement must have intended that the words "by resignation or otherwise" should cover all the subjects as expressed in the motion of Mr. Madison.

It seems clear, from this historical recital of the facts, that the word "resignation" was retained for the purpose expressed by Mr. Madison, to wit: to indicate that there could be no doubt about the right of United States Senators to resign if they chose so to do, and the words "or otherwise" must have meant all other forms of vacancy included in the motion of Mr. Madison; that is, all other kinds of vacancies.

IV.

It is apparent that the framers of the Constitution tried to provide against vacancies. Being practical men, they must have foreseen that vacancies would frequently occur by resignation, by expulsion, by disqualification, by refusal to accept and by failure of the Legislature to elect; and they certainly intended that any of these vacancies should be filled temporarily by executive appointment. This is the natural and common sense construction of this constitutional provision. Any other construction makes it necessary to differentiate in each case presented, and makes an inquiry imperative at the very outset as to what class of vacancy was created. It makes a classification of vacancies; one class which the Governor has the right to fill by appointment, and the other class which he has not the right to fill. It seems to me that no such super-refinement was intended by the Constitution. Under this limited construction the Senate makes an inquiry in each case as to

which class the vacancy belongs. If it is a vacancy by death, then it is said the Governor has the right to appoint; if it is a vacancy by expulsion, the Governor has the right to appoint; if it is a vacancy by disqualification, the Governor has the right to appoint; and if it is a vacancy by resignation, the Governor has the right to appoint. In the case of a vacancy occasioned by the refusal of the person elected to serve, the Governor has the right to appoint. But, according to this peculiar classification theory insisted upon by the opposition, a vacancy that occurs and continues to exist by reason of the expiration of a term by the efflux of time cannot be filled by Executive appointment. The reason, spirit, and common sense of the constitutional provision will not justify such a distinction. This distinction is made on the theory that all vacancies to be filled by Executive appointment must happen in some such manner as by resignation.

A vacancy caused by death is as unlike a vacancy caused by resignation as it is possible to conceive anything to be. A vacancy caused by death is unexpected, unforeseen and without any element of voluntary will power acting upon it. A vacancy caused by resignation is deliberate, premeditated and is the result of one's own volition. Take a vacancy that is caused by expulsion. In such a vacancy the wishes or desires of the Senator expelled are in no way regarded. He is expelled by the action of the Senate sitting as a deliberative body, having the constitutional right to pass upon the qualifications of its own members. The vacancy is created, not by any wish of the member himself, but by the action of his associates over which he has no control. Such a vacancy is the very antithesis of a vacancy caused by resignation. In the case of resignation, the Senator himself acts regardless of what his fellow members in the Senate may think or do. In the case of expulsion the Senate acts regardless of what the member affected may think or do. In the one case the individual Senator has no control over the action of the Senate, and in the other case the Senate has no control over the individual Senator in the exercise of rights guaranteed to him under the provisions of the Constitution. Centainly the supporters of the theory that all vacancies must be caused in a like manner to a vacancy by resignation must find some other theory upon which to support their argument. The theory of "likeness" fails them in this contention. How much more in keeping with the general, broad spirit of the Constitution, and how much more nearly it is allied to the thought that the framers of the Constitution intended the membership in the Senate to be kept full,

to say that the phrase "if vacancies happen by resignation or otherwise" was intended to fill every vacancy that could exist in the Senate, no matter from what cause.

As we have shown in another branch of this argument, the word "vacancy," as applied to an office, means one that is without an incumbent, an office that is empty. An office without an incumbent, no matter for what reason, is a vacancy that ought to be filled, and it was clearly the intention of the framers of the Constitution to provide for filling such vacancies temporarily by Executive appointments.

The construction of the Constitution for which we contend would settle, for all time, the whole controversy about the filling of vacancies. This construction makes it unnecessary to go into refinements to differentiate one kind of a vacancy from some other kind of a vacancy. Adopt this construction and it will not be necessary, by the use of ingenious and subtle arguments upon the question of technical phraseology, to say that this particular vacancy is caused by something like unto a resignation and that another vacancy is caused by something unlike a resignation. Adopt now the theory of construction for which we are contending, and it is my opinion that many of the unseemly contests involving the election of United States Senators will no longer fret the public mind.

On the question of what is a proper construction to be placed on the word "otherwise," we have the expression of some of the most experienced Senators who have discussed it at one time or another. It seems to me that that construction should be adopted which will most easily keep a full representation in the Senate from the various States. Upon this question see the remarks of Senator Edmunds in the Bell case, in 1879, in the Congressional Record for that year, page 189:

> "The Constitution is looking to have each State represented in this body all the time and by some method that the Constitution provides, and looks to do it, and therefore when it uses the word 'otherwise' it uses a comprehensive term, so that in whatever way a State ceases to have opportunity to express its full voice here in this council of States, it shall be filled up temporarily by the Governor until the Legislature, the chief and sovereign power in the State, next meeting, can have an opportunity to fill it."

See also the minority report of the Committee in that case. Congressional Record for 1879, page 185:

> "The purpose of the Constitution is to always have the Senate full. To meet the case of a vacancy happening in the recess of a Legislature, the Constitution clothes the executive with the power of temporary appointment. The purpose to keep the representation of the State always full requires the construction which authorizes such appointment when the vacancy happens at the beginning of the term as much as if it happen at any other time."

To the same effect are the remarks of Senator Cameron, of Wisconsin. Congressional Record for that year, page 315:

> "It has been stated repeatedly that one leading object of the Constitution was to keep the seats of Senators always full. But the framers of the Constitution saw that a vacancy might happen, might come to pass, might befall, during a recess of the Legislature, when it would be not impossible, but inconvenient and expensive, to assemble the Legislature for the purpose of filling that vacancy. To provide against that contingency the Constitution provides that the executive may fill vacancies. The Constitution makes no distinction between vacancies which happen at the commencement of the term, in the middle of the term, or at the end of the term."

To the same effect are the remarks of Senator McDonald, of Indiana, at page 317:

> "This is admitted by all a permanent body, the permanent branch of the National Legislature. The purpose of its creation was that it should be perpetual and its constituent parts are made up of the representatives of States. Each State is entitled to two Senators in this body, to two representatives on this floor."

Senator Hunton, of Virginia, summed up his views of the proper construction in the Mantle case, at page 333, as follows:

> "No one can read this provision (of the Constitution) and fail to find an intention to keep the Senate full—always full. When it is composed of less than two from each State it does not measure up to the standard prescribed by the Constitution. Its framers intended to provide for a full Senate. If this is so, we should incline to that construction which will more nearly and more certainly keep the Senate full."

Attorney General Taney, in placing a construction upon that provision of the Constitution which requires the President to fill up vacancies that may happen during a recess of the Senate, says:

> "The Constitution was formed for practical purposes, and a construction that defeats the very object of the grant of power cannot be a true one. It was the intention of the Constitution that the offices created by law should always be full."

If the rule of construction hereinbefore contended for, and which is well stated in the opinion of Attorney General Taney, is the correct one, then it seems as though there ought to be no difficulty in arriving at a proper meaning of the constitutional provision. The framers of the Constitution meant to keep the representation in the Senate full, and to this end, provided for the filling of vacancies by Executive appointment until an election could be made by the Legislature.

Upon this question, see remarks of Senator Edmunds in the Bell case in 1879:

> "Now let us see where is the harm, what is the danger to the Constitution, to the public interests, to the general welfare to hold that view? It is said that the Legislatures are the constituency. Suppose they are—I do not think they are in a correct sense—but I shall not waste time by going into that—where is the harm, the danger of the misrepresentation of a State if, when a Legislature on the first occasion when it ought to have elected in advance of the time when the term begins, in order to provide that its representation may be always full, the Governor of the State elected by the people, and as we all know is the practice, for very short terms, the representative of the people just as much as the body of the Legislature is, shall do it and allow the people of that State to have their representation in this hall for the time that the Constitution has limited, until the Legislature can meet again and try it." (Congressional Record, 1879, page 351.)

In another part of his argument in the Bell case, Senator Edmunds, said:

> "So, then, Mr. President, I have no difficulty with this case myself after hearing all that has been said on this subject and thinking about it, and I believe if we decide it in favor of this candidate, a matter of very little practical consequence of course, because the Legislature shall meet so soon, we shall have established a just and wise decision in favor

of giving the people of every State who are the persons who are really represented the fullest opportunity in one way or another to have their seats here kept full." Congressional Record, 1879, p. 351.)

V.

It is earnestly contended by the opposition that the power of the Governor to fill vacancies by temporary appointment is exhausted when the Legislature of the State has had the opportunity to fill the vacancy when in session. We do not believe that this is a proper construction of the language of the Constitution. Other provisions of the Constitution of similar import have not been subjected to such a construction. In this connection the construction that has been placed upon the provisions of the Constitution authorizing the President to fill up vacancies during a recess of the Senate is of great value. It is almost a parallel case. The recess appointments of the President are to hold until the end of the next session of the Senate, but in many instances, the next session of the Senate either refused to confirm the Presidential appointments or neglected to do so; in each of which cases there was another vacancy in the office. It has, however, been uniformly held that, where the President had first made a temporary appointment until the end of the next session of the Senate, and for any reason the office had not been filled for the full term by confirmation during a session of the Senate, another vacancy existed, and one which could be temporarily filled until the end of the next session of the Senate. The following are some extracts taken from the opinions of the Attorneys General of the United States who have passed upon the question involved:

Attorney General Taney, in advising the President in 1832 upon that question, said:

> "The appointment of Mr. Gwinn during the last recess 'filled up' the vacancy which had then happened, and the office remained full; and there was no vacancy, from the time of his appointment and acceptance, until the close of the late session. The nomination made not being confirmed by the Senate, the commission granted by the President expired at the end of the session; and the moment after it closed, the office again became vacant. This was a new vacancy." (Opinions of Attorneys General, Vol. 2, page 526.)

Again, Attorney General Legare, advising the Secretary of War, in 1832, stated the principle in the following language:

> "A vacancy having occurred during a recess, the President had filled it up by a temporary appointment, under the clause of the Constitution in question; then, after the meeting of the Senate, had made another nomination, which was not acted upon by the Senate; and so the office being now vacant, the question is, has the President power to fill it up again, by granting a commission which shall expire at the end of the next session of the Senate? This question, however difficult it may appear to have been rendered by opinions thrown out, or proceedings had in analogous cases, does seem to me, with all possible deference for the superior wisdom of others, to admit of no doubt, whether it be considered as one of pure legal science, or as a matter of public expediency."
>
> "The convention very wisely provided against the possibility of such evils by enabling and requiring the President to keep full every office of the government during a recess of the Senate, when his advisers could not be consulted; not only so, but, making allowance for the tardiness and uncertainties inseparable from the debates and proceedings of all deliberative bodies, they extended this indispensible authority to the very last moment of the session. My opinion is, that the same overruling necessity which applied to the original vacancy applies to the second one, created by an omission of the Senate to act on a nomination. (Opinions of Attorneys General, Vol. III, pp. 674, 676.

Again, Attorney General Mason, 1846, wrote an opinion to the President, in which he sustains the position taken by his predecessors upon the question of the right to again fill by appointment places which had been previously filled by temporary appointment, but which the Senate had not confirmed. The rule is stated in the syllabus of that opinion as follows:

> "Even though the vacancy occurred before the session of the Senate, if that body, during its session, neglected to confirm a nomination to fill it, the President may fill it by a temporary appointment; and public considerations seem to require him to do so." Opinions of Attorneys General, Vol. 4, p. 523.)

Attorney General Speed, in 1867, advised the Secretary of the Treasury to the same effect. The principle is stated in the syllabus of that opinion in the following language:

> "Where the President made a temporary appointment of a Collector of Internal Revenue during a recess of the Senate, and no nomination was made during the next regular

session, or during an extra session called thereafter, it was held that the President, after the adjournment of the extra session might fill the vacancy by a second temporary appointment." (Opinions of Attorneys General, Vol. 11, p. 179.)

To the same effect is the precedent established by Governor Pattison in the appointment of Robert Watchorn to be Factory Inspector under the provisions of the act of May 20, A. D. 1889 (P. L. 248). Being authorized under the provisions of the statute named to appoint a Factory Inspector, whose appointment should be confirmed by the Senate, he sent to that body the name of Robert Watchorn. The Senate refused to confirm the appointment. On the adjournment of the Legislature, no appointment having been confirmed by the Senate, the Governor held that a vacancy existed, and he filled the same by appointing Robert Watchorn to the position of Factory Inspector after his nomination had been rejected by the Senate. The State Treasurer having asked for an opinion upon the question of whether or not the salary of the Factory Inspector, appointed as aforesaid, should be paid out of the public funds, Attorney General Hensel advised him that the appointment had been properly made, and that his salary should be paid. In the syllabus of that case the principle is stated as follows:

"Watchorn was appointed Factory Inspector by the Governor. His nomination was rejected by the Senate. He was then appointed after the adjournment of the Senate. Held, that Watchorn's appointment was valid and the State Treasurer was justified and authorized in recognizing him and his warrants as those of a de facto and a de jure officer."

A very analogous case was raised in the State of Rhode Island. William A. Pirce was declared by the General Assembly of that State to have been, on November 4, 1884, elected a Representative in the Forty-ninth Congress. The National House of Representatives, on January 25, 1887, resolved that he was not elected; that the seat was vacant; and that neither he nor any other person received a majority of the legal votes cast at the election on November 4, 1884. This, then, was a case of the people of that district having failed to elect a Congressman. The question was then raised before the Supreme Court, whether, under the provisions of Article I, section 2, of the Constitution of the United States, which provides "When vacancies happen in the representation from any State, the executive authority therefor shall issue writs of election to fill such vacancies," the Governor should issue a writ for a special election

to fill the vacancy. It was contended in that case that it was not such a vacancy as was contemplated by the provisions of the Constitution above named. The Supreme Court held that it was a vacancy within the meaning of Article I, section 2, above referred to, and the Governor had power to issue a writ of election to fill the same. (In re Representation Vacancy, 15 R. I., 621.)

The question was raised in the State of Oregon, wherein the Supreme Court laid down the following rule:

> "Vacancy in an office is one thing, and term is another. An office may be vacant and filled many times during a term of four years." (State v. Johns, 2 Oregon, 507.)

Admit that the Legislature failed to do its duty, it does not follow that the power of the Governor to fill vacancies under the Federal Constitution is either exhausted or abridged. This position is supported and emphasized by the remarks of Senator Edmunds, in the Bell case, wherein he said:

> "It might indeed be said, Mr. President, that even this conduct of the Legislature under the circumstances, this omitting to try to elect, was a very great chance; it has so happened by a casualty, by misinformation, by misunderstanding what the decision of this body was supposed to be, as some say they did, or understanding it correctly, so that it would fall within the strictest meaning of the most extraordinary chance in the world that they should have been so misled as it is now said they were. But that I admit is not a sound argument, for they were bound to know the law, and if the law gave them the power to elect they might have elected. But my point is that, failing to do their duty within the Constitution as it stands, the Governor of that State had a right to fill up the vacancy until the Legislature should meet again. Then they are to fill it, as it is a vacancy." (Congressional Record, 1879, page 350.)

The opinions and cases above cited show that executive appointments to fill vacancies do not depend upon the action of the Legislature. It is the duty of the Legislature to permanently fill vacancies in the United States Senate, but if, for any reason, that body fails to do so, the vacancy still exists in the office, and the Constitution intends that these vacancies shall be temporarily filled. The Rhode Island case is directly in point. There the people—a more sovereign power than the Legislature—failed to elect a Congressman. A vacancy existed by reason of the failure of the people to elect, and the

Supreme Court held that it was the duty of the Governor to issue a writ of election to fill this vacancy. In that case the only manner of filling the vacancy was by a special election for that purpose. A vacancy in the office of United States Senator, caused by the failure of the Legislature to elect, cannot be said to stand on a higher plane than where the people failed to elect, and if a vacancy existed in the latter case which had to be filled by the Governor issuing a writ to hold a special election, it seems as though the same rule would require the Governor to fill a vacancy temporarily until it could be filled permanently by the next Legislature. If the theory that the State should go unrepresented because the Legislature failed or neglected to do its duty is the correct one, then the same rule should apply to a Congressional district where the people had failed to do their duty, and in the Rhode Island case, that district must have gone unrepresented until the next election. The Supreme Court of that State, however, repudiated this doctrine.

VI.

Any rule of official action prescribed by the Federal Constitution may be followed by the Chief Executive of any State to the exclusion of a different rule prescribed by the Constitution and laws of such State. It therefore follows that, when a vacancy "happens to exist" during a recess of the Legislature of any State in the office of United States Senator, the Executive thereof may make a temporary appointment until the next meeting of the Legislature, even if the Constitution of the State provides a different method for the filling of vacancies. That the Federal Constitution, within the limit of its powers, is the supreme law is well settled both by the provisions of the Constitution itself and the authorities and decisions construing the same. The following authorities are cited in support of this position:

Section 2, of Aritcle VI, of the Constitution, provides as follows:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

Chief Justice Marshall, in the case of McCulloch v. Maryland, decided in 1819, defined the relations between the Federal and State Constitutions in his usually clear and forceful manner:

> "If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to result, necessarily, from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one State may be willing to control its operations, no State is willing to allow other to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason: the people have, in express terms, decided it by saying, 'this Constituion, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the State Legislature, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it. The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the Constitution, form the supreme law of the land, 'anything in the Constitution or laws of any State to the contrary notwithstanding.'" (4 Wheaton, p. 464.)
>
> "The Constituion of the United States is the supreme law of the land and is equally binding upon the Federal government and the States and all their officers and people." (Black's Constitutional Law, section 18.)
>
> "The constitutional functions of the Governor of a State are regulated to some extent by the Constitution of the United States, and chiefly in relation to matters concerning the intercourse of the States with each other and with the representation of the State in Congress." (Black's Constitutional Law, page 279.)

Mr. Justice Grier, of the United States Supreme Court, very aptly states the principle in the following language:

> "The Constitution of the United States is the supreme law of the land and binds every forum, whether it derives its authority from the State or from the United States." (Cook v. Moffatt, 5 Howard, p. 308.)

To the same effect is the case of Sinnot v. Davenport, wherein the principle is stated as follows:

> "An act of Congress, passed in pursuance of clear author ity, under the Constitution, is the supreme law of the land, and any law of a State in conflict with it is inoperative and void." (22 Howard, 227.)

On the twenty-first day of April, 1899, a vacancy existed in the office of United States Senator from this State. A Legislature, whose duty it was to elect a Senator to fill the vacancy caused by the expiration of a full term on the third day of March, preceding, had failed to do so. The Governor, under the authority of section 2, of Article II, of the Federal Constitution, which is the Supreme law of the land for the filling of vacancies that exist during the recess of a Legislature, appointed a person to fill that vacancy until the next meeting of the Legislature, as provided in the Article of the Federal Constitution referred to, and he is, therefore, entitled to his seat.

VII.

Section 4 of Article II of Constitution of Pennsylvania provides:

> "In case of a vacancy in the office of United States Senator from this Commonwealth, in a recess between sessions, the Governor shall convene the two Houses, by proclamation on notice not exceeding sixty days, to fill the same."

Just when and under what circumstances the Legislature is to be convened in extra session for the purpose of filling a vacancy in the office of United States Senator under our State Constitution must be decided by the Executive. The power vested in the Governor to convene the Legislature on extraordinary occasions must always be exercised in a manner to carry out the intention of the framers of the Constitution. If, however, any question of construction arises, by which it is necessary to decide whether the occasion has arisen for the exercise of this extraordinary power, the Executive himself must decide it. His decision, in passing upon a question of constitutional construction involving the exercise of these extraordinary powers, must necessarily be final and conclusive.

Cooley, in his work on Constitutional Limintations, section 41 and following, states the rule thus:

> "It follows, therefore, that every department of the government and every official of every department may at any time, when a duty is to be performed, be required to pass upon a question of constitutional construction. Sometimes the case will be such that the decision when made must, from the nature of things, be conclusive and subject to no appeal or review, however erroneous it may be in the opinion of other departments or other officers; but in other cases the same question may be required to be passed upon again

before the duty is completely performed. The first of these classes is where, by the Constitution, a particular question is plainly addressed to the discretion or judgment of some one department or officer, so that the interference of any other department or officer, with a view to the substitution of its own discretion or judgment in the place of that to which the Constitution has confided the decision, would be impertinent and intrusive. Under every constitution, cases of this description are to be met with; and, though it will sometimes be found difficult to classify them, there can be no doubt, when the case is properly determined to be one of this character, that the rule must prevail which makes the decision final.

"We will suppose, again, that the Constitution empowers the executive to convene the Legislature on extraordinary occasions, and does not in terms authorize the intervention of any one else in determining what is and what is not such an occasion in the constitutional sense; it is obvious that the question is addressed exclusively to the executive judgment, and neither the legislative nor the judicial department can intervene to compel action, if the executive decide against it, or to enjoin action, if, in his opinion, the proper occasion has arisen."

Under the provisions of the Constitution of Pennsylvania in reference to the convening of the Legislature in extra session for the purpose of electing a person to fill a vacancy in the office of United States Senator, two questions may very properly arise.

1. Whether or not the Governor is required to convene the Legislature in extra session to elect a person to fill a vacancy in the office of United States Senator, which vacancy occurred during the regular session of the Legislature which had the opportunity of electing a Senator but failed to do so; or, whether this provision of the Constitution requires the Governor to convene the Legislature in extra session for this purpose only when the vacancy occurs in the recess and at a time when the regular session did not have the opportunity of making a choice to fill the vacancy.

2. The second question which naturally arises is as to the time when the extra session shall be convened, if convened at all. It is contended, on one side, that the extra session should be convened immediately upon the adjournment of the regular session. On the other hand, it is contended that the Governor can exercise a discretion as to the time when the extra session shall be convened; that is to say, it may be called any time between the adjournment of the last regular session and the meeting of the next biennial session by giving proper notice of the time when the extra session is to be convened. The very fact, however, that these two questions are raised under the provisions of our constitution makes it necessary

that the power of decision should be vested somewhere. It is only fair to state that able lawyers divide on both of the questions hereinbefore stated. Who, under the Constitution, is to place upon this provision a construction that will be conclusive? These are questions that address themselves to a single department of the State Government, that is, to the Executive. The Governor, who is elected by the people and who is responsible to them for his acts, and who issues the mandate in calling the Legislature together, must necessarily decide what is a proper construction to be applied in the exercise of this extraordinary power. Under the Constitution and laws of our State there is no other authority to pass upon these questions. When, therefore, the Governor, in placing a construction upon this provision, says that the Constitution does not mean that an extra session shall be called when the vacancy occurs during a regular session, his decision, under the authority hereinbefore cited, must be conclusive.

The same principle applies in the disposition of the second question. When the Executive, in the performance of his duty and the exercise of a reasonable discretion vested in him, decides that he has the right to call an extra session of the Legislature at any time between the adjournment of the last Legislature and the convening of the next biennial session, by giving proper notice, his decision in this respect, must necessarily be conclusive. It may be contended that the construction placed upon the Constitution is not the proper one, but it will be admitted that there must be, in every form of government, some officer or tribunal whose duty it is to finally determine all doubtful questions. In this instance it is plainly the duty of the Executive, and he believed that the provisions of the Constitution under consideration should receive a reasonable and rational construction.

In the exercise of his discretion, he did not feel called upon to convene the Legislature in extra session to fill a vacancy at the very time the regular session was balloting day by day for the purpose of electing a United States Senator. In his opinion it seemed like a foolish and futile thing to convene the extra session after the regular session had exhausted all possible efforts to make an election. In this case the regular session continued to ballot for many weeks after the vacancy occurred without producing a result. During the several months the Legislature was convened in regular session it became evident that it would be impossible for a majority to agree upon any candidate. If it had been called together in extra session the result would have been the same and there would have been no election. The vacancy, in all human probability, would have existed after the calling of an extra session, just as it did after the regular session had made every possible effort to elect a Senator.

The calling of a extra session would mean the expenditure of several hundred thousand dollars of the public funds, and, with the partisan and factional feeling engendered during the several months of the regular session, no election would have resulted.

Under these circumstances, the Executive, in the exercise of his discretion, held that the Constitution did not require him to convene the Legislature in extra session. The vacancy, however, still continued to exist, and, under the authority of the Federal Constitution, a temporary appointment was made. The Executive of the State was the only authority called upon to place a construction upon this constitutional provision, and he has done so, and his decision upon this question, whether it be a correct or an erroneous one, under the authorities, is held to be final and not subject to review.

The Supreme Court of the State of Colorado, in passing upon a question of kindred character, states the rule as follows:

> "Whether or not an occasion exists of such extraordinary character as demands a convention of the General Assembly in special session, under the provisions of section 9, article IV of the Constitution, is a matter resting entirely in the judgment of the Executive." (9 Colorado, 642.)

PRECEDENTS.

THE FOLLOWING INTERESTING PRECEDENTS WILL BE OF USE IN PROPERLY ARRIVING AT A CONCLUSION OF THIS VEXED QUESTION:

The precedents of the Senate are not uniform on the question of seating Senatorial appointments to fill vacancies at the beginning of a term by reason of the failure of the Legislature to elect.

In 1790 John Walker, of Virginia, was appointed to fill a vacancy at the beginning of a full term caused by the refusal of George Mason to accept. The Senate seated him.

In 1793 Kensey Johns, of the State of Delaware, was refused admission on credentials of the Executive of that State.

In 1797 William Cocke, of Tennessee, was appointed by the Governor and admitted by the Senate.

In 1801 Uriah Tracey, of Connecticut, was appointed by the Executive of that State and seated by the Senate.

In 1801 William Hindman, of Maryland, was appointed and seated under similar circumstances.

In 1803 John Condit, of New Jersey, was appointed and seated to fill a vacancy at the beginning of a full term.

In 1809 Joseph Anderson, of Tennessee, was appointed by the Executive and seated by the Senate.

In the same year Samuel Smith, of Maryland, was appointed and seated under similar circumstances.

In 1813 Charles Cutts, of New Hampshire, was appointed by the Executive and seated by the Senate to fill a vacancy at the beginning of the term.

In 1817 John Williams, of Tennessee, was appointed by the Executive and seated by the Senate.

In 1825 James Lanman, of Connecticut, was appointed by the Executive, and the Senate refused to admit him on his credentials of appointment. In this case the Executive of the State of Connecticut anticipated a vacancy and appointed Lanman before the vacancy occurred by reason of the expiration of the term. Judge Story

states that this was the reason the Senate refused to seat Lanman, holding that an Executive appointment could not be made to fill a vacancy until the vacancy existed.

In 1837 Ambrose H. Sevier, of Arkansas, was appointed to fill an anticipated vacancy from that State and the Senate gave him his seat. The Sevier case would seem to overrule the Lanman case.

In 1879 the Executive of New Hampshire appointed Charles H. Bell to fill a vacancy at the expiration of a full term and before the Legislature of that State had made an election. The whole question of the filling of vacancies by Executive appointment was fully discussed in this case, and a majority of the Senate decided in favor of the right to make the appointment.

This precedent was followed in the Henry W. Blair case from the same State in 1885.

Gilman Marston, of the same State, was appointed under similar circumstances in 1889, and was admitted on his credentials of appointment.

In the period from 1879 to 1889 it seems as though the Senate had considered the precedents settled in favor of recognizing Executive appointments.

In 1893 Samuel Pasco, of Florida, was appointed by the Executive of his State to fill a vacancy at the expiration of a full term, and he was seated on his credentials.

At the same session, however, Lee Mantle, of Montana, who was appointed by the Governor of that State, to fill a vacancy at the expiration of a term, was denied his seat. The Mantle case was the first precedent made by the Senate from 1879 to 1893, against the seating of Executive appointments.

The precedent of the Mantle case was followed in the Corbett case in 1898.

The above summarized statement of the precedents in reference to the seating of Executive appointments to fill vacancies in the Senate at the expiration of a full term, shows conclusively that there has been no well-defined rule of Senatorial action in such cases. Since the adoption of the Federal Constitution there have been 156 Executive appointments to fill vacancies in the Senate. The vacancies which have been filled in this manner have been occasioned in many different ways, as by death, by resignation, by refusal to serve, by expulsion, by holding incompatible office, by expiration of full term and non-election by the Legislature.

The following is the number of Executive appointments to fill vacancies caused in different ways:

By death,	67
By resignation,	64
By expulsion,	3
By refusal to serve,	1
By holding incompatible office,	1
By expiration of term and non-election of successor by the Legislature,	20

Of the executive appointments made to fill vacancies at the beginning of a full term the Senate has seated 14 and rejected 6.

If we apply the precedents about which there is no controversy to Senator Quay we can more readily understand just what they establish and the line of distinction that is attempted to be drawn in the present case.

If some other person had been elected by the Legislature at its last session, and after election had refused to accept without having served a day, and Mr. Quay had been appointed to fill that vacancy until the next meeting of the Legislature, his right to a seat would not be questioned. This is the case of John Walker, of Virginia, in 1790.

If some other person had been elected by the last Legislature prior to its adjournment, but the person so elected had never taken the oath of office and had died prior to the meeting of the Senate, and Mr. Quay had been appointed to fill that vacancy, he would have been entitled to a seat. This is the case of Mr. Hayward, the vacancy caused by whose death has been recently filed by the appointment of Mr. Allen, of Nebraska.

Again, if some other person had been elected by the Legislature and the Senate had refused to seat him because he had not been a citizen of the United States a sufficient length of time, and the vacancy so caused should have been filled by the appointment of Mr. Quay, the Senate would give him his seat. This is the case of Albert Gallatin, of Pennsylvania, about 1790.

Again, if the Legislature of Pennsylvania had been convened in session and adjourned in the year preceding the expiration of the term of Senator Quay, and had made no attempt to elect a United States Senator, and the vacancy had continued to exist after March 3, 1899, and the Executive had appointed Mr. Quay, he would have been entitled to his seat. This is the case of William Cocke, of Tennessee, in 1798; Bell, of New Hampshire, in 1879; Blair, of the same State, in 1885; and Marston of the same State, in 1889.

Again, if the Legislature had met and adjourned in the year 1898 without having attempted to make an election and the Executive had appointed Mr. Quay to fill the vacancy until the next meeting of the Legislature, he would have been entitled to his seat under the following precedents: Tracey, of Connecticut, in 1801; Hindman, of Maryland in 1801; Condit of New Jersey, in 1803; Anderson, of Tennessee, in 1809; Smith, of Maryland, in 1809; Cutts, of New Hampshire, in 1813, and Williams, of Tennessee, in 1870.

In all of the precedents to which I have referred the vacancy was occasioned by the expiration of a term, and by reason of the failure of the Legislature to act, or, after it had acted, by reason of the person elected failing to serve or by reason of his disqualification. In each case the vacancy began on the fourth of March after the expiration of a full term and continued up to the time of the appointment and the meeting of the next session of the Senate. The conditions presented in those cases are all embraced in the case now before your committee for consideration, the only difference being that, in our case, the Legislature, instead of entirely ignoring the question of the election of a United States Senator, made an effort to do so, but failed. This is the only particular in which the present case differs from the former ones. It seems to me, however, that there is no such difference as would justify the seating in one case and the refusal to seat in the other. In all of the cases mentioned the vacancy was at the beginning of a full term, and it continued to exist until the Executive appointee took the office. It seems to me the rule ought to be the same in the case now in controversy.

The great weight of Senatorial precedent is in favor of seating Executive appointments. Representation in the Senate should always be kept full, and the only way in which it can be kept full or nearly so, is by recognizing the right to fill vacancies temporarily under the authority of the Executive to appoint.

JNO. P. ELKIN,
Attorney General.

GENERAL RULES OF PRACTICE

IN THE

ATTORNEY GENERAL'S DEPARTMENT.

PROCEDURE.

The Attorney General is the legal adviser of the Governor, the heads of Departments and of the various State Boards, heads of State institutions, Mine Inspectors and other State officials, and, when requested, furnishes orally or in writing formal opinions on questions arising in the administration of the State Government. The written opinions are published bi-ennially in his report to the Legislature, and those rendered upon matters of public interest within the past two years have been included in the present report. The nature and extent of the Attorney General's duties do not permit him to furnish legal advice to individuals other than those officially connected with the State Government.

The Attorney General receives for collection from the Auditor General and State Treasurer all claims due the Commonwealth from any source, whereupon he proceeds to collect the same by suit or otherwise as he deems most conducive to the interests of the Commonwealth, and pays over to the State Treasurer all moneys immediately upon his receipt of the same. While most of these claims are transmitted to him for collection by the State Treasurer and Auditor General, as aforesaid, it is his duty to collect any claims due the Commonwealth which may be certified to him by any other State official or State board. He has the right of access at all times to the books and papers in the offices of the Auditor General and State Treasurer, and, in his discretion, may cause a settlement and collection of moneys appearing to be due thereby. In conjunction with the Auditor General and State Treasurer, forming what is commonly known as the "Board of Public Accounts," he revises and resettles accounts for tax or any other debt due the State, whether from corporations, city or county officers or individuals. Upon formal request of the Insurance Commissioner or the Commissioner of Banking, accompanied by evidence showing insolvency or a business conducted contrary to law, it becomes the duty of the Attorney General to proceed by a suggestion for an order to show cause, in the Dauphin county court, against insolvent and illegally conducted insurance companies, trust companies and building and loan associations, with a view to the winding up of their business and the appointment of receivers. He also has authority under the law to compromise and adjust, before or after suit, any claims due the Commonwealth which have been certified to him for collection, upon such terms as he deems to the best interest of the Commonwealth.

He examines the proposed charters of incorporation of banks and insurance companies, the amendments or renewals of such charters, and if he finds that they conform to law he approves the same. He has power generally to act for the Commonwealth in all litigation to which it may be a party, but he is never concerned officially in any criminal action. He also prosecutes writs of quo warranto and other extraordinary legal remedies in the name of the Commonwealth. The Attorney General is a member of the Board of Property, the Board of Public Accounts, the Board of Pardons and the Medical Council of the State. The functions of these Boards are fully set forth in their appropriate places in the Biennial Report for 1895-6.

The practice of the Department upon application for writs of quo warranto or mandamus or other extraordinary legal process is as follows:

Upon receipt of petition or application, requesting the Attorney General to institute said proceedings, a certain day is fixed as a time of hearing. Notice of the application and the time of hearing, together with a copy of the petition or application, is required to be served by the petitioner upon the respondent. At the time fixed for the hearing the respective parties are heard in person or by counsel at the Attorney Genral's office in Harrisburg. Testimony is taken either orally or by affidavit, and if a prima facie case is made out by the complainant, the Attorney General allows the writ asked for by a simple order to that effect, without filing a formal opinion setting forth the reasons for his action. If the writ requested is thus allowed he files his suggestion or bill in the court of common pleas of Dauphin county, which court, under the act of 1870, (P. L. 57), is endowed with special jurisdiction to hear and determine all cases and proceedings in which the Commonwealth is a party. While the general practice is to institute all proceedings of this character in said court, the complainant can, by giving sufficient reasons therefor, institute the proceedings at the relation of the Attorney General in his own proper county. If it shall appear to the Attorney General in his discretion that the petitioner or complainant has not made out a prima facie case, he will refuse the application by simple notification that the writ has been refused without giving reasons. The hearing of these cases by the court presents no peculiarities, the quo warranto cases being heard upon suggestion and answer and the equity cases upon bill and answer as in the courts of other counties. The nature and scope of the various proceedings referred to is indicated by the schedules hereinafter found.

The practice with regard to settlements for taxes and other claims is as follows:

These claims come into the hands of the Attorney General only by certification from the Auditor General after settlement made by that official in conjunction with the State Treasurer. If the debtor, after having received a copy of the settlement from the Auditor General, neglects to take an appeal therefrom to the court of common pleas of Dauphin county within sixty days after the approval of such settlement by the State Treasurer, the Auditor General certifies said settlement to the Attorney General for immediate collection, and without further delay an action of assumpsit is brought upon this settlement in the Dauphin county court. The summons obtained from the prothonotary of said court is sent for service to the sheriff of the county in which the office or residence of the debtor is located, together with a copy of the settlement filed in the suit. The sheriff makes his return of service through this Department to the prothonotary, and if the claim is not paid or adjusted and no formal affidavit of defense is filed, judgment is taken upon the return day for the amount of tax or claim, together with interest thereon, at the rate of 12 per cent. from sixty days after the date of settlement, Attorney General's commissions at 5 per cent., and costs of suit. If a formal affidavit of defense is filed before the return day, the case is included in a trial list which is prepared semi-annually when warranted by the accumulation of suits, and tried at a special session of common pleas fixed by the court of Dauphin county. If, however, the debtor should, within sixty days after settlement, file with the Auditor General a formal appeal from the settlement, the said appeal, together with a specification of the legal objections to said settlement, is filed in the office of the prothonotary of Harrisburg, and the proceeding is also included in the trial list above mentioned. The practice in settlements for bonus on charters or increase of capital stock is the same as in other claims except that the interest charged is but 6 per cent. from the date when the bonus becomes due.

The trial of suits of the Commonwealth for unpaid taxes, bonus and other claims presents some peculiarities. The Dauphin county court, as mentioned above, has special jurisdiction under the act of 1870. Under the act of April 22, 1874 (P. L. 109), all tax cases may be tried without the intervention of a jury by filing in the proper office a stipulation to that effect, and nearly all of the Commonwealth's cases are thus tried. Testimony is taken either orally or by affidavit. Many cases are tried entirely by affidavits. As in all other cases either party has the right of appeal from the opinion and finding of the court, and all such appeals are argued before the Supreme Court at its annual session in Harrisburg unless advanced by special order. Cases which involve consideration of the Federal Constitution may be further appealed to the United States Courts, but such appeals are infrequent.

SCHEDULE A.

LIST OF CLAIMS RECEIVED FROM THE AUDITOR GENERAL AND OTHERS IN 1899 AND 1900.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Samuel S. Laughlin, Recorder of Deeds, Clarion county,	Fees of office,	$63 00	Paid.
Honesdale Water Works Company,	Tax on capital stock, 1879,	4 50	Paid.
Island Park Company,	Tax on loans, 1888,	10 97	Paid.
Island Park Company,	Tax on loans, 1894,	14 63	Paid.
Island Park Company,	Tax on loans, 1895,	14 63	Paid.
Island Park Company,	Tax on loans, 1896,	14 63	Paid.
Island Park Company,	Tax on loans, 1897,	14 63	Paid.
Island Park Company,	Tax on loans, 1898,	14 63	Paid.
Island Park Company,	Tax on capital stock, 1881,	2 80	Paid.
Island Park Company,	Tax on capital stock, 1883,	2 84	Paid.
Island Park Company,	Tax on capital stock, 1885,	2 84	Paid.
Island Park Company,	Tax on capital stock, 1888,	2 80	Paid.
Island Park Company,	Tax on capital stock, 1894,	6 46	Paid.
Island Park Company,	Tax on capital stock, 1895,	6 46	Paid.
Island Park Company,	Tax on capital stock, 1896,	6 46	Paid.
Island Park Company,	Tax on capital stock, 1897,	6 46	Paid.
Island Park Company,	Tax on capital stock, 1898,	6 46	Paid.
The Bradstreet Company,	Tax on capital stock, 1876 to 1881,	82 75	Paid.
Irwin Electric Light and Power Company,	Tax on capital stock, 1896,	220 00	Paid.
Irwin Electric Light and Power Company,	Tax on capital stock, 1897,	330 00	Paid.
Irwin Electric Light and Power Company,	Tax on capital stock, 1898,	330 00	Paid.
Irwin Electric Light and Power Company,	Tax on capital stock, 1899,	330 00	Paid.
Irwin Electric Light and Power Company,	Tax on loans, 1897,	206 95	Paid.
Irwin Electric Light and Power Company,	Tax on loans, 1898,	206 95	Paid.
Irwin Electric Light and Power Company,	Tax on loans, 1899,	206 95	Paid.
Jeannette Electric Light Company,	Tax on capital stock, 1897,	55 00	Paid.
Jeannette Electric Light Company,	Tax on capital stock, 1898,	55 00	Paid.
Jeannette Electric Light Company,	Tax on capital stock, 1899,	55 00	Paid.
Manor Electric Company,	Tax on capital stock, 1898,	33 00	Paid.
Manor Electric Company,	Tax on capital stock, 1899,	33 00	Paid.
Cumberland Building and Loan Association, Chattanooga, Tenn.	Fees for examination, 1898,	25 00	Paid.

North American Life and Surety Company,	Fees for examination, 1898,	26 26	Insolvent.
H. F. Watson Company,	Bonus,	312 50	Paid.
H. F. Watson Company,	Tax on loans, 1892,	87 40	Paid.
H. F. Watson Company,	Tax on loans, 1893,	87 40	Paid.
H. F. Watson Company,	Tax on loans, 1894,	87 40	Paid.
H. F. Watson Company,	Tax on loans, 1895,	87 40	Paid.
H. F. Watson Company,	Tax on loans, 1896,	87 40	Paid.
H. F. Watson Company,	Tax on loans, 1897,	87 40	Paid.
H. F. Watson Company,	Tax on loans, 1898,	87 40	Paid.
H. F. Watson Company,	Tax on loans, 1899,	87 40	Paid.
Directors of the Poor, Conyngham and Centralia Poor District.	Board, maintenance, etc.,	52 14	Paid.
Mount Troy and Reserve Township Traction Street Railway Company.	Penalty,	5,000 00	Claim withdrawn by Department of Internal Affairs.
McKees Rocks and Neville Island Street Railway Company.	Penalty,	5,000 00	Claim withdrawn by Department of Internal Affairs.
Ellwood and New Castle Street Railway Company,	Penalty,	5,000 00	Claim withdrawn by Department of Internal Affairs.
Beech Creek, Altoona and Southwestern Railroad Company.	Penalty,	5,000 00	Claim withdrawn by Department of Internal Affairs.
Philipsburg, Ebensburg and Johnstown Railroad Company.	Penalty,	5,000 00	Claim withdrawn by Department of Internal Affairs.
Altoona Short Line Railroad Company,	Penalty,	5,000 00	Claim withdrawn by Department of Internal Affairs.
Lancaster and Ephrata Railroad Company,	Penalty,	5,000 00	Claim withdrawn by Department of Internal Affairs.
Park Gate and Ellwood Street Railway Company,	Penalty,	5,000 00	Claim withdrawn by Department of Internal Affairs.
Overseers of the Poor, White Deer township, Union county.	Board, maintenance, etc.,	52 14	Paid.
Green Ridge Lumber Company,	Tax on capital stock, 1879,	300 00	Paid.
Walker, Stratman & Co., Incorporated,	Tax on loans, 1895,	41 80	Paid.
Walker, Stratman & Co., Incorporated,	Tax on loans, 1896,	38 00	Paid.
Walker, Stratman & Co., Incorporated,	Tax on loans, 1898,	41 80	Paid.
Taylorville Water Company,	Tax on capital stock, 1887,	66 00	Paid.
Taylorville Water Company,	Tax on capital stock, 1889,	165 00	Paid.
Taylorville Water Company,	Tax on loans, 1888,	14 25	Not liable.
Taylorville Water Company,	Tax on loans, 1889,	15 67	Paid.
Taylorville Water Company,	Tax on loans, 1890,	58 43	Paid.
George Keller Brewing Company,	Tax on loans, 1891,	31 35	Paid.
Webster Gas Coal Company,	Tax on capital stock, 1896,	125 00	Paid.
Webster Gas Coal Company,	Tax on loans, 1896,	118 07	Paid.
Webster Gas Coal Company,	Tax on loans, 1897,	109 57	Paid.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM THE AUDITOR GENERAL AND OTHERS IN 1899 AND 1900.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Vulcan Works Company,	Tax on loans, 1894,	152 00	Paid.
City of Altoona,	Tax on loans, 1898,	3,567 82	Paid.
Lehigh Valley Cold Storage Company,	Tax on loans, 1894,	69 66	Paid.
Waynesburg, Graysville and Jacksonville Telephone Company.	Tax on loans, 1895,	7 26	Paid.
Waynesburg, Graysville and Jacksonville Telephone Company.	Tax on loans, 1897,	3 80	Paid.
Waynesburg, Graysville and Jacksonville Telephone Company.	Tax on capital stock, 1891,	6 50	Paid.
Waynesburg, Graysville and Jacksonville Telephone Company.	Tax on capital stock, 1892,	8 67	Paid.
Waynesburg, Graysville and Jacksonville Telephone Company.	Tax on capital stock, 1893,	8 76	Paid.
Waynesburg, Graysville and Jacksonville Telephone Company.	Tax on capital stock, 1894,	8 76	Paid.
Waynesburg, Graysville and Jacksonville Telephone Company.	Tax on capital stock, 1895,	8 76	Paid.
Waynesburg, Graysville and Jacksonville Telephone Company.	Tax on capital stock, 1897,	7 80	Paid.
Erie Transit Company,	Tax on capital stock, 1892,	30 00	Paid.
Erie Transit Company,	Tax on capital stock, 1893,	30 00	Paid.
Security Home Purchasing Company,	Fees for examination, 1897,	25 02	Paid.
Speyerer Hotel Company,	Tax on capital stock, 1893,	51 60	Paid.
P. A. Swartz Company,	Tax on capital stock, 1892,	76 38	Paid.
Shamokin borough,	Tax on loans, 1897,	334 00	Withdrawn for re-settlement.
Shamokin borough,	Tax on loans, 1898,	334 00	Withdrawn for re-settlement.
Pennsylvania Lime and Fluxing Stone Company,	Tax on loans, 1888,	14 25	Paid.
Anthracite Land Company,	Tax on capital stock, 1896,	60 00	Paid.
Anthracite Land Company,	Tax on capital stock, 1897,	60 00	Paid.
Republic Savings and Loan Association, New York,	Fees for examination,	27 34	Paid.
Bloomsburg Brass and Copper Company,	Tax on loans, 1895,	66 91	Paid.
Bloomsburg Brass and Copper Company,	Tax on loans, 1897,	83 60	Paid.

Bloomsburg Brass and Copper Company,	Tax on loans, 1898,	83 60	Paid.
Southern Avenue Land Company,	Bonus,	186 25	Paid.
Germania Homestead and Trust Company,	Fees for examination,	25 58	Paid to Banking Department.
Oakland-Homestead Loan and Trust Company,	Fees for examination,	25 62	Paid to Banking Department.
Wolfenden, Shore & Co., Limited,	Tax on capital stock, 1889,	80 43	Paid.
Natalie Anthracite Coal Company,	Tax on loans, 1895,	4,000 00	Insolvent. Compromise settlement.
Natalie Anthracite Coal Company,	Tax on loans, 1896,	8,000 00	Insolvent. Compromise settlement.
Natalie Anthracite Coal Company,	Tax on loans, 1897,	8,000 00	Insolvent. Compromise settlement.
Natalie Anthracite Coal Company,	Tax on capital stock, 1895,	6,249 97	Insolvent. Compromise settlement.
Natalie Anthracite Coal Company,	Tax on capital stock, 1896,	10,000 00	Insolvent. Compromise settlement.
Natalie Anthracite Coal Company,	Tax on capital stock, 1897,	10,000 00	Insolvent. Compromise settlement.
Juniata Furnace and Foundry Company,	Tax on loans, 1897,	190 00	Paid.
Juniata Furnace and Foundry Company,	Tax on loans, 1898,	190 00	Paid.
Latrobe Brewing Company, Limited,	Tax on capital stock, 1893,	125 00	Paid.
Champion Saw and Gas Engine Company,	Bonus,	50 00	Paid.
Duquesne Tube Works Company,	Bonus,	256 25	In hands of receivers.
Jefferson Fire Insurance Company,	Tax on capital stock, 1881,	280 51	Pending.
Frisbie Coal Company, Limited,	Tax on capital stock, 1890,	75 00	Defunct.
Bristol and Trenton Passenger Railway Company,	Penalty,	5,000 00	Judgment for Commonwealth.
Grand Boulevard Street Railway Company,	Penalty,	5,000 00	Suit discontinued.
Youghiogheny Valley Passenger Railway Company,	Penalty,	5,000 00	Suit discontinued.
Southwest Connecting Railway Company,	Penalty,	5,000 00	Defunct.
Holmesburg and Bristol Passenger Railway Company,	Penalty,	5,000 00	Judgment for Commonwealth.
Iron City Homestead Loan and Trust Company,	Fees for examination,	25 44	Paid.
Central Homestead Loan and Trust Company,	Fees for examination,	25 50	Defunct.
Pittsburg Homestead Loan and Trust Company,	Fees for examination,	25 44	Paid.
Workingman's Building and Loan Association of Beaver Falls.	Penalty,	140 00	Judgment for Commonwealth.
Inter-State Loan and Investment Association, Chicago, Ills.	Fees for examination,	25 06	Defunct.
Equitable Savings Society, New York,	Fees for examination,	25 00	Defunct.
Pittsburg Tapering Tube Company,	Bonus,	12 50	Judgment. Paid.
Citizens' Ice and Refrigerating Company,	Tax on loans, 1895,	95 00	Defunct.
Lynn Slate Company,	Tax on capital stock, 1891,	27 50	Defunct.
Messer Elastic Rotator Company,	Tax on loans, 1895,	15 43	Defunct.
Erie Transit Company,	Tax on capital stock, 1894,	30 00	Paid.
Consolidated Chemical Company,	Bonus,	62 50	Paid.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM THE AUDITOR GENERAL AND OTHERS IN 1899 AND 1900.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Keystone Boiler Company,	Bonus,	62 50	Partly paid.
Pittsburg Gas Coal and Coke Company,	Tax on capital stock, 1892,	12 50	Defunct.
Pittsburg Heating Supply Company,	Tax on capital stock, 1895,	30 00	Paid.
Nunnery Hill Incline Plane Company,	Tax on gross receipts, 1888,	19 19	Judgment for Commonwealth.
Dithridge Flint Glass Company,	Tax on loans, 1889,	42 75	Defunct.
McMillan Sash Balance Company,	Tax on loans, 1894,	15 20	Defunct.
Citizens' Land Association, Bloomsburg,	Bonus,	62 50	Paid.
Consumers' Electric Light and Power Company of McAdoo.	Bonus,	18 75	Judgment for Commonwealth.
Whitehead Coal Mining Company,	Bonus,	31 25	Defunct.
Oriental Knitting and Manufacturing Company,	Bonus,	37 50	Judgment for Commonwealth.
McKees Rocks Coke Company,	Tax on capital stock, 1890,	99 00	Judgment for Commonwealth.
Brilliant Black Slate Company,	Tax on capital stock, 1895,	81 20	Defunct.
Vulcan Works Company,	Tax on loans, 1895,	167 20	Paid.
Vulcan Works Company,	Tax on loans, 1896,	167 20	Paid.
Vulcan Works Company,	Tax on loans, 1897,	167 20	Paid.
Vulcan Works Company,	Tax on loans, 1898,	167 20	Paid.
Anthracite Land Company,	Tax on loans, 1896,	76 00	Paid.
Anthracite Land Company,	Tax on loans, 1897,	112 18	Paid.
Westmoreland Fire Brick Company,	Tax on capital stock, 1894,	60 00	Insolvent.
Westmoreland Fire Brick Company,	Tax on loans, 1893,	57 00	Insolvent.
Mankey Furniture Company,	Tax on loans, 1892,	110 12	In hands of receiver.
Mankey Furniture Company,	Tax on loans, 1893,	85 12	In hands of receiver.
Pittsburg Storage Company,	Tax on capital stock, 1893,	55 00	Paid.
Pittsburg Storage Company,	Tax on capital stock, 1895,	110 00	Claim withdrawn.
Duquesne Light, Heat and Power Company,	Tax on loans, 1892,	22 80	Not liable.
Duquesne Light, Heat and Power Company,	Tax on loans, 1893,	22 80	Tax paid locally.
Southwark Merchants' Electric Light and Power Company.	Bonus,	62 50	Defunct.
Southwark Merchants' Electric Light and Power Company.	Tax on capital stock, 1897,	14 95	Defunct.
Watson Land and Improvement Company,	Tax on capital stock, 1895,	750 00	Judgment for Commonwealth.

Watson Land and Improvement Company,	Tax on capital stock, 1896,	750 00	Judgment for Commonwealth.
Penn Elevator Engineering Company,	Tax on loans, 1894,	203 37	Defunct.
Penn Elevator Engineering Company,	Bonus,	62 50	Defunct.
Chambers Glass Company,	Tax on capital stock, 1894,	448 08	Paid.
Chambers Glass Company,	Tax on capital stock, 1895,	448 08	Paid.
Chambers Glass Company,	Tax on loans, 1894,	798 00	Paid.
Chambers Glass Company,	Tax on loans, 1895,	798 00	Paid.
Pittsburg Storage Company,	Tax on capital stock, 1896,	110 00	Claim withdrawn.
Pittsburg Storage Company,	Tax on capital stock, 1897,	110 00	Claim withdrawn.
Pittsburg Storage Company,	Tax on capital stock, 1898,	110 00	Claim withdrawn.
Reading City Passenger Railway Company,	Tax on capital stock, 1897,	3,770 56	Withdrawn for re-settlement.
Reading City Passenger Railway Company,	Tax on capital stock, 1898,	4,025 00	Withdrawn for re-settlement.
Reading City Passenger Railway Company,	Tax on capital stock, 1899,	5,188 75	Withdrawn for re-settlement.
Reading City Passenger Railway Company,	Tax on loans, 1896,	425 60	Withdrawn for re-settlement.
Reading City Passenger Railway Company,	Tax on loans, 1897,	425 60	Withdrawn for re-settlement.
Reading City Passenger Railway Company,	Tax on loans, 1898,	425 60	Withdrawn for re-settlement.
Reading City Passenger Railway Company,	Tax on loans, 1899,	425 60	Withdrawn for re-settlement.
Clearfield Gas Company,	Tax on capital stock, 1887,	6 36	Paid.
Clearfield Gas Light Company,	Tax on capital stock, 1889,	25 44	Paid.
Clearfield Gas Light Company,	Tax on capital stock, 1890,	25 44	Not liable.
Peerless Brick Company,	Tax on loans, 1896,	684 00	Suit pending.
Peerless Brick Company,	Tax on loans, 1897,	684 00	Suit pending.
Pennsylvania Industrial Development Company,	Tax on capital stock, 1892,	53 13	Defunct.
Pennsylvania Industrial Development Company,	Tax on capital stock, 1893,	25 00	Defunct.
Parkside Apartment House Company,	Penalty,	500 00	Not liable.
Old Reliable Building and Loan Association, Allegheny City.	Tax on premiums, 1897,	40 07	Withdrawn for re-settlement.
Old Reliable Building and Loan Association, Allegheny City.	Tax on premiums, 1898,	91 74	Withdrawn for re-settlement.
Pittsburg, Buffalo and Rochester Railway Company,	Tax on capital stock, 1883,	30 00	Defunct.
Royal Petroleum Company,	Tax on capital stock, 1867 to 1880,	8 64	Defunct. Insolvent.
Columbian Brick Company,	Tax on loans, 1893,	24 05	Insolvent. Defunct.
Westminster Coal Company,	Tax on capital stock, 1895,	10 00	Insolvent.
Bower Slate and Pencil Quarry Company,	Tax on capital stock, 1894,	2 69	Defunct.
Bower Slate and Pencil Quarry Company,	Tax on capital stock, 1895,	62 50	Defunct.
Guarantors' Finance Company,	Tax on capital stock, 1898,	3,625 00	In hands of receivers.
Brownsville Plate Glass Company,	Tax on capital stock, 1896,	25 00	Defunct.
Brownsville Plate Glass Company,	Tax on capital stock, 1897,	25 00	Defunct.
Farmers' Creamery Company,	Tax on loans, 1895,	68 40	Defunct. Insolvent.
Farmers' Creamery Company,	Tax on loans, 1894,	68 40	Defunct. Insolvent.
Farmers' Creamery Company,	Tax on loans, 1893,	76 00	Defunct. Insolvent.
Second Ward Market House Association,	Tax on capital stock, 1895,	36 74	Defunct. Insolvent.
Pittsburg Sand Company,	Bonus,	62 50	Defunct.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM THE AUDITOR GENERAL AND OTHERS IN 1899 AND 1900.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Hastings Truss Company,	Tax on capital stock, 1893,	62 50	Defunct.
Swift Hardware Company, Limited,	Tax on capital stock, 1894,	60 30	Defunct and insolvent.
Swift Hardware Company, Limited,	Tax on capital stock, 1893,	100 50	Defunct.
Emlenton Producers' Oil Company, Limited,	Tax on capital stock, 1892,	284 71	Insolvent.
Rockland Oil Company,	Tax on capital stock, 1894,	224 17	Defunct.
Rockland Oil Company,	Tax on capital stock, 1895,	224 17	Defunct.
Wilmington Dental Manufacturing Company,	Tax on capital stock, 1895,	1,947 00	In hands of receiver.
California Glass Company,	Tax on loans, 1892,	34 96	In hands of receiver.
California Glass Company,	Tax on loans, 1893,	74 29	In hands of receiver.
California Glass Company,	Tax on loans, 1896,	65 80	In hands of receiver.
California Glass Company,	Tax on loans, 1897,	57 57	In hands of receiver.
California Glass Company,	Tax on loans, 1898,	53 03	In hands of receiver.
Loder Brewing Company,	Tax on loans, 1898,	250 00	In hands of receiver.
Loder Brewing Company,	Tax on loans, 1899,	250 00	In hands of receiver.
Champion Manufacturing Company,	Bonus,	62 50	Insolvent.
Champion Manufacturing Company,	Tax on loans, 1895,	19 95	Insolvent.
Uniontown Radiator Company,	Bonus,	31 25	Insolvent.
Lackawanna Stone Company,	Tax on loans, 1896,	133 00	Insolvent.
Watsontown Electric Light Company,	Bonus,	18 75	Defunct.
New York National Building and Loan Association,	Tax on capital stock, 1898,	450 60	In hands of receivers.
Rochester Homestead Loan and Trust Company,	Tax on capital stock, 1897-8,	23 10	Defunct.
Rochester Homestead Loan and Trust Company,	Tax on loans, 1892,	14 83	Defunct.
Dunlo Supply Company, Limited,	Tax on capital stock, 1893,	25 00	Defunct.
United Collieries Company,	Tax on capital stock, 1897,	150 00	Insolvent.
United Collieries Company,	Tax on capital stock, 1896,	150 00	Insolvent.
United Collieries Company,	Tax on capital stock, 1898,	150 00	Insolvent.
India Refining Company,	Bonus,	625 00	Paid to Auditor General.
Monongahela Natural Gas Company,	Tax on capital stock, 1898,	272 00	Withdrawn for re-settlement.
Monongahela Natural Gas Company,	Tax on capital stock, 1892-3-4-6-7-99,	3,359 60	Withdrawn for re-settlement.
Monongahela Natural Gas Company,	Tax on capital stock, 1890-1,	1,080 00	Withdrawn for re-settlement.
Monongahela Natural Gas Company,	Tax on capital stock, 1889,	46 67	Withdrawn for re-settlement.

Monongahela Natural Gas Company,	Tax on loans, 1896,	532 00	Withdrawn for re-settlement.
Monongahela Natural Gas Company,	Tax on loans, 1897,	426 60	Withdrawn for re-settlement.
Monongahela Natural Gas Company,	Tax on loans, 1898,	228 00	Withdrawn for re-settlement.
Monongahela Natural Gas Company,	Tax on loans, 1899,	212 80	Withdrawn for re-settlement.
Third National Bank, Pittsburg,	Tax on shares of stock, 1898,	1,038 58	Pending.
Bellevue Homestead Loan and Trust Company,	Tax on loans, 1892 to 1895,	250 80	Pending.
Bellevue Homestead Loan and Trust Company,	Tax on loans, 1896-7-8,	188 10	Pending.
Bellevue Homestead Loan and Trust Company,	Tax on capital stock, 1892 to 1895,	330 00	Pending.
Bellevue Homestead Loan and Trust Company,	Tax on capital stock, 1896-7-8,	247 50	Pending.
Penn Homestead and Loan Association,	Tax on loans, 1893,	28 21	Pending.
Penn Homestead and Loan Association,	Tax on loans, 1894,	28 21	Pending.
Penn Homestead and Loan Association,	Tax on loans, 1895,	28 21	Pending.
Penn Homestead and Loan Association,	Tax on loans, 1896,	28 21	Pending.
Penn Homestead and Loan Association,	Tax on loans, 1897,	28 21	Pending.
Penn Homestead and Loan Association,	Tax on loans, 1898,	28 21	Pending.
Penn Homestead and Loan Association,	Tax on capital stock, 1891,	45 00	Pending.
Penn Homestead and Loan Association,	Tax on capital stock, 1893,	40 97	Pending.
Penn Homestead and Loan Association,	Tax on capital stock, 1894,	40 97	Pending.
Penn Homestead and Loan Association,	Tax on capital stock, 1895,	40 97	Pending.
Penn Homestead and Loan Association,	Tax on capital stock, 1896,	40 97	Pending.
Penn Homestead and Loan Association,	Tax on capital stock, 1897,	40 97	Pending.
Penn Homestead and Loan Association,	Tax on capital stock, 1898,	40 97	Pending.
Oakland Homestead Loan and Trust Company,	Tax on capital stock, 1892 to 1894,	247 50	Pending.
Oakland Homestead Loan and Trust Company,	Tax on capital stock, 1895 to 1898,	330 00	Pending.
Oakland Homestead Loan and Trust Company,	Tax on capital stock, 1891,	49 50	Pending.
Snowden Slate Company,	Bonus,	125 00	Pending.
Perkasie Industrial Establishment Association,	Tax on capital stock, 1893,	10 00	Pending.
Perkasie Industrial Establishment Association,	Tax on capital stock, 1894,	10 00	Pending.
Perkasie Industrial Establishment Association,	Tax on capital stock, 1895,	14 00	Pending.
Perkasie Industrial Establishment Association,	Tax on capital stock, 1896,	15 40	Pending.
Perkasie Industrial Establishment Association,	Tax on capital stock, 1897,	10 00	Pending.
Perkasie Industrial Establishment Association,	Tax on loans, 1897,	7 60	Pending.
Perkasie Industrial Establishment Association,	Tax on loans, 1898,	8 36	Pending.
Iron City Homestead Loan and Trust Company,	Tax on loans, 1891,	7 84	Pending.
Iron City Homestead Loan and Trust Company,	Tax on loans, 1892 to 1898,	73 15	Pending.
Iron City Homestead Loan and Trust Company,	Tax on capital stock, 1891,	49 50	Pending.
Iron City Homestead Loan and Trust Company,	Tax on capital stock, 1892 to 1898,	577 50	Pending.
Germania Homestead Loan and Trust Company,	Tax on loans, 1890,	46 09	Pending.
Germania Homestead Loan and Trust Company,	Tax on loans, 1893,	19 00	Pending.
Germania Homestead Loan and Trust Company,	Tax on loans, 1894,	9 50	Pending.
Germania Homestead Loan and Trust Company,	Tax on loans, 1895,	9 50	Pending.
Germania Homestead Loan and Trust Company,	Tax on loans, 1896,	10 45	Pending.
Germania Homestead Loan and Trust Company,	Tax on loans, 1897,	10 45	Pending.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM THE AUDITOR GENERAL AND OTHERS IN 1899 AND 1900.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Germania Homestead Loan and Trust Company, ...	Tax on loans, 1898, ...	10 45	Pending.
Germania Homestead Loan and Trust Company, ...	Tax on capital stock, 1890, ...	33 00	Pending.
Germania Homestead Loan and Trust Company, ...	Tax on capital stock, 1893, ...	55 00	Pending.
Germania Homestead Loan and Trust Company, ...	Tax on capital stock, 1894, ...	55 00	Pending.
Germania Homestead Loan and Trust Company, ...	Tax on capital stock, 1895, ...	55 00	Pending.
Germania Homestead Loan and Trust Company, ...	Tax on capital stock, 1896, ...	60 50	Pending.
Germania Homestead Loan and Trust Company, ...	Tax on capital stock, 1897, ...	60 50	Pending.
Germania Homestead Loan and Trust Company, ...	Tax on capital stock, 1898, ...	60 50	Pending.
North Cedar Hill Cemetery Company, ...	Tax on capital stock, 1884, ...	214 50	Pending.
North Cedar Hill Cemetery Company, ...	Tax on capital stock, 1885, ...	214 50	Pending.
North Cedar Hill Cemetery Company, ...	Tax on capital stock, 1886, ...	214 50	Pending.
North Cedar Hill Cemetery Company, ...	Tax on capital stock, 1887, ...	214 50	Pending.
Schuylkill Fire Insurance Company, ...	Tax on gross premiums (6 mo.), 1897, ...	75 75	Pending.
Schuylkill Fire Insurance Company, ...	Tax on gross premiums (6 mo.), 1898, ...	105 71	Pending.
Schuylkill Fire Insurance Company, ...	Tax on capital stock, 1897, ...	136 86	Pending.
Schuylkill Fire Insurance Company, ...	Tax on capital stock, 1898, ...	389 24	Pending.
Nescopec Coal Company, ...	Tax on capital stock, 1877, ...	98 88	Pending.
Allegheny and Kiskiminetas Electric Railway Company,	Tax on capital stock, 1893, ...	9 50	Pending.
Allegheny and Kiskiminetas Electric Railway Company,	Tax on capital stock, 1894, ...	30 00	Pending.
Allegheny and Kiskiminetas Electric Railway Company,	Tax on capital stock, 1895, ...	30 00	Pending.
Homestead Loan and Trust Company of New Castle, ...	Tax on capital stock, 1896, ...	18 21	Pending.
Homestead Loan and Trust Company of New Castle, ...	Tax on capital stock, 1897, ...	18 21	Pending.
Homestead Loan and Trust Company of New Castle, ...	Tax on capital stock, 1898, ...	18 21	Pending.
Homestead Loan and Trust Company of New Castle, ...	Tax on loans, 1894, ...	7 52	Pending.
Homestead Loan and Trust Company of New Castle, ...	Tax on loans, 1895, ...	7 52	Pending.
Homestead Loan and Trust Company of New Castle, ...	Tax on loans, 1896, ...	7 52	Pending.
Homestead Loan and Trust Company of New Castle, ...	Tax on loans, 1897, ...	7 52	Pending.
Homestead Loan and Trust Company of New Castle, ...	Tax on loans, 1898, ...	7 52	Pending.
Central Homestead Loan and Trust Company, ...	Tax on capital stock, 1895, ...	10 70	Defunct.
Central Homestead Loan and Trust Company, ...	Tax on capital stock, 1896, ...	10 70	Defunct.

Central Homestead Loan and Trust Company,	Tax on capital stock, 1897,	10 70	Defunct.
Central Homestead Loan and Trust Company,	Tax on capital stock, 1898,	11 77	Defunct.
Central Homestead Loan and Trust Company,	Tax on loans, 1895,	50 49	Defunct.
Central Homestead Loan and Trust Company,	Tax on loans, 1896,	41 42	Defunct.
Central Homestead Loan and Trust Company,	Tax on loans, 1897,	52 70	Defunct.
Central Homestead Loan and Trust Company,	Tax on loans, 1898,	60 51	Defunct.
Pittsburg Homestead Loan and Trust Company,	Tax on loans, 1891,	42 28	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on loans, 1892,	56 34	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on loans, 1893,	56 34	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on loans, 1894,	56 34	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on loans, 1895,	56 34	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on loans, 1896,	56 34	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on loans, 1897,	56 34	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on loans, 1898,	56 34	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on capital stock, 1891,	44 94	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on capital stock, 1892,	74 91	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on capital stock, 1893,	74 91	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on capital stock, 1894,	74 91	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on capital stock, 1895,	74 91	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on capital stock, 1897,	75 90	Pending.
Pittsburg Homestead Loan and Trust Company,	Tax on capital stock, 1898,	75 90	Pending.
Security Homestead and Loan Company,	Tax on capital stock, 1894,	66 00	Pending.
Security Homestead and Loan Company,	Tax on capital stock, 1895,	66 00	Pending.
Security Homestead and Loan Company,	Tax on capital stock, 1896,	66 00	Pending.
Security Homestead and Loan Company,	Tax on capital stock, 1897,	66 00	Pending.
Security Homestead and Loan Company,	Tax on capital stock, 1898,	66 00	Pending.
Security Homestead and Loan Company,	Tax on capital stock, 1892,	60 00	Pending.
Security Homestead and Loan Company,	Tax on capital stock, 1893,	66 00	Pending.
Security Homestead and Loan Company,	Tax on loans, 1892,	45 60	Pending.
Security Homestead and Loan Company,	Tax on loans, 1893,	60 16	Pending.
Security Homestead and Loan Company,	Tax on loans, 1894,	50 16	Pending.
Security Homestead and Loan Company,	Tax on loans, 1895,	50 16	Pending.
Security Homestead and Loan Company,	Tax on loans, 1896,	50 16	Pending.
Security Homestead and Loan Company,	Tax on loans, 1897,	50 16	Pending.
Security Homestead and Loan Company,	Tax on loans, 1898,	50 16	Pending.
Consumers' Brewing Company,	Bonus,	4,625 00	Pending.
David W. Cotterel,	Mercantile license tax,	18 40	Paid.
Philadelphia Finance Company,	Tax on capital stock, 1896,	791 40	In hands of receivers.
Philadelphia Finance Company,	Tax on capital stock, 1897,	461 65	In hands of receivers.
Guarantors' Finance Company,	Tax on capital stock, 1897,	1,510 42	In hands of receivers.
Guarantors' Finance Company,	Tax on capital stock, 1898,	3,625 00	In hands of receivers.
Guarantors' Finance Company,	Tax on capital stock, 1899,	3,625 00	In hands of receivers.
Guarantors' Finance Company,	Tax on capital stock, 1900,	3,625 00	In hands of receivers.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM THE AUDITOR GENERAL AND OTHERS IN 1899 AND 1900.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Edison Electric Illuminating Company, Shamokin, ...	Tax on capital stock, 1898, ...	100 00	Paid.
Consumers' Brewing Company, ...	Bonus, ...	4,625 00	Paid.
Real Estate Investment Company, ...	Bonus, ...	1,125 00	Pending.
Pittsburg and Birmingham Traction Company, ...	Tax on capital stock, 1898, ...	5,763 11	Paid.
Pittsburg and Birmingham Traction Company, ...	Tax on gross receipts (6 mo.), 1900, ...	2,070 66	Pending.
Brownsville Avenue Street Railway Company, ...	Tax on capital stock, 1898, ...	1,895 00	Pending.
Brownsville Avenue Street Railway Company, ...	Tax on capital stock, 1899, ...	1,990 00	Pending.
Brownsville Avenue Street Railway Company, ...	Tax on loans, 1899, ...	760 00	Paid.

SCHEDULE B.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1899.		
Jan. 3,	Morris and Essex Mutual Coal Company,	$111 00
3,	McKinley Lanning Loan and Trust Company,	315 00
3,	International Navigation Company,	200 00
3,	Johnson Coal Company,	250 00
3,	Annora Coal Company,	300 00
3,	Pine Creek Railway Company,	5,000 00
3,	Newton Coal Mining Company,	250 00
3,	Jefferson and Clearfield Coal and Iron Company,	1,281 25
3,	Erie and Wyoming Valley Railroad Company,	250 00
3,	New York, Chicago and St. Louis Railroad Company,	1,037 60
3,	Delaware, Lackawanna and Western Railroad Company,	60,834 44
3,	People's Traction Company,	1,500 00
3,	Frankford and Southwark Philadelphia City Passenger Railway Company,	391 77
3,	People's Passenger Railway Company,	992 00
3,	Continental Passenger Railway Company,	589 00
3,	Philadelphia Traction Company,	2,324 07
3,	Union Passenger Railway Company,	1,785 56
3,	Seventeenth and Nineteenth Streets Passenger Railway Company,	190 00
3,	Thirteenth and Fifteenth Streets Passenger Railway Company,	60 00
3,	Northern Central Railway Company,	2,024 00
3,	Wharton Railroad Switch Company,	1,550 00
4,	Allentown Gas Company,	535 80
4,	The United Gas Improvement Company,	3,916 41
6,	Pennsylvania Globe Gas Light Company,	10 50
6,	Cayuta Wheel and Foundry Company,	169 22
6,	Hazleton Coal Company,	2,000 00
6,	Harvey's Lake Supply Company, Limited,	43 63
6,	Carbondale Traction Company,	678 66
6,	Carbondale and Forest City Passenger Railway Company,	250 00
6,	Allentown Terminal Railroad Company,	60 61
6,	Locust Mountain Coal and Iron Company,	53 47
6,	Delano Land Company,	1,750 00
6,	Pine Creek Railway Company,	5,500 00
6,	Huntingdon Gas Company,	58 80
6,	Huntingdon Electric Light Company,	8 20
9,	Pennsylvania and Northwestern Railroad Company,	5,500 00
9,	Lebanon Stove Works,	165 75
10,	Wilkes-Barre and Scranton Railway Company,	227 81
10,	Faraday Heat, Power and Light Company,	100 00
10,	Northampton Slate Company,	37 47
10,	Warren Gas Light Company,	503 74
10,	J. M. Risher Coal Company,	363 84
11,	Western New York and Pennsylvania Railway Company,	7,500 00
11,	Kendall and Eldred Railroad Company,	3 76
11,	Kinzua Railway Company,	3 50
11,	Kinzua Valley Railroad Company,	3 62
11,	McKean and Buffalo Railroad Company,	19 40
11,	Olean, Bradford and Warren Railway Company,	3 00
11,	Bradford Railway Company,	2 50
12,	McKinley, Lanning Loan and Trust Company,	157 37
12,	Wilkes-Barre and Eastern Railroad Company,	3,750 00
13,	Pennsylvania Plate Glass Company,	613 23
13,	New York, Chicago and St. Louis Railroad Company,	35 68
13,	Bradford, Bordell and Kinzua Railway Company,	750 00
13,	Jefferson Railroad Company,	4,125 00
13,	Buffalo, Bradford and Pittsburg Railroad Company,	1,968 15
14,	Fairmount Coal and Coke Company,	750 00
14,	Fairmount Park Transportation Company,	1,430 63

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.		Name.	Amount.
1899.			
Jan.	14,	New York, Lake Erie and Western Coal and Railroad Company,	$2,500 00
	16,	Beech Creek Railroad Company,	1,021 88
	17,	Pennsylvania Renting Company,	200 00
	17,	Beech Creek Railroad Company,	11,025 00
	17,	Dunkirk, Allegheny Valley and Pittsburg Railroad Company,	2,302 88
	17,	Lebanon Stove Works,	134 25
		Total,	$141,468 36
		The above amount was collected during concluding days of the term of Henry C. McCormick.	
	19,	Westinghouse Electric and Manufacturing Company,	11,250 00
	19,	New York, Susquehanna and Western Railroad Company,	1,039 33
	19,	Jefferson Railroad Company,	4,727 41
	19,	Tioga Railroad Company,	207 67
	23,	Breckenridge Coal Company,	85 00
	26,	Wharton Railroad Switch Company,	1,101 34
Feb.	2,	Hillside Coal and Iron Company,	2,270 00
	2,	Northwestern Mining and Exchange Company,	1,125 00
	2,	Northwestern Mining and Exchange Company,	1,080 00
	6,	Fall Brook Railway Company,	3,724 00
	10,	Huntingdon and Broad Top Mountain Railroad Company,	2,538 62
Mar.	1,	Scranton and Pittston Traction Company,	1,312 50
	3,	Huntingdon and Broad Top Mountain Railroad and Coal Company,	237 00
	4,	Erie Electric Motor Company,	506 28
	9,	West Branch Lumber Company,	785 00
	9,	Blubaker Coal Company,	125 00
	9,	Scranton Railway and Traction Company,	1,000 00
	10,	Long Valley Coal Company,	50 00
	16,	Northern Central Railway Company,	4,724 68
	16,	Western New York and Pennsylvania Railroad Company,	241 11
	18,	Laurel Run Coal Company,	240 00
	18,	Upper Lehigh Coal Company,	757 50
	18,	Upper Lehigh Coal Company,	757 50
	18,	Bethlehem Iron Company,	3,214 26
	18,	Algonquin Coal Company,	225 00
	21,	Mortgage Trust Company,	99 90
	22,	Waynesboro Water Company,	118 99
	22,	Waynesboro Water Company,	81 01
	24,	Solicitors' Loan and Trust Company,	34 39
	24,	Solicitors' Loan and Trust Company,	656 25
	27,	Buffalo Coal Company,	233 00
	27,	Northwestern Coal and Iron Company,	237 06
Apr.	17,	Latrobe Brewing Company,	201 25
May	5,	Curwensville Lumber Company,	545 29
	5,	Waynesboro Water Company,	190 99
	8,	Manor Gas Coal Company,	1,034 69
June	5,	Manor Gas Coal Company,	336 10
	7,	Juniata Furnace and Foundry Company,	380 00
	30,	Natalie Anthracite Coal Company,	13,993 75
July	14,	Wolfenden, Shore & Co., Limited,	80 43
Aug.	2,	Champion Saw and Gas Engine Company,	53 00
	9,	Southern Avenue Land Company,	186 25
	11,	Bloomsburg Brass and Copper Company,	234 11
	11,	Republic Savings and Loan Association,	27 34
	21,	Anthracite Land Company,	132 00
	22,	Pennsylvania Lime and Fluxing Stone Company,	31 20
	28,	P. A. Swartz Company,	132 14

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1899.		
Aug. 29,	Speyerer Hotel Company,	$77 40
Sept. 7,	Erie Transit Company,	45 90
12,	Waynesboro, Graysville and Jacksonville Telephone Company,	141 35
20,	Coudersport and Port Allegheny Railroad Company,	344 85
22,	Lehigh Valley Cold Storage Company,	87 07
27,	City of Altoona,	3,567 82
Oct. 2,	Vulcan Works,	186 20
4,	Webster Gas Coal Company,	369 70
6,	Cumberland Building and Loan Association,	25 00
20,	George Keller Brewing Company,	31 35
Nov. 3,	Taylorville Water Company,	262 95
4,	Walker, Stratman & Co., Incorporated,	121 60
16,	Green Ridge Lumber Company,	300 00
29,	Hostetter Connellsville Coke Company,	575 00
29,	Puritan Coke Company,	100 00
Dec. 1,	Union Railroad Company,	4,750 00
1,	Pittsburg and Lake Erie Railroad Company,	3,200 66
1,	Johnstown Passenger Railway Company,	574 00
15,	Scranton and Wilkes-Barre Consolidated Coal Company,	125 00
18,	Assignee of Coatesville Casket Company,	2 96
22,	Smith, Kline and French Company,	346 04
28,	Jacob Farley, overseer of the poor, White Deer township, Union county,	52 14
29	Delaware, Lackawanna and Western Railroad Company,	10,547 48
1900.		
Jan. 5,	Jamison Coal Company,	414 00
9,	Berwick Store Company, Limited,	50 00
11,	Black Creek Improvement Company,	150 00
11,	Allentown Gas Company,	228 00
11,	Hollenback Coal Company,	1,200 00
11,	Summit Coal Company,	10 00
11,	Huntingdon and Broad Top Mountain Railroad and Coal Company,	4,250 00
11,	North West Coal Company,	188 00
11,	Forty Fort Coal Company,	369 58
11,	Edgerton Coal Company,	35 00
11,	Babylon Coal Company,	100 00
11,	Mt. Lookout Coal Company,	100 00
11,	Wyoming Land Company,	70 00
11,	Ambrose D. Goldworthy, treasurer, Centralia,	52 14
12,	Enterprise Transit Company,	242 50
12,	Diamond Coal Land Company,	125 00
12,	Burrell Coal Company,	150 00
12,	Hecla Coke Company,	170 00
12,	Bedford Springs Company, Limited,	175 00
16,	Philadelphia City Passenger Railway Company,	570 00
16,	Philadelphia and Darby Railway Company,	190 00
16,	Philadelphia Traction Company,	190 00
16,	Continental Passenger Railway Company,	260 00
16,	Catharine and Bainbridge Streets Railway Company,	150 00
16,	West Philadelphia Passenger Railway Company,	690 00
16,	Thirteenth and Fifteenth Streets Passenger Railway Company,	1,128 20
16,	Union Passenger Railway Company,	190 00
16,	Beech Creek Cannel Coal Company,	7 00
16,	Barclay Railroad Company,	300 00
16,	Westinghouse Air Brake Company,	13,750 00
16,	Erie and Wyoming Valley Railroad Company,	2,250 00
16,	Dunmore Iron and Steel Company,	600 00
16,	Atlantic Crushed Coke Company,	275 00
16,	J. Langdon & Co., Incorporated,	500 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1900.		
Jan. 16,	Mortgage Trust Company of Pennsylvania,	$100 00
16,	Hempfield Coal Company,	100 00
16,	Carbon Coal Company,	100 00
16,	Arona Gas Coal Company,	600 00
16,	Galeton and Eastern Railroad Company,	36 46
16,	Buffalo and Susquehanna Railroad Company,	4,750 00
16,	Fall Brook Coal Company,	1,500 00
16,	Newton Coal Mining Company,	125 00
16,	Erie and Western Transportation Company,	275 00
16,	Green and Coates Streets Passenger Railway Company,	35 00
16,	People's Passenger Railway Company,	388 50
16,	Hestonville, Mantua and Fairmount Passenger Railway Company,	1,463 60
16,	Philadelphia Mortgage and Trust Company,	1,262 16
16,	Lackawanna Iron and Steel Company,	1,250 00
16,	Economy Light, Heat and Power Company,	500 00
16,	Commercial Trust Company,	1,500 00
16,	The United Gas Improvement Company,	1,940 00
16,	Claridge Gas Coal Company,	1,100 00
17,	Pennsylvania Globe Gas Light Company,	10 69
17,	Philadelphia Warehousing and Cold Storage Company,	200 00
17,	Kingston Water Company,	6 25
17,	Bethlehem Iron Company,	1,324 04
18,	Haverford Electric Light Company,	200 00
18,	McKinley Lanning Loan and Trust Company,	214 11
18,	Cranberry Improvement Company,	425 00
18,	Wyoming Valley Coal Company,	1,000 00
19,	Highland Coal Company,	375 00
19,	Tioga Improvement Company,	400 00
19,	Beech Creek Cannel Coal Company,	50 00
19,	Brush Electric Light Company,	1,136 41
19,	H. F. Watson Company,	699 20
22,	Allegheny Heating Company,	750 00
22,	Allegheny County Light Company,	836 00
22,	East End Electric Light Company,	760 00
22,	Shipman Koal Company,	375 00
22,	Chest Creek Land and Improvement Company,	700 00
22,	Central District and Printing Telegraph Company,	6,460 88
22,	Jefferson and Clearfield Coal and Iron Company,	7,750 00
24,	Beech Creek Railroad Company,	185 64
24,	Pine Creek Railway Company,	10,000 00
26,	Arrott Steam Power Mills Company,	50 00
26,	Boston Bridge Company,	110 00
26,	International Navigation Company,	550 00
26,	Bethlehem South Gas and Water Company,	125 00
26,	Cambria Iron Company,	2,375 00
26,	Silver Brook Water Company,	48 32
29,	Allegheny and Western Railway Company,	1,562 50
29,	Clearfield and Mahoning Railway Company,	2,500 00
29,	Mahoning Valley Railroad Company,	1,000 00
29,	Johnsonburg and Bradford Railroad Company,	1,500 00
29,	Lehigh Valley Coal Company,	1,138 14
29,	Lehigh Valley Railroad Company,	7,587 92
29,	Pennsylvania and New York Canal and Railroad Company,	1,568 80
29,	Long Valley Coal Company,	125 00
29,	Johnstown Water Company,	400 00
29,	Lower Merion Gas Company,	45 60
30,	Lackawanna Store Association, Limited,	525 00
31,	Tarentum Water Company,	150 00
31,	Pennsylvania and Northwestern Railroad Company,	2,875 00
31,	Annora Coal Company,	125 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1900.		
Jan. 31,	Coudersport and Port Allegheny Railroad Company, ...	$1,100 00
31,	Elk Tanning Company, ...	650 00
31,	Penn Tanning Company, ...	1,000 00
Feb. 1,	West End Coal Company.	250 00
1,	Union Tanning Company, ...	1,000 00
1,	Easton and Northern Railroad Company, ...	57 00
1,	Upper Lehigh Coal Company, ...	250 00
1,	Edison Electric Light Company of Philadelphia, ...	4,500 00
2,	Johnson-Beasley Coal Company, ...	67 20
5,	Kingston Water Company, ...	6 25
5,	Chest Creek Land and Improvement Company, ...	700 00
5,	Westinghouse Electric Manufacturing Company, ...	4,375 00
7,	Pancoast Coal Company, ...	800 00
9,	Northern Electric Light and Power Company, ...	125 00
14,	St. Clair Coal Company, ...	218 53
14,	Beech Creek Railroad Company, ...	10,000 00
15,	Iron City Homestead Loan and Trust Company, ...	25 44
15,	Pittsburg Homestead Loan and Trust Company, ...	25 44
16,	Manor Electric Company, ...	66 00
16,	Jeannette Electric Light Company, ...	65 00
16,	Irwin Electric Light and Power Company, ...	1,210 00
16,	Irwin Electric Light and Power Company, ...	620 85
19,	Wilson Distilling Company, Limited, ...	350 00
21,	Thouron Coal Land Company, ...	44 70
21,	H. F. Watson Company, ...	312 50
27,	Philadelphia Electric Lighting Company, ...	175 00
28,	Bellefonte Furnace Company, ...	2,217 87
Mar. 1,	Pittsburg Heating Supply Company, ...	30 00
5,	Hazard Manufacturing Company, ...	16 50
5,	Scranton Traction Company, ...	544 00
5,	Blakeley and Dickson Traction Street Railway Company,	113 00
19,	The Bradstreet Company, ...	82 75
19,	New York and Pennsylvania Brick Tile and Terra Cotta Company, ...	600 00
19,	Island Park Company, ...	84 12
19,	Island Park Company, ...	43 58
20,	Lackawanna Iron and Coal Company, ...	2,000 00
20,	State Line and Sullivan Railroad Company, ...	1,450 00
20,	New Haven and Dunbar Railroad Company, ...	125 00
21,	Lower Merion Gas Company, ...	171 00
21,	Equitable Illuminating Gas Light Company, ...	634 60
21,	Tamaqua and Lansford Street Railway Company, ...	100 00
21,	Alliance Coal Mining Company, ...	3,750 00
21,	Allentown Iron Company, ...	50 00
21,	Mineral Springs Coal Company, ...	400 00
21,	Lehigh Coal and Navigation Company, ...	23,751 00
21,	Tresckow Railroad Company, ...	100 00
21,	Lehigh and Lackawanna Railroad Company, ...	375 00
21,	Allentown Terminal Railroad Company, ...	175 00
21,	Wind Gap and Delaware Railroad Company, ...	150 00
21,	Wilkes-Barre and Scranton Railway Company, ...	200 00
21,	Delaware Division Canal Company of Pennsylvania, ...	200 00
22,	E. P. Wilbur Trust Company, ...	666 67
22,	Adam Schiedt Brewing Company, ...	475 00
22,	Lytle Coal Company, ...	500 00
22,	Finance Company of Pennsylvania, ...	5,137 45
22,	Pittsburg Storage Company, ...	55 00
22,	Schenley Distillery Company, Limited, ...	200 00
22,	Midvalley Supply Company, Limited, ...	100 00
22,	Silver Brook Supply Company, Limited, ...	50 00
22,	Scranton Gas and Water Company, ...	1,000 00
22,	Scranton Electric Light and Heat Company, ...	500 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1900.		
Mar. 22,	Meadow Brook Water Company,	$230 00
22,	Sayre Land Company,	100 00
22,	Millwood Coal and Coke Company,	200 00
22,	Bangor Fidelity Slate Company,	52 00
23,	Guarantee Trust and Safe Deposit Company,	590 38
23,	Central Trunk Railway Company,	225 00
27,	Keystone Boiler Company,	50 00
27,	Beechwood Improvement Company,	100 00
27,	Chambers Glass Company,	2,492 16
27,	Mountain Coal Company,	50 00
27,	Stevens Coal Company,	425 00
27,	Morris and Essex Mutual Coal Company,	25 00
27,	Keystone Lumber Company,	50 00
27,	New York, Chicago and St. Louis Railroad Company,	2,375 00
28,	Johnson Coal Company,	175 00
28,	Tygert Allen Fertilizer Company,	40 00
28,	St. Mary's Gas Company,	150 00
28,	Tionesta Valley Railway Company,	625 00
28,	Alden Coal Company,	125 00
28,	Wilkes-Barre Gas Company,	208 33
28,	Gas Company of Luzerne County,	50 63
28,	Consumers' Gas Company of Wilkes-Barre,	25 00
28,	Dents' Run Coal Company,	100 00
29,	Carbondale Traction Company,	500 00
29,	Honesdale Water Company,	14 17
Apr. 2,	Vulcan Works,	668 80
2,	Buffalo and Susquehanna Railroad Company,	87 40
2,	Reynoldsville and Falls Creek Railroad Company,	1,200 00
3,	Huntingdon and Broad Top Mountain Railroad and Coal Company,	692 91
5,	Clearfield Bituminous Coal Corporation,	800 00
5,	The United Gas Improvement Company,	502 38
5,	West Branch Coal Company,	286 02
6,	Buffalo, Rochester and Pittsburg Railway Company,	16,000 00
6,	Silver Brook Coal Company,	1,125 00
9,	Lehigh Valley Railroad Company,	5,000 00
9,	Lehigh Valley Coal Company,	5,500 00
9,	Pennsylvania and New York Canal and Railroad Company,	5,308 50
9,	Schuylkill and Lehigh Valley Railroad Company,	2,250 00
9,	Hazleton Coal Company,	1,250 00
9,	Hazleton Water Company,	175 00
9,	Locust Mountain Water Company,	175 00
9,	Montrose Railway Company,	375 00
9,	Glen Summit Hotel and Land Company,	300 00
16,	Midland Mining Company,	250 00
16,	Delano Land Company,	875 00
16,	New York and Middle Coal Field Railroad and Coal Company,	1,000 00
16,	Coal Ridge Improvement and Coal Company,	575 00
18,	Philadelphia and Reading Coal and Iron Company,	20,000 00
18,	Tremont Coal Company,	1,000 00
18,	Delaware Coal Company,	523 20
18,	Preston Coal and Improvement Company,	750 00
19,	Philadelphia and Reading Terminal Railroad Company,	10,000 00
19,	Reading Company,	225,000 00
19,	Philadelphia and Reading Railway Company,	19,000 00
30,	Mellville Coal Company,	225 00
30,	Beech Creek Railroad Company,	5,000 00
30,	Erie Transit Company,	14 10
May 1,	Langcliffe Coal Company,	75 00
1,	Langcliffe Coal Company, Limited,	250 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.		Name.	Amount.
1900.			
May	7,	Lehigh and Wilkes-Barre Coal Company,	$23,750 00
	9,	Anthracite Land Company,	206 06
	11,	Woodside Real Estate Company,	500 00
	11,	Fairmount Park Transportation Company,	994 00
	15,	Provident Life and Trust Company,	13,680 97
	23,	Consolidated Chemical Company,	5 94
	29,	Baltimore and Cumberland Valley Railroad Company,	174 73
	29,	Baltimore and Harrisburg Railway Company,	1,504 91
	29,	Baltimore and Harrisburg Railway, Eastern Extension Company,	253 94
	29,	Baltimore and Harrisburg Railway, Western Extension,	1,116 70
June	1,	Shipman Koal Company,	375 00
	18,	Mt. Holly Water Company,	65 00
	20,	Citizens' Land Association of Bloomsburg,	70 31
July	16,	Samuel S. Laughlin, recorder of deeds, Clarion county,	63 00
	26,	Electric Light, Heat and Power Company, Gettysburg,	123 33
	30,	United States Light and Fuel Company,	5 06
Aug.	15,	Blubaker Coal Company,	300 00
	29,	Erie Railroad Company for following companies:	
		Blossburg Coal Company,	3,375 00
		Buffalo, Bradford and Pittsburg Railroad Company,	2,250 00
		Brockport and Shawmut Railroad Company,	75 00
		Moosic Mountain and Carbondale Railroad Company,	300 00
		Susquehanna Connecting Railroad Company,	750 00
		Sharon Railway Company,	900 00
		Tioga Railroad Company,	1,160 17
		Newcastle and Shenango Valley Railroad Company,	504 13
Sept.	12,	Clearfield Gas Company,	6 36
	12,	Clearfield Gas Light Company,	14 84
	18,	Hestonville, Mantua and Fairmount Passenger Railroad Company,	1,250 00
	18,	People's Passenger Railway Company,	1,000 00
	18,	Frankford and Southwark Philadelphia City Passenger Railway Company,	283 44
	18,	Union Traction Company,	610 30
	18,	Philadelphia Traction Company,	15,500 00
	18,	Union Passenger Railway Company,	1,500 00
	18,	West Philadelphia Passenger Railway Company,	1,500 00
	19,	Fall Brook Coal Company,	800 00
	19,	Parrish Coal Company,	600 00
	20,	Atlantic and Ohio Telegraph Company,	500 00
	21,	Faraday Heat, Power and Light Company,	117 96
	28,	Kingston Coal Company,	3,000 00
Oct.	2,	Conshohocken Electric Light and Power Company,	30 00
	2,	East Broad Top Railroad and Coal Company,	300 00
	2,	Rockhill Iron and Coal Company,	600 00
	2,	Dunkirk, Allegheny Valley and Pittsburg Railroad Company,	3,600 00
	2,	Robesonia Iron Company, Limited,	433 00
	3,	Investment Company of Pennsylvania,	3,210 00
	5,	Fall Brook Railway Company,	750 00
Dec.	4,	Lake Shore and Michigan Southern Railway Company,	9,259 38
	4,	Jamestown and Franklin Railroad Company,	973 52
	11,	Consumers' Brewing Company,	1,491 25
	12,	Brownsville Avenue Street Railway Company,	760 00
	12,	Pittsburg and Birmingham Traction Company,	5,763 11
	28,	Edison Electric Illuminating Company,	100 00
		Total,	$851,956 85

SCHEDULE C.

QUO WARRANTOS.

Name of Party.	Action Taken.
Courtney Coal Company, ...	Allowed. Judgment of ouster.
Lackawanna Street Railway Company,	Refused.
Charles A. Bleiler, coroner of Schuylkill county.	Refused.
Caledonia Coal Company, ...	Allowed. Judgment of ouster.
Jefferson A. Gamble, sheriff of Lycoming county.	Refused.
William H. Lynch, commissioner of highways, city of Harrisburg.	Allowed. Judgment of ouster.
Sycamore Street Railway Company, ..	Allowed. Judgment for respondent. Pending in Supreme Court.
Henry J. Trainor, select councilman, city of Philadelphia.	Refused.
Crescent Pipe Line Company, ...	Refused.
Citizens' Electric Company, ...	Proceedings stayed.
Acme Heating Company, ...	Allowed. Judgment of ouster.
Chartiers and Robinson Township Turnpike Company.	Refused.
Punxsutawney Water Company, ...	Allowed.
Philadelphia, Morton and Swarthmore Street Passenger Railway Company.	Allowed. Judgment for respondent. Pending in Supreme Court.
Patrick Hopkins, school director, city of Pittsburg.	Refused.
Pittston and Scranton Street Railway Company.	Refused.
Tidaghton and Fahnastalk Railway Company.	Allowed. Judgment of ouster.
Pittsburg and Mt. Washington Electric Street Railway Company.	Allowed. Judgment of ouster.
Shade Creek Coal Lands Company, ..	Allowed. Judgment of ouster.
Forest Hill Coal Mining Company, ...	Allowed. Pending in Dauphin county court.
Washington Incline Plane Company, ..	Allowed. Judgment of ouster.
Philadelphia Butchers' Abattoir Company.	Proceedings discontinued.
North Shore Railroad Company, ...	Allowed. Pending in Dauphin county court.
Potter Publishing Company, ...	Proceedings stayed.
Birmingham and Brownsville Turnpike Company.	Refused.

SCHEDULE C—Continued.

QUO WARRANTOS.

Name of Party.	Action Taken.
Erie and Wyoming Valley Railroad Company.	Allowed. Judgment for respondent. Pending in Supreme Court.
Arroyo Bridge Company, ...	Allowed. Judgment of ouster.
Waverly Coal and Coke Company, ...	Allowed. Judgment of ouster.
Henry Krauskopf, justice of the peace, borough of South Bethlehem.	Allowed. Pending in Dauphin county court.
Monongahela Bridge Company, ...	Allowed. Pending in Dauphin county court.
New York, Philadelphia and Chicago Railway Company.	Allowed. Judgment of ouster.
Connell Park and Speedway Street Railway Company.	Pending.
The Mountain Water Company, ...	Refused.
Wayne Citizens' Water Company, ...	Pending.
Port Allegheny Water Company, ...	Pending.
Madison Gas Coal Company, ...	Allowed. Judgment of ouster.
Belle Vernon and Fayette Street Railway Company.	Allowed. Pending in Dauphin county court.
North Belle Vernon Street Railway Company.	Allowed. Pending in Dauphin county court.
Fayette County and Belle Vernon Street Railway Company.	Allowed. Pending in Dauphin county court.
Washington and Belle Vernon Street Railway Company.	Allowed. Pending in Dauphin county court.
Rankin Bridge Company, ...	Allowed. Judgment of ouster.
Newton Coal Mining Company, ...	Allowed. Judgment of ouster.
Middletown Electric Railway Company,	Allowed. Judgment of ouster.
Nunnery Hill Street Railway Company,	Allowed.
Northern Boulevard Company, ...	Pending.
Birmingham and Brownsville Macadamized Turnpike Road Company.	Refused.

SCHEDULE D.

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
Commonwealth, v. Clearfield Traction Company, et al.	Bill and answer filed. Pending in Dauphin county court.
Mrs. Rebecca Green and Moses C. Green, in right of said Rebecca Green, v. Commonwealth of Pennsylvania.	Bill and answer filed in Blair county court. Pending there.

SCHEDULE E.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
Commonwealth, ex rel., John P. Elkin, Attorney General, v. W. W. Griest, Secretary of the Commonwealth.	Mandamus refused. On appeal judgment reversed.
Jacob L. Baugh, et al., v. Levi G. McCauley, Auditor General and Clayton McMichael, city treasurer of Philadelphia.	Application for mandamus refused.
Jacob L. Baugh, et al., v. John P. Elkin, Attorney General of Pennsylvania.	Rule for alternative mandamus discharged.
George W. Ludwig, v. Medical Council of Pennsylvania.	Rule to show cause, etc., discharged.
Commonwealth, ex rel., John Cavanaugh, v. W. W. Griest, Secretary of the Commonwealth.	Peremptory mandamus awarded.
Plummer E. Jefferis, plaintiff, v. W. W. Griest, Secretary of the Commonwealth.	Mandamus awarded.
John B. Rendall, plaintiff, v. W. W. Griest, Secretary of the Commonwealth.	Mandamus awarded.
Albert W. Johnson, plaintiff, v. W. W. Griest, Secretary of the Commonwealth.	Alternative mandamus awarded. Further proceedings stayed.
School directors of Lower Providence township, Montgomery county, Pa., v. N. C. Schaeffer, State Superintendent of Public Instruction and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending in Dauphin county court.
School directors of Norriton township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Worcester township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.

SCHEDULE E—Continued.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
School directors of Whitpain township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Upper Salford township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Skippack township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Lower Gwynedd township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of the borough of Rockledge, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Lower Pottsgrove, township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of the borough of East Greenville, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Towamencin township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of the borough of Macungie, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.

SCHEDULE E—Continued.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
School directors of the borough of Emaus, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Whitehall township, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of the borough of West Bethlehem, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of the borough of Coopersburg, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Lower Macungie township, Lehigh county, Pa. v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of South Whitehall township, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Hanover township, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Salisbury township, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Upper Macungie township, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.

SCHEDULE E—Continued.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
School directors of Lowhill township, Lehigh county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of Douglass township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
School directors of the borough of Hatboro, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.
Scranton Railway Company, v. William A. Stone, Governor of Pennsylvania.	Peremptory mandamus awarded.
School directors of Franconia township, Montgomery county, Pa., v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded. Pending.

SCHEDULE F.

LIST OF CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA DURING THE YEARS 1899 AND 1900.

May Term, 1899.

Commonwealth, appellant, v. Union Traction Company of Philadelphia, appellee,	Affirmed.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellant, v. Williamsport Mutual Fire Insurance Company, appellee,	Non prosd.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellant, v. Order of Solon, appellee. (Appeal of Percy F. Smith),	Non prosd.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellee, v. Keystone Electric Light, Heat and Power Company of Gettysburg, appellant,	Reversed.
Commonwealth for use of State Hospital for the Insane, Southeastern District of Pennsylvania, appellee, v. Philadelphia County, appellant,	Reversed.
Commonwealth, ex rel., Clarence M. Busch, appellant, v. Thomas M. Jones, Superintendent of Public Printing and Binding, appellee,	Reversed.
Commonwealth, appellant, v. American Water Works and Guarantee Company,	Discontinued.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant,	Affirmed.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of L. K. Porter),	Affirmed.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of J. G. White),	Affirmed.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. Appeal of R. J. Godfrey),	Non-prosd.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of James Fitzsimmons),	Affirmed.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of S. J. M. McCarrell),	Affirmed.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of B. F. Todd, et al.),	Reversed.

May Term, 1900.

Commonwealth, ex rel., John P. Elkin, Attorney General, appellant, v. W. W. Griest, Secretary of the Commonwealth, appellee,	Reversed.
Commonwealth, ex rel., John P. Elkin, Attorney General, appellee, v. Textile Mutual Fire Insurance Company, appellant,	Non-prosd.
Commonwealth, ex rel., John P. Elkin, Attorney General, appelle, v. Automatic (now Arlington) Mutual Fire Insurance Company, appellant,	Non-prosd.
Commonwealth, ex rel., John P. Elkin, Attorney General, appellee, v. Protective Mutual Fire Insurance Company, appellant,	Non prosd.
Commonwealth, appellee, v. Pennsylvania Coal Company, appellant,	Affirmed.
A. G. Knisely, treasurer of the county of Dauphin for use of the Commonwealth of Pennsylvania, appellee, v. David W. Cotterel, appellant,	Affirmed.
Commonwealth, appellee, v. Union Improvement Company, appellant,	Continued.
Edward R. Wood, et al., appellants, v. William S. Vare, et al., mercantile appraisers, etc., and Clayton McMichael, treasurer of the county of Philadelphia, appellees,	Affirmed.

SCHEDULE F—Continued.

LIST OF CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA DURING THE YEARS 1899 AND 1900.

May Term, 1900.

Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of C. L. McMillin),	Non-prosd.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of B. F. Beatty, deceased),	Non prosd.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of James P. Stewart),	Non-prosd.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Order of Solon, appellant. (Appeal of Robert J. Godfrey),	Non prosd.

SCHEDULE G.

LIST OF CASES PENDING IN THE SUPREME COURT OF PENNSYLVANIA.

May Term, 1901.

Commonwealth, ex rel., John P. Elkin, Attorney General, appellant, v. Erie and Wyoming Valley Railroad Company, appellee.

Commonwealth, ex rel., John P. Elkin, Attorney General, appellant, v. Sycamore Street Railway Company, appellee.

Commonwealth, ex rel., John P. Elkin, Attorney General, appellant, v. J. Paxton Lance, et al., directors and stockholders of corporation doing business under name of Philadelphia, Morton and Swarthmore Street Passenger Railway Company, appellee.

SCHEDULE H.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Baltimore and Cumberland Valley Railroad Company.	$293 82	C. S. 1896. Paid.
Baltimore and Cumberland Valley Railroad Company.	293 82	C. S. 1897. Paid.
Baltimore and Cumberland Valley Railroad, Extension Company.	1,612 52	C. S. 1897. Verdict for def't.
Baltimore and Harrisburg Railway Company.	3,022 11	C. S. 1896. Paid.
Baltimore and Harrisburg Railway Company.	3,022 11	C. S. 1897. Paid.
Baltimore and Harrisburg Railway Eastern Extension Company.	1,071 95	C. S. 1896. Paid.
Baltimore and Harrisburg Railway-Eastern Extension Company.	1,071 95	C. S. 1897. Paid.
Baltimore and Harrisburg Railway, Western Extension Company.	968 63	C. S. 1896. Paid.
Baltimore and Harrisburg Railway, Western Extension Company.	968 63	C. S. 1897. Paid.
Smith, Kline and French Company,..	1,762 37	C. S. 1898. Paid.
Northern Liberties Gas Works, ...	3,135 00	C. S. 1897. Verdict for def't.
Suburban Rapid Transit Street Railway Company.	917 90	C. S. 1897. Paid.
Suburban Rapid Transit Street Railway Company.	774 17	C. S. 1898. Paid.
Union Railroad Company, ...	8,000 00	C. S. 1898. Paid.
Pittsburg and Lake Erie Railroad Company.	37,908 89	C. S. 1898. Paid.
Pittsburg, McKeesport and Youghiogheny Railroad Company.	27,715 56	C. S. 1898. Verdict for def't.
County of McKean, ...	8,241 51	Tax on personal property, 1896. Judgment for Com'th.
Johnstown Passenger Railway Company.	2,311 42	C. S. 1897. Paid.
Nypano Railroad Company, ...	22,080 54	C. S. 1897. Verdict for Com'th.
Nypano Railroad Company, ...	40,398 63	C. S. 1898. Verdict for Com'th.
Beech Creek Railroad Company, ...	37,500 00	C. S. 1897. Paid.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	5,944 21	C. S. 1897. Paid.
Parrish Coal Company, ...	2,396 91	C. S. 1897. Paid.
Stevens Coal Company, ...	1,135 00	C. S. 1897. Paid.
Langcliffe Coal Company, ...	375 00	C. S. 1895. Paid.
Langcliffe Coal Company, ...	375 00	C. S. 1894. Paid.
Langcliffe Coal Company, ...	375 00	C. S. 1893. Paid.
Langcliffe Coal Company, Limited, ...	500 00	C. S. 1897. Paid.
Lehigh Valley Railroad Company, ..	231,087 71	C. S. 1898. Paid.
Lehigh Valley Railroad Company, ..	208,312 29	C. S. 1897. Paid.
Lehigh Coal and Navigation Company.	83,334 99	C. S. 1897. Paid.
Delaware, Lackawanna and Western Railroad Company.	210,395 00	C. S. 1898. Paid.
Pine Creek Railway Company, ...	15,099 18	C. S. 1898. Paid.
Western New York and Pennsylvania Railway Company.	34,576 20	C. S. 1898. Pending.
Philadelphia, Warehousing and Cold Storage Company.	3,367 33	C. S. 1898. Paid.
Tionesta Valley Railway Company,..	1,400 00	C. S. 1897. Paid.
Tionesta Valley Railway Company,..	1,750 00	C. S. 1898. Paid.
E. P. Wilbur Trust Company, ...	2,916 67	C. S. 1898. Paid.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	133 00	L. T. 1898. Verdict for def't.
Hostetter Connellsville Coke Company.	6,262 50	C. S. 1897. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Hostetter Connellsville Coke Company.	6,600 00	C. S. 1898. Paid.
Clearfield Bituminous Coal Corporation.	3,146 34	L. T. 1898. Verdict for Com'th.
Annora Coal Company, ...	342 00	L. T. 1898. Verdict for def't.
Hempfield Coal Company, ...	424 08	L. T. 1898. Verdict for def't.
Lehigh Valley Coal Company, ...	46,305 06	L. T. 1898. Paid.
West Branch Coal Company, ...	670 70	L. T. 1898. Paid.
Haverford Electric Light Company,..	237 73	C. S. 1897. Paid.
Haverford Electric Light Company,..	237 73	C. S. 1898. Paid.
Enterprise Transit Company, ...	1,950 00	C. S. 1898. Paid.
Pittsburg, Chartiers and Youghiogheny Railway Company.	4,635 00	C. S. 1898. Verdict for def't.
Atlantic Crushed Coke Company, ...	542 00	C. S. 1898. Paid.
New York, Chicago and St. Louis Railroad Company.	9,263 59	C. S. 1897. Paid.
Erie and Wyoming Valley Railroad Company.	19,191 07	C. S. 1898. Paid.
State Line and Sullivan Railroad Company.	1,964 27	C. S. 1898. Paid.
State Line and Sullivan Railroad Company.	1,815 06	C. S. 1897. Paid.
Huntingdon and Broad Top Mountain Railroad and Coal Company.	7,108 03	L. T. 1898. Paid.
Guarantee Trust and Safe Deposit Company.	8,857 10	C. S. 1898. Paid.
The Finance Company of Pennsylvania.	16,793 03	C. S. 1898. Paid.
Philadelphia Mortgage Trust Company.	6,464 21	C. S. 1898. Paid.
McKinley Lanning Loan and Trust Company.	523 66	C. S. 1897. Paid.
McKinley Lanning Loan and Trust Company.	482 22	L. T. 1898. Paid.
Manor Gas Coal Company, ...	760 00	L. T. 1898. Pending.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	136 80	L. T. 1897. Verdict for def't.
Buffalo, Bradford and Pittsburg Railroad Company.	4,905 99	C. S. 1898. Paid.
Moosic Mountain and Carbondale Railroad Company.	210 50	C. S. 1898. Paid.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	9,813 71	C. S. 1898. Paid.
Buffalo and Susquehanna Railroad Company.	10,962 86	C. S. 1897. Paid.
Huntingdon and Broad Top Mountain Railroad and Coal Company.	17,149 90	C. S. 1898. Paid.
Sharon Railway Company, ...	2,938 00	C. S. 1898. Paid.
Sharon Railway Company, ...	2,938 00	C. S. 1897. Paid.
Buffalo and Susquehanna Railroad Company.	10,441 11	C. S. 1898. Paid.
Old Bangor Slate Company, ...	159 14	C. S. 1898. Verdict for def't.
Central Trunk Railway Company,...	263 00	C. S. 1897. Paid.
Central Trunk Railway Company,...	263 00	C. S. 1898. Paid.
Buffalo and Susquehanna Railroad Company.	4,674 26	L. T. 1897. Paid.
Buffalo and Susquehanna Railroad Company.	3,766 82	L. T. 1898. Paid.
Reynoldsville and Falls Creek Railroad Company.	2,095 40	C. S. 1897. Paid.
Reynoldsville and Falls Creek Railroad Company.	2,138 25	C. S. 1898. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Central Trunk Railway Company, ..	263 00	C. S. 1898. Paid.
Mellville Coal Company, ...	1,382 14	C. S. 1898. Paid.
Pancoast Coal Company, ...	1,027 84	C. S. 1897. Paid.
Pancoast Coal Company, ...	1,027 84	C. S. 1898. Paid.
Silver Brook Water Company, ...	50 00	C. S. 1897. Paid.
Silver Brook Coal Company, ...	1,500 00	C. S. 1897. Paid.
Coal Ridge Improvement and Coal Company.	1,482 62	L. T. 1897. Verdict for def't.
Coal Ridge Improvement and Coal Company.	1,482 62	L. T. 1898. Verdict for def't.
Lehigh and Wilkes-Barre Coal Company.	2,003 68	L. T. 1897. Verdict for def't.
Lehigh and Wilkes-Barre Coal Company.	2,003 68	L. T. 1898. Verdict for def't.
Lehigh Valley Coal Company, ...	41,665 48	L. T. 1897. Paid.
West Branch Coal Company, ...	668 80	L. T. 1897. Verdict for def't.
Wilson Distilling Company, Limited,	1,000 00	C. S. 1897. Paid.
Wilson Distilling Company, Limited,	1,000 00	C. S. 1898. Paid.
Bangor Fidelity Slate Company, ...	570 00	L. T. 1897. Verdict for def't.
Bangor Fidelity Slate Company, ...	570 00	L. T. 1898. Verdict for def't.
Pennsylvania Coal Company, ...	54,200 00	C. S. 1898. Judg't for Com'th in Supreme Court.
Long Valley Coal Company, ...	125 00	C. S. 1896. Paid.
Long Valley Coal Company, ...	125 00	C. S. 1898. Paid.
Puritan Coke Company, ...	2,500 00	C. S. 1898. Paid.
Brockport and Shawmut Railroad Company.	100 00	C. S. 1896. Paid.
Buffalo, Bradford and Pittsburg Railroad Company.	4,905 99	C. S. 1897. Paid.
Lehigh and Lackawanna Railroad Company.	1,390 00	C. S. 1898. Paid.
Lehigh and Lackawanna Railroad Company.	1,390 00	C. S. 1897. Paid.
Wilkes-Barre and Scranton Railway Company.	2,856 43	C. S. 1897. Paid.
Wilkes-Barre and Scranton Railway Company.	2,856 43	C. S. 1898. Paid.
New York, Chicago and St. Louis Railroad Company.	8,853 28	C. S. 1898. Paid.
Mahoning Valley Railroad Company,	1,250 00	C. S. 1897. Paid.
Mahoning Valley Railroad Company,	1,250 00	C. S. 1898. Paid.
Moosic Mountain and Carbondale Railroad Company.	210 50	C. S. 1896. Paid.
Moosic Mountain and Carbondale Railroad Company.	210 50	C. S. 1897. Paid.
Brockport and Shawmut Railroad Company.	100 00	C. S. 1897. Paid.
Brockport and Shawmut Railroad Company.	100 00	C. S. 1898. Paid.
Blossburg Coal Company, ...	2,970 90	C. S. 1896. Paid.
Blossburg Coal Company, ...	2,882 55	C. S. 1897. Paid.
Kingston Water Company, ...	112 50	C. S. 1897. Paid.
Kingston Water Company, ...	112 50	C. S. 1898. Paid.
Kingston Coal Company, ...	8,750 00	C. S. 1896. Paid.
Kingston Coal Company, ...	8,750 00	C. S. 1897. Paid.
Kingston Coal Company, ...	7,500 00	C. S. 1898. Paid.
Alliance Coal Mining Company, ...	5,494 26	C. S. 1896. Paid.
Alliance Coal Mining Company, ...	5,494 26	C. S. 1897. Paid.
Alliance Coal Mining Company, ...	5,494 26	C. S. 1898. Paid.
Hollenback Coal Company, ...	2,600 00	C. S. 1896. Paid.
Hollenback Coal Company, ...	2,600 00	C. S. 1897. Paid.
Hollenback Coal Company, ...	2,600 00	C. S. 1898. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Tioga Improvement Company, ...	400 00	C. S. 1897. Paid.
Chest Creek Land and Improvement Company.	1,730 33	C. S. 1897. Paid.
Lower Merion Gas Company, ...	91 20	L. T. 1898. Paid.
Allentown Gas Company, ...	368 60	L. T. 1898. Paid.
St. Mary's Gas Company, ...	835 00	C. S. 1898. Paid.
Equitable Illuminating Gas Light Company, Philadelphia.	13,862 09	L. T. 1898. Paid.
Chest Creek Land and Improvement Company.	1,994 28	C. S. 1898. Paid.
Union Traction Company, ...	57 00	L. T. 1898. Verdict for def't.
Union Passenger Railway Company,	3,205 25	L. T. 1898. Paid.
Philadelphia and Darby Railway Company.	1,148 00	L. T. 1898. Paid.
Philadelphia City Passenger Railway Company.	380 00	L. T. 1898. Paid.
Continental Passenger Railway Company.	1,108 40	L. T. 1898. Paid.
Hestonville, Mantua and Fairmount Passenger Railway Company.	4,590 29	L. T. 1898. Paid.
Seventeenth and Nineteenth Streets Passenger Railway Company.	380 00	L. T. 1898. Verdict for def't.
Green and Coates Streets Philadelphia Passenger Railway Company.	407 87	L. T. 1898. Paid.
Thirteenth and Fifteenth Streets Passenger Railway Company.	2,228 55	L. T. 1898. Paid.
Tygert-Allen Fertilizer Company, ...	100 00	C. S. 1898. Paid.
American Meter Company, ...	4,000 00	C. S. 1898. Verdict for def't.
Arrott Steam Power Mills Company,	1,018 70	C. S. 1898. Paid.
Boston Bridge Company, ...	166 78	C. S. 1897. Paid.
Boston Bridge Company, ...	191 86	C. S. 1898. Paid.
Sayre Land Company, ...	1,019 89	C. S. 1898. Paid.
Tarentum Water Company, ...	780 00	C. S. 1897. Paid.
Tarentum Water Company, ...	780 00	C. S. 1898. Paid.
Twenty-second Street and Allegheny Avenue Passenger Railway Company.	5,079 17	C. S. 1898. Pending.
Ridge Avenue Passenger Railway Company.	22,104 75	C. S. 1898. Verdict for def't.
Frankford and Southwark Philadelphia City Passenger Railroad Company.	75,468 75	C. S. 1898. Paid.
Catherine and Bainbridge Streets Railway Company.	2,625 00	C. S. 1898. Paid.
West Philadelphia Passenger Railway Company.	20,772 25	C. S. 1898. Paid.
West Philadelphia Passenger Railway Company.	3,894 18	L. T. 1898. Paid.
Electric Traction Company of Philadelphia.	1,039 50	L. T. 1898. Verdict for def't.
People's Passenger Railway Company.	2,684 26	L. T. 1898. Paid.
Hestonville, Mantua and Fairmount Passenger Railroad Company.	15,166 04	C. S. 1898. Paid.
Union Passenger Railway Company,.	31,580 75	C. S. 1898. Paid.
Philadelphia Traction Company, ...	146,906 92	C. S. 1898. Paid.
Philadelphia Traction Company, ...	3,914 08	L. T. 1898. Paid.
Philadelphia and Darby Railway Company.	1,385 00	C. S. 1898. Pending.
New York, Lake Erie and Western Coal and Railroad Company.	4,328 00	L. T. 1898. Verdict for def't.
Barclay Railroad Company, ...	1,250 00	C. S. 1898. Paid.
Jefferson Railroad Company, ...	4,853 36	L. T. 1897. Verdict for Com'th.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Jefferson Railroad Company, ...	4,853 36	L. T. 1898. Verdict for Com'th.
Cayuta Wheel and Foundry Company,	200 00	C. S. 1898. Verdict for def't.
New York and Pennsylvania Brick, Tile and Terra Cotta Company.	1,917 66	C. S. 1898. Paid.
William Mann Company, ...	141 38	C. S. 1898. Verdict for def't.
Woodside Real Estate Company, ...	500 00	C. S. 1898. Paid.
Tamaqua and Lansford Street Railway Company.	846 50	C. S. 1898. Paid.
Fairmount Park Transportation Company.	494 00	C. S. 1898. Paid.
People's Passenger Railway Company.	32,570 29	C. S. 1898. Paid.
Scranton and Carbondale Traction Company.	1,024 00	C. S. 1896. Pending.
Scranton and Carbondale Traction Company.	1,030 00	C. S. 1897. Pending.
Scranton and Carbondale Traction Company.	1,165 00	C. S. 1898. Pending.
New York, Lake Erie and Western Coal and Railroad Company.	2,500 00	C. S. 1896. Verdict for Com'th.
Allentown Terminal Railroad Company.	2,375 92	C. S. 1897. Verdict for def't.
Allentown Terminal Railroad Company.	2,817 54	C. S. 1898. Paid.
Coudersport and Port Allegany Railroad Company.	1,685 83	C. S. 1897. Paid.
Coudersport and Port Allegany Railroad Company.	1,685 83	C. S. 1898. Paid.
Clearfield and Mahoning Railway Company.	5,399 24	C. S. 1897. Paid.
Clearfield and Mahoning Railway Company.	5,957 02	C. S. 1898. Paid.
Jefferson Railroad Company, ...	4,971 50	C. S. 1897. Verdict for Com'th.
Jefferson Railroad Company, ...	4,971 50	C. S. 1898. Verdict for Com'th.
Tioga Improvement Company, ...	1,000 00	C. S. 1898. Paid.
Delano Land Company, ...	3,418 33	C. S. 1898. Paid.
Philadelphia Manufacturers' Mutual Fire Insurance Company.	120 67	Gross premiums 1897. Pending.
Delaware Division Canal Company of Pennsylvania.	1,585 67	C. S. 1897. Paid.
Delaware Division Canal Company of Pennsylvania.	1,585 67	C. S. 1898. Paid.
McKeesport Gas Improvement Company.	4,250 00	C. S. 1898. Appeal withdrawn.
McKeesport Gas Company, ...	500 00	C. S. 1898. Appeal withdrawn.
Pine Creek Railway Company, ...	12,500 00	C. S. 1897. Paid.
Mt. Holly Water Company, ...	135 00	C. S. 1898. Paid.
Beech Creek Railway Company, ...	2,405 66	L. T. 1898. Paid.
Easton and Northern Railroad Company.	193 80	L. T. 1898. Paid.
Lehigh Valley Railroad Company, ..	133,968 54	L. T. 1898. Paid.
Pennsylvania and Northwestern Railroad Company.	11,698 56	C. S. 1898. Paid.
Tioga Railroad Company, ...	429 40	L. T. 1894. Partly paid.
Tioga Railroad Company, ...	5,448 00	C. S. 1897. Paid.
Tioga Railroad Company, ...	5,448 00	C. S. 1898. Paid.
Tresckow Railroad Company, ...	453 60	C. S. 1897. Paid.
Tresckow Railroad Company, ...	453 60	C. S. 1898. Paid.
Wind Gap and Delaware Railroad Company.	582 60	C. S. 1897. Paid.
Wind Gap and Delaware Railroad Company.	582 60	C. S. 1898. Paid.
New York, Susquehanna and Western Railroad Company.	2,903 16	L. T. 1897. Verdict for Com'th.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Pennsylvania and New York Canal and Railroad Company.	27,861 74	L. T. 1898. Paid.
Tioga Railroad Company, ...	987 62	L. T. 1897. Verdict for Com'th.
Tioga Railroad Company, ...	987 62	L. T. 1898. Verdict for Com'th.
New York, Lake Erie and Western Coal and Railroad Company.	4,328 00	L. T. 1897. Verdict for def't.
Delaware, Lackawanna and Western Railroad Company.	5,303 10	L. T. 1898. Paid.
The St. Clair Coal Company, ...	625 00	C. S. 1896. Paid.
The St. Clair Coal Company, ...	625 00	C. S. 1897. Paid.
The St. Clair Coal Company, ...	625 00	C. S. 1898. Paid.
Beechwood Improvement Company, ..	375 00	C. S. 1897. Paid.
Beechwood Improvement Company, ..	375 00	C. S. 1898. Paid.
Allentown Iron Company, ...	586 22	C. S. 1898. Paid.
Allentown Gas Company, ...	1,500 00	C. S. 1898. Verdict for def't.
Bethlehem, South, Gas and Water Company.	1,750 00	C. S. 1898. Paid.
Bethlehem Iron Company, ...	4,722 02	L. T. 1898. Paid.
The United Gas Improvement Company.	3,844 43	L. T. 1898. Paid.
Consumers' Gas Company of Reading.	2,000 00	C. S. 1898. Verdict for def't.
Lehigh Coal and Navigation Company.	103,385 96	C. S. 1898. Paid.
Erie and Western Transportation Company.	9,399 38	C. S. 1898. Paid.
William Wharton, Jr., & Co., Incorporated.	1,423 00	C. S. 1897. Verdict for def't.
William Wharton, Jr., & Co., Incorporated.	1,423 00	C. S. 1898. Verdict for def't.
Erie Railroad Company, ...	51,385 84	C. S. 1897. Verdict for Com'th.
Erie Railroad Company, ...	51,385 84	C. S. 1898. Verdict for Com'th.
Pennsylvania and New York Canal and Railroad Company.	53,875 00	C. S. 1898. Paid.
Schenley Distillery, Limited, ...	675 00	C. S. 1897. Paid.
Schenley Distillery, Limited, ...	675 00	C. S. 1898. Paid.
Dunmore Iron and Steel Company, ..	3,474 02	C. S. 1897. Paid.
Dunmore Iron and Steel Company,..	3,106 06	C. S. 1898. Paid.
Hazard Manufacturing Company, ...	3,000 00	C. S. 1898. Paid.
Keystone Lumber Company, ...	412 13	C. S. 1898. Paid.
Annora Coal Company, ...	705 00	C. S. 1898. Paid.
Johnson Coal Company, ...	1,881 50	C. S. 1898. Paid.
Hecla Coke Company, ...	2,000 00	C. S. 1898. Paid.
Langcliffe Coal Company, Limited, ..	1,750 00	C. S. 1898. Paid.
Johnstown Water Company, ...	3,106 86	C. S. 1898. Paid.
Siemens Lungren Company, ...	30 00	C. S. 1898. Verdict for def't.
Lower Marion Gas Company, ...	1,000 00	C. S. 1898. Verdict for def't.
Equitable Illuminating Gas Light Company of Philadelphia.	23,438 75	C. S. 1898. Verdict for def't.
Allegheny Heating Company, ...	10,000 00	C. S. 1898. Paid.
Pennsylvania Globe Gas Light Company.	1,500 00	C. S. 1898. Paid.
South Side Gas Company, ...	1,800 00	C. S. 1898. Verdict for def't.
Midland Mining Company, ...	570 00	C. S. 1897. Paid.
Midland Mining Company, ...	570 00	C. S. 1898. Paid.
Beech Creek Cannel Coal Company,..	123 00	C. S. 1896. Paid.
Beech Creek Cannel Coal Company,..	123 00	C. S. 1897. Paid.
Beech Creek Cannel Coal Company,..	123 00	C. S. 1898. Paid.
Lehigh and Wilkes-Barre Coal Company.	67,814 49	C. S. 1897. Paid.
Lehigh and Wilkes-Barre Coal Company.	69,311 50	C. S. 1896. Paid.
West Branch Coal Company, ...	619 33	C. S. 1897. Paid.
West Branch Coal Company, ...	619 33	C. S. 1898. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Jefferson and Clearfield Coal and Iron Company.	22,500 00	C. S. 1898. Paid.
J. Langdon & Co., Incorporated, ...	3,069 50	C. S. 1898. Paid.
Coal Ridge Improvement and Coal Company.	1,906 67	C. S. 1898. Paid.
Hazleton Coal Company, ...	8,104 67	C. S. 1898. Paid.
Blubaker Coal Company, ...	1,750 00	C. S. 1898. Paid.
Mammoth Vein Coal and Iron Company.	2,543 63	C. S. 1896. Judgment for def't.
Northwestern Mining and Exchange Company.	5,042 41	C. S. 1897. Verdict for Com'th.
Northwestern Mining and Exchange Company.	4,812 31	C. S. 1898. Verdict for Com'th.
New York and Middle Coal Field Railroad and Coal Company.	6,085 00	C. S. 1898. Paid.
Preston Coal and Improvement Company.	6,070 07	C. S. 1898. Paid.
Tremont Coal Company, ...	5,998 25	C. S. 1898. Paid.
Delaware Coal Company, ...	1,527 06	C. S. 1896. Verdict for def't.
Delaware Coal Company, ...	1,498 35	C. S. 1897. Paid.
Delaware Coal Company, ...	1,684 30	C. S. 1898. Paid.
Westinghouse Air Brake Company,..	30,390 10	C. S. 1898. Paid.
Westinghouse Electric and Manufacturing Company.	14,118 22	C. S. 1898. Paid.
Jamestown and Franklin Railroad Company.	2,500 00	C. S. 1896. Paid.
Jamestown and Franklin Railroad Company.	2,500 00	C. S. 1897. Paid.
Jamestown and Franklin Railroad Company.	2,500 00	C. S. 1898. Paid.
Commercial Trust Company, ...	7,366 67	C. S. 1898. Paid.
Central District and Printing Telegraph Company.	16,673 21	C. S. 1897. Paid.
New York and Pennsylvania Brick, Tile and Terra Cotta Company.	500 00	C. S. 1897. Paid.
Carbondale Traction Company, ...	2,250 00	C. S. 1897. Paid.
Carbondale Traction Company, ...	2,250 00	C. S. 1898. Paid.
Northern Electric Light and Power Company.	4,578 43	C. S. 1898. Paid.
Central District and Printing Telegraph Company.	13,861 93	C. S. 1898. Paid.
Philadelphia Electric Lighting Company.	250 00	C. S. 1897. Paid.
Mortgage Trust Company of Pennsylvania.	2,500 00	C. S. 1898. Paid.
Investment Company of Philadelphia,	4,955 70	C. S. 1898. Paid.
New York, Susquehanna and Western Railroad Company.	3,004 80	C. S. 1897. Verdict for Com'th.
New York, Susquehanna and Western Railroad Company.	2,940 06	C. S. 1898. Verdict for Com'th.
Wilkes-Barre and Eastern Railroad Company.	20,319 90	C. S. 1897. Verdict for Com'th.
Wilkes-Barre and Eastern Railroad Company.	21,544 58	C. S. 1898. Verdict for Com'th.
Croft and Allen Company, ...	450 00	C. S. 1898. Pending.
Philadelphia and Reading Terminal Railroad Company.	35,415 00	C. S. 1897. Paid.
Philadelphia and Reading Terminal Railroad Company.	35,415 00	C. S. 1898. Paid.
Reading Company, ...	256,896 56	C. S. 1897. Paid.
Reading Company, ...	245,579 57	C. S. 1898. Paid.
Philadelphia and Reading Railway Company.	204,032 30	C. S. 1897. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Philadelphia and Reading Railway Company.	219,694 20	C. S. 1898. Paid.
Philadelphia and Reading Coal and Iron Company.	178,300 00	C. S. 1898. Paid.
Edison Electric Light Company, Philadelphia.	18,764 20	C. S. 1898. Paid.
Brush Electric Light Company, ...	1,129 50	C. S. 1897. Paid.
Brush Electric Light Company, ...	1,143 22	C. S. 1898. Paid.
Atlantic and Ohio Telegraph Company.	3,250 00	C. S. 1896. Paid.
Bradford Railway Company, ...	350 00	C. S. 1898. Pending.
Kendall and Eldred Railroad Company.	450 00	C. S. 1898. Pending.
McKean and Buffalo Railroad Company.	550 00	C. S. 1898. Pending.
Kinzua Railway Company, ...	350 00	C. S. 1898. Pending.
Kinzua Valley Railroad Company,..	250 00	C. S. 1898. Pending.
Olean, Bradford and Warren Railroad Company.	110 00	C. S. 1898. Pending.
Fairmount Coal and Coke Company,	1,060 80	C. S. 1898. Pending.
Northwestern Coal and Iron Company.	122 25	C. S. 1898. Pending.
Buffalo Coal Company, ...	300 00	C. S. 1898. Pending.
Diamond Coal Land Company, ...	648 88	C. S. 1898. Paid.
Forty Fort Coal Company, ...	1,189 15	C. S. 1898. Paid.
Hempfield Coal Company, ...	1,375 00	C. S. 1897. Paid.
Hempfield Coal Company, ...	1,375 00	C. S. 1898. Paid.
Highland Coal Company, ...	3,119 99	C. S. 1898. Paid.
Lytle Coal Company, ...	1,420 20	C. S. 1896. Paid.
Lytle Coal Company, ...	1,420 20	C. S. 1897. Paid.
Lytle Coal Company, ...	1,420 20	C. S. 1898. Paid.
Locust Mountain Coal and Iron Company.	2,750 00	C. S. 1898. Verdict for def't.
Locust Mountain Water Company,..	582 00	C. S. 1898. Paid.
Mineral Springs Coal Company, ...	500 00	C. S. 1897. Paid.
Mineral Springs Coal Company, ...	500 00	C. S. 1898. Paid.
Mountain Coal Company, ...	750 00	C. S. 1898. Paid.
Millwood Coal and Coke Company, ..	810 00	C. S. 1898. Paid.
Arona Gas Coal Company, ...	1,270 00	C. S. 1897. Paid.
Arona Gas Coal Company, ...	1,270 00	C. S. 1898. Paid.
Babylon Coal Company, ...	531 50	C. S. 1898. Paid.
Black Creek Improvement Company,	4,192 00	C. S. 1898. Paid.
Burrell Coal Company, ...	330 62	C. S. 1897. Paid.
Burrell Coal Company, ...	330 62	C. S. 1898. Paid.
Carbon Coal Company, ...	1,481 50	C. S. 1897. Paid.
Carbon Coal Company, ...	1,481 50	C. S. 1898. Paid.
Claridge Gas Coal Company, ...	1,450 00	C. S. 1897. Paid.
Claridge Gas Coal Company, ...	1,450 00	C. S. 1898. Paid.
Clearfield Bituminous Coal Corporation.	2,003 82	C. S. 1897. Paid.
Clearfield Bituminous Coal Corporation.	1,963 88	C. S. 1898. Paid.
Mid Valley Supply Company, Limited,	500 00	C. S. 1898. Paid.
Pew Emerson & Co., Limited, ...	500 00	C. S. 1898. Discontinued.
Consumers' Gas Company of Wilkes-Barre.	75 00	C. S. 1898. Paid.
Economy Light, Heat and Power Company.	1,587 34	C. S. 1898. Paid.
Gas Company of Luzerne County, ..	4,320 00	C. S. 1898. Paid.
Wilkes-Barre Gas Company, ...	625 00	C. S. 1898. Paid.
Scranton Electric Light and Heat Company.	1,075 00	C. S. 1898. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Scranton Gas and Water Company,..	8,728 32	C. S. 1898. Paid.
Mammoth Vein Coal and Iron Company.	2,540 00	C. S. 1898. Judgment for def't.
Shade Gap Railroad Company, ...	345 80	L. T. 1893. Verdict for Com'th.
Shade Gap Railroad Company, ...	345 80	L. T. 1894. Verdict for def't.
Shade Gap Railroad Company, ...	345 80	L. T. 1895. Verdict for def't.
Shade Gap Railroad Company, ...	336 30	L. T. 1896. Verdict for def't.
Shade Gap Railroad Company, ...	351 50	L. T. 1897. Verdict for def't.
Shade Gap Railroad Company, ...	336 30	L. T. 1898. Verdict for def't.
Shade Gap Railroad Company, ...	138 90	C. S. 1893. Verdict for Com'th.
Shade Gap Railroad Company, ...	138 90	C. S. 1894. Verdict for Com'th.
Shade Gap Railroad Company, ...	558 00	C. S. 1895. Verdict for Com'th.
Shade Gap Railroad Company, ...	558 00	C. S. 1896. Verdict for Com'th.
Shade Gap Railroad Company, ...	558 00	C. S. 1897. Verdict for Com'th.
Shade Gap Railroad Company, ...	558 00	C. S. 1898. Verdict for Com'th.
Hazleton Water Company, ...	375 00	C. S. 1898. Paid.
Galeton and Eastern Railroad Company.	104 17	C. S. 1898. Paid.
Johnsonburg and Bradford Railroad Company.	980 00	C. S. 1896. Paid.
Johnsonburg and Bradford Railroad Company.	980 00	C. S. 1897. Paid.
Johnsonburg and Bradford Railroad Company.	980 00	C. S. 1898. Paid.
Montrose Railway Company, ...	1,350 00	C. S. 1896. Paid.
Montrose Railway Company, ...	1,350 00	C. S. 1897. Paid.
Montrose Railway Company, ...	1,350 00	C. S. 1898. Paid.
New Haven and Dunbar Railroad Company.	100 00	C. S. 1897. Paid.
New Haven and Dunbar Railroad Company.	100 00	C. S. 1898. Paid.
Allegheny and Western Railway Company.	6,250 00	C. S. 1898. Paid.
East Broad Top Railroad and Coal Company.	1,500 00	C. S. 1897. Paid.
East Broad Top Railroad and Coal Company.	1,500 00	C. S. 1898. Paid.
Scranton Traction Company, ...	2,494 26	L. T. 1896. Paid.
Blakely and Dickson Traction Street Railway Company.	180 00	C. S. 1897. Paid.
Blakely and Dickson Traction Street Railway Company.	180 00	C. S. 1898. Paid.
Meadow Brook Water Company, ...	2,193 00	C. S. 1898. Paid.
Silver Brook Coal Company, ...	2,582 50	C. S. 1898. Paid.
Silver Brook Water Company, ...	75 00	C. S. 1898. Paid.
Silver Brook Supply Company, Limited.	400 00	C. S. 1898. Paid.
Shipman Koal Company, ...	1,270 00	C. S. 1898. Paid.
Shipman Koal Company, ...	570 00	L. T. 1898. Verdict for def't.
Summit Coal Company, ...	27 50	C. S. 1898. Paid.
Union Improvement Company, ...	7,253 28	C. S. 1898. Judg't for Com'th.
Upper Lehigh Coal Company, ...	3,668 81	C. S. 1898. Paid.
West End Coal Company, ...	1,300 00	C. S. 1898. Paid.
Wyoming Land Company, ...	165 00	C. S. 1898. Paid.
Rockhill Iron and Coal Company, ..	750 00	C. S. 1895. Paid.
Rockhill Iron and Coal Company, ..	750 00	C. S. 1896. Paid.
Rockhill Iron and Coal Company, ..	750 00	C. S. 1897. Paid.
Rockhill Iron and Coal Company, ..	750 00	C. S. 1898. Paid.
Morris and Essex Mutual Coal Company.	262 50	C. S. 1898. Paid.
Mount Lookout Coal Company, ...	605 52	C. S. 1898. Paid.
Newton Coal Mining Company, ...	1,000 00	C. S. 1898. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
North West Coal Company, ...	776 00	C. S. 1898. Paid.
Parrish Coal Company, ...	2,090 83	C. S. 1898. Paid.
Thouron Coal Land Company, ...	750 00	C. S. 1898. Paid.
Edgerton Coal Company, ...	339 50	C. S. 1898. Paid.
Cranberry Improvement Company, ..	2,200 00	C. S. 1898. Paid.
Buffalo, Rochester and Pittsburg Railway Company.	31,077 08	C. S. 1897. Paid.
Buffalo, Rochester and Pittsburg Railway Company.	31,695 31	C. S. 1898. Paid.
Wyoming Valley Coal Company, ...	1,885 00	C. S. 1898. Paid.
New York, Lake Erie and Western Coal and Railroad Company.	15,000 00	C. S. 1897. Verdict for Com'th.
New York, Lake Erie and Western Coal and Railroad Company.	15,000 00	C. S. 1898. Verdict for Com'th.
Lehigh Valley Coal Company, ...	25,493 75	C. S. 1898. Paid.
Berwick Store Company, Limited,...	1,000 00	C. S. 1898. Paid.
Schuylkill and Lehigh Valley Railroad Company.	8,533 33	C. S. 1898. Paid.
Susuehanna Connecting Railroad Company.	1,750 00	C. S. 1897. Paid.
Susquehanna Connecting Railroad Company.	2,000 00	C. S. 1898. Paid.
Lake Shore and Michigan Southern Railway Company.	33,298 05	C. S. 1898. Paid.
Bedford Springs Company, Limited,	1,150 00	C. S. 1898. Paid.
Blossburg Coal Company, ...	2,282 55	C. S. 1898. Paid.
East End Electric Light Company,..	1,392 52	L. T. 1898. Paid.
Allegheny County Light Company, ..	1,690 52	L. T. 1898. Paid.
Fall Brook Coal Company, ...	3,000 00	C. S. 1898. Paid.
Provident Life and Trust Company of Philadelphia.	197,916 03	C. S. 1898. Paid.
Elk Tanning Company, ...	13,542 90	C. S. 1898. Paid.
Penn Tanning Company, ...	17,783 88	C. S. 1898. Paid.
Union Tanning Company, ...	10,815 45	C. S. 1898. Paid.
International Navigation Company,..	4,791 50	C. S. 1898. Paid.
Glen Summit Hotel and Land Company.	250 00	C. S. 1895. Paid.
Glen Summit Hotel and Land Company.	250 00	C. S. 1896. Paid.
Glen Summit Hotel and Land Company.	250 00	C. S. 1897. Paid.
Glen Summit Hotel and Land Company.	250 00	C. S. 1898. Paid.
Cambria Iron Company, ...	5,831 49	C. S. 1898. Paid.
Penn Traffic Company, Limited, ...	1,968 75	C. S. 1898. Verdict for def't.
Lackawanna Iron and Steel Company,	14,943 88	C. S. 1898. Paid.
Lackawanna Iron and Coal Company,	9,250 00	C. S. 1898. Paid.
Lackawanna Store Association, Limited.	2,332 77	C. S. 1898. Paid.
Bangor Fidelity Slate Company, ...	398 78	C. S. 1897. Paid.
Bangor Fidelity Slate Company, ...	398 78	C. S. 1898. Paid.
Lower Marion Gas Company, ...	114 00	L. T. 1887. Paid.
Lower Marion Gas Company, ...	114 00	L. T. 1888. Paid.
Lower Marion Gas Company, ...	114 00	L. T. 1889. Paid.
Shipman Koal Company, ...	1,000 00	C. S. 1897. Paid.
National Tube Works, ...	58,083 53	C. S. 1896. Verdict for def't.
National Tube Works, ...	58,083 53	C. S. 1897. Pending.
Oil City and Ridgway Railway and Mining Company.	432 75	C. S. 1898. Pending.
Fall Brook Railway Company, ...	39,613 90	C. S. 1898. Paid.
The United Gas Improvement Company.	2,502 38	C. S. 1898. Paid.
People's Traction Company, ...	63,270 00	C. S. 1898. Appeal withdrawn.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Union Traction Company, ...	35,633 78	C. S. 1898. Paid.
Dents Run Coal Company, ...	100 00	C. S. 1897. Paid.
Dents Run Coal Company, ...	100 00	C. S. 1898. Paid.
New Castle and Shenango Valley Railroad Company.	2,137 50	L. T. 1889 to 1891. Paid.
New Castle and Shenango Valley Railroad Company.	7,600 00	L. T. 1892 to 1899. Verdict for Com'th.
New Castle and Shenango Valley Railroad Company.	7,040 00	L. T. 1889 to 1898. Paid.
Alden Coal Company, ...	2,339 02	C. S. 1898. Paid.
Beech Creek Railroad Company, ...	33,998 33	C. S. 1898. Paid.
Thouron Coal Land Company, ...	1,339 85	C. S. 1897. Verdict for Com'th.
Adam Scheidt Brewing Company, ...	2,511 42	C. S. 1897. Paid.
Adam Scheidt Brewing Company, ..	1,417 04	C. S. 1898. Paid.
People's Street Railway Company of Luzerne County.	4,500 00	C. S. 1896. Pending.
Scranton Railway Company, ...	15,214 95	C. S. 1898. Pending.
Scranton Passenger Railway Company.	500 00	C. S. 1895. Pending.
Scranton Passenger Railway Company.	500 00	C. S. 1896. Pending.
Scranton Traction Company, ...	9,453 00	C. S. 1895. Pending.
Scranton Traction Company, ...	10,422 76	C. S. 1896. Pending.
Valley Passenger Railway Company,	1,250 00	C. S. 1895. Pending.
Valley Passenger Railway Company,	1,250 00	C. S. 1896. Pending.
Yale and Towne Manufacturing Company.	5,500 00	C. S. 1896. Verdict for Com'th.
Yale and Towne Manufacturing Company.	5,500 00	C. S. 1897. Verdict for Com'th.
Yale and Towne Manufacturing Company.	5,500 00	C. S. 1898. Verdict for Com'th.
Shamokin, Sunbury and Lewisburg Railroad Company .	17,165 00	C. S. 1898. Judgment for def't.
Conshohocken Electric Light and Power Company.	76 00	L. T. 1893. Paid.
Fall Brook Coal Company, ...	3,300 00	C. S. 1899. Paid.
Robesonia Iron Company, Limited,..	8,433 00	C. S. 1885 to 1899. Paid.
Buffalo, Bradford and Pittsburg Railroad Company.	1,000 00	C. S. 1899. Verdict for Com'th.
Blossburg Coal Company, ...	1,125 00	C. S. 1899. Verdict for Com'th.
Erie Railroad Company, ...	3,570 00	C. S. 1899. Verdict for Com'th.
Hillside Coal and Iron Company, ...	50 00	C. S. 1897. Verdict for Com'th.
Hillside Coal and Iron Company, ...	50 00	C. S. 1898. Verdict for Com'th.
Hillside Coal and Iron Company, ...	250 00	C. S. 1899. Verdict for Com'th.
Jefferson Railroad Company, ...	3,350 00	C. S. 1899. Verdict for Com'th.
Northwestern Mining and Exchange Company.	1,000 00	C. S. 1899. Verdict for Com'th.
New York, Susquehanna and Western Railroad Company.	937 50	C. S. 1899. Verdict for Com'th.
Nypano Railroad Company, ...	6,500 00	C. S. 1899. Verdict for Com'th.
New York, Susquehanna and Western Coal Company.	185 90	C. S. 1896. Verdict for Com'th.
New York, Susquehanna and Western Coal Company.	185 90	C. S. 1897. Verdict for Com'th.
New York, Susquehanna and Western Coal Company.	185 90	C. S. 1898. Verdict for Com'th.
New York, Susquehanna and Western Coal Company.	250 00	C. S. 1899. Verdict for Com'th.
New York, Lake Erie and Western Coal and Railroad Company.	2,250 00	C. S. 1899. Verdict for Com'th.
Susquehanna Connecting Railroad Company.	625 00	C. S. 1899. Verdict for Com'th.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Tioga Railroad Company, ...	3,000 00	C. S. 1899. Verdict for Com'th.
Wilkes-Barre and Eastern Railroad Company.	6,250 00	C. S. 1899. Verdict for Com'th.
Scranton Gas and Water Company, ..	16,373 87	C. S. 1899. Pending.
Anthracite Coal and Improvement Company.	233 45	C. S. 1897. Pending.
Wilkes-Barre and Scranton Railway Company.	3,526 72	C. S. 1899. Pending.
Tresckow Railroad Company, ...	453 60	C. S. 1899. Pending.
Tamaqua and Lansford Street Railway Company.	1,378 54	C. S. 1899. Pending.
Lehigh and Lackawanna Railroad Company.	1,500 00	C. S. 1899. Pending.
Lehigh-Luzerne Coal Company, ...	3,500 00	C. S. 1895. Pending.
Lehigh-Luzerne Coal Company, ...	3,500 00	C. S. 1896. Pending.
Lehigh-Luzerne Coal Company, ...	3,500 00	C. S. 1897. Pending.
Lehigh-Luzerne Coal Company, ...	3,850 00	C. S. 1898. Pending.
Lehigh-Luzerne Coal Company, ...	3,100 00	C. S. 1899. Pending.
Hollenback Coal Company, ...	3,150 00	C. S. 1899. Pending.
Delaware Division Canal Company of Pennsylvania.	3,020 33	C. S. 1899. Pending.
Allentown Terminal Railroad Company.	2,692 59	C. S. 1899. Pending.
New Castle Electric Company, ...	271 19	G. R. 1900 (6 mo.) Pending.
Keystone Laundry Company, ...	275 00	C. S. 1899. Pending.
Beech Creek Cannel Coal Company,	33 44	L. T. 1899. Pending.
Thouron Coal Land Company, ...	76 67	L. T. 1899. Pending.
West Branch Coal Company, ...	604 20	L. T. 1899. Pending.
Dunbar Furnace Company, ...	1,235 12	L. T. 1897. Pending.
Dunbar Furnace Company, ...	1,223 24	L. T. 1898. Pending.
Dunbar Furnace Company, ...	650 42	C. S. 1897. Pending.
Dunbar Furnace Company, ...	592 54	C. S. 1898. Pending.
Dunbar Furnace Company, ...	384 21	C. S. 1899. Pending.
Versailles Traction Company, ...	750 00	C. S. 1899. Pending.
Pocono Mountain Ice Company, ...	375 00	C. S. 1899. Pending.
Johnsonburg and Bradford Railroad Company.	1,623 20	L. T. 1899. Pending.
Old Bangor Slate Company, ...	587 37	C. S. 1899. Pending.
Wilson Distillery Company, Limited,	500 00	C. S. 1899. Pending.
Cambria Iron Company, ...	36,692 03	C. S. 1899. Pending.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	9,884 79	C. S. 1899. Pending.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	133 00	L. T. 1899. Pending.
Beech Creek Railroad Company, ...	37,358 33	C. S. 1899. Pending.
Beech Creek Railroad Company, ...	2,405 66	L. T. 1899. Pending.
Fall Brook Railway Company, ...	34,086 57	C. S. 1899. Pending.
Pine Creek Railway Company, ...	18,883 00	C. S. 1899. Pending.
Pittsburg and Eastern Railroad Company.	1,069 00	C. S. 1899. Pending.
Buffalo and Susquehanna Railroad Company.	3,450 41	L. T. 1899. Pending.
Clearfield Bituminous Coal Corporation.	146 34	L. T. 1899. Pending.
Tioresta Valley Railway Company,..	2,116 36	C. S. 1899. Pending.
Erie and Western Transportation Company.	9,404 66	C. S. 1899. Pending.
Northern Electric Light and Power Company.	4,350 00	C. S. 1899. Pending.
Edison Electric Light Company of Philadelphia.	14,600 00	C. S. 1899. Pending.
Nescopec Coal Company, ...	1,500 00	C. S. 1899. Pending.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Midland Mining Company, ...	570 00	C. S. 1899. Pending.
Everhart Coal Company, ...	800 00	C. S. 1899. Pending.
Silver Brook Coal Company, ...	4,800 00	C. S. 1899. Pending.
Burrell Coal Company, ...	75 00	C. S. 1899. Pending.
Lytle Coal Company, ...	3,270 00	C. S. 1899. Pending.
Millwood Coal and Coke Company, ..	1,000 00	C. S. 1899. Pending.
Diamond Coal Land Company, ...	510 00	C. S. 1899. Pending.
Black Creek Improvement Company,	3,925 00	C. S. 1899. Pending.
J. Langdon & Co., Incorporated, ...	3,324 00	C. S. 1899. Pending.
Kingston Coal Company, ...	8,750 00	C. S. 1899. Pending.
Pennsylvania and Northwestern Railroad Company.	12,515 56	C. S. 1899. Pending.
Delaware, Lackawanna and Western Railroad Company.	242,350 00	C. S. 1899. Pending.
Delaware, Lackawanna and Western Railroad Company.	5,187 97	L. T. 1899. Pending.
Pennsylvania Coal Company, ...	95,142 55	C. S. 1899. Pending.
Erie and Wyoming Valley Railroad Company.	17,349 39	C. S. 1899. Pending.
Western Union Telegraph Company,..	11,973 44	C. S. 1899. Pending.
Huntingdon and Broad Top Mountain Railroad and Coal Company.	16,915 67	C. S. 1899. Pending.
Stevens Coal Company, ...	1,941 80	C. S. 1898. Pending.
Stevens Coal Company, ...	1,849 00	C. S. 1899. Pending.
Delaware and Hudson Canal Company.	28,964 16	C. S. 1898. Pending.
Delaware and Hudson Canal Company.	43,442 79	C. S. 1899. Pending.
Jamestown and Franklin Railroad Company.	5,227 50	C. S. 1899. Pending.
New York, Chicago and St. Louis Railroad Company.	7,000 00	C. S. 1899. Pending.
Lake Shore and Michigan Southern Railway Company.	38,311 35	C. S. 1899. Pending.
General Trading Company, Limited,	285 00	C. S. 1897. Pending.
General Trading Company, Limited,	285 00	C. S. 1898. Pending.
General Trading Company, Limited,	285 00	C. S. 1899. Pending.
Rochester and Pittsburg Coal and Iron Company.	7,528 50	C. S. 1898. Pending.
Rochester and Pittsburg Coal and Iron Company.	7,050 00	C. S. 1899. Pending.
Reynoldsville and Falls Creek Rail road Company.	3,350 00	C. S. 1899. Pending.
Reynoldsville and Falls Creek Railroad Company.	646 00	L. T. 1899. Pending.
Clearfield and Mahoning Railway Company.	6,452 33	C. S. 1899. Pending.
Buffalo, Rochester and Pittsburg Railway Company.	22,704 62	C. S. 1899. Pending.
Lehigh Valley Coal Company, ...	3,250 00	C. S. 1893. Pending.
Lehigh Valley Coal Company, ...	5,500 00	C. S. 1899. Pending.
Hazleton Coal Company, ...	1,250 00	C. S. 1899. Pending.
Upper Lehigh Coal Company, ...	4,437 45	C. S. 1899. Pending.
Delano Land Company, ...	4,855 00	C. S. 1899. Pending.
Sayre Land Company, ...	910 00	C. S. 1899. Pending.
Locust Mountain Water Company,..	175 00	C. S. 1899. Pending.
Schuylkill and Lehigh Valley Railroad Company.	2,250 00	C. S. 1899. Pending.
Pennsylvania and New York Canal and Railroad Company.	5,308 50	C. S. 1899. Pending.
Montrose Railway Company, ...	680 50	C. S. 1899. Pending.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
New York and Middle Coal Field Railroad and Coal Company.	4,500 00	C. S. 1899. Pending.
Lehigh Valley Railroad Company,..	179,372 75	C. S. 1899. Pending.
Alden Coal Company, ...	2,150 40	C. S. 1899. Pending.
Long Valley Coal Company, ...	380 00	L. T. 1899. Pending.
State Line and Sullivan Railroad Company.	3,087 05	C. S. 1899. Pending.
Barclay Railroad Company, ...	2,692 05	C. S. 1899. Pending.
East Broad Top Railroad and Coal Company.	835 58	L. T. 1899. Pending.
East Broad Top Railroad and Coal Company.	1,500 00	C. S. 1899. Pending.
Rockhill Iron and Coal Company, ...	750 00	C. S. 1899. Pending.
International Navigation Company,..	2,772 28	C. S. 1899. Pending.
Lehigh and Wilkes-Barre Coal Company.	42,752 16	C. S. 1898. Pending.
Lehigh Coal and Navigation Company.	115,453 73	C. S. 1899. Pending.
People's Electric Light, Heat and Power Company of Nanticoke.	135 41	C. S. 1898. Pending.
People's Electric Light, Heat and Power Company of Nanticoke.	375 00	C. S. 1899. Pending.
Hempfield Coal Company, ...	1,375 00	C. S. 1899. Pending.
Hempfield Coal Company, ...	472 72	L. T. 1899. Pending.
Greensburg Coal Company, ...	664 00	C. S. 1899. Pending.
Arona Gas Coal Company, ...	800 00	C. S. 1899. Pending.
Carbon Coal Company, ...	1,481 50	C. S. 1899. Pending.
Schuylkill Anthracite Coal Royalty Company.	437 50	C. S. 1899. Pending.
Schuylkill Anthracite Coal Royalty Company.	431 13	L. T. 1899. Pending.
Union Improvement Company, ...	8,728 97	C. S. 1899. Pending.
Susquehanna and New York Railroad Company.	955 51	C. S. 1899. Pending.
Buffalo and Susquehanna Railroad Company.	18,711 75	C. S. 1899. Pending.
Thomas M. Dodson Coal Company, ..	1,315 92	C. S. 1899. Pending.
Thouron Coal Land Company, ...	700 00	C. S. 1899. Pending.
Annora Coal Company, ...	342 00	L. T. 1899. Pending.
Tarentum Water Company, ...	780 00	C. S. 1899. Pending.
Conshohocken Gas Light Company,..	375 00	C. S. 1898. Pending.
Conshohocken Gas Light Company,..	375 00	C. S. 1899. Pending.
Wilkes-Barre Gas Company, ...	1,300 00	C. S. 1899. Pending.
Gas Company of Luzerne County, ..	270 00	C. S. 1899. Pending.
Gas Company of Luzerne County, ..	2,338 00	L. T. 1899. Pending.
People's Light Company of Pittston,	562 50	C. S. 1899. Pending.
Consumers' Gas Company of Wilkes-Barre.	390 00	C. S. 1899. Pending.
Wyoming Valley Electric Light, Heat and Power Company.	4,800 00	C. S. 1899. Pending.
Wyoming Valley Electric Light, Heat and Power Company.	1,781 60	L. T. 1899. Pending.
Wilkes-Barre Electric Light Company.	875 00	C. S. 1899. Pending.
Suburban Electric Light Company,..	825 00	C. S. 1899. Pending.
Economy Light, Heat and Power Company.	1,493 10	C. S. 1899. Pending.
Economy Light, Heat and Power Company.	1,025 24	L. T. 1899. Pending.
Central District and Printing Telegraph Company.	23,497 50	C. S. 1899. Pending.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1899.

Name.	Amount.	Remarks.
Provident Life and Trust Company of Philadelphia.	25,000 00	C. S. 1899. Pending.
Mortgage Trust Company of Pennsylvania.	1,425 00	C. S. 1899. Pending.
Philadelphia Mortgage and Trust Company.	1,750 00	C. S. 1899. Pending.
E. P. Wilbur Trust Company, ...	3,812 34	C. S. 1899. Pending.
Finance Company of Pennsylvania,..	19,507 85	C. S. 1899. Pending.
Guarantee Trust and Safe Deposit Company.	9,087 50	C. S. 1899. Pending.
McKinley Lanning Loan and Trust Company.	453 48	C. S. 1898. Pending.
McKinley Lanning Loan and Trust Company.	453 48	C. S. 1899. Pending.
McKinley Lanning Loan and Trust Company.	321 48	L. T. 1899. Pending.
Investment Company of Philadelphia.	6,620 00	C. S. 1899. Pending.
Scranton and Carbondale Traction Company.	543 40	L. T. 1899. Pending.
Scranton and Pittston Traction Company.	725 80	L. T. 1899. Pending.
People's Traction Company, ...	273 60	L. T. 1896. Pending.
People's Traction Company, ...	273 60	L. T. 1897. Pending.
People's Traction Company, ...	273 60	L. T. 1898. Pending.
People's Traction Company, ...	273 60	L. T. 1899. Pending.
Philadelphia and West Chester Traction Company.	1,306 40	L. T. 1899. Pending.
Manor Gas Coal Company, ...	760 00	L. T. 1899. Pending.
Barnes Brothers Company, ...	300 00	C. S. 1899. Pending.
Jarecki Manufacturing Company, ...	1,065 00	C. S. 1899. Pending.
Long Valley Coal Company, ...	155 15	C. S. 1899. Pending.
Parrish Coal Company, ...	2,193 12	C. S. 1899. Pending
Cranberry Improvement Company, ..	3,172 80	C. S. 1899. Pending
Johnson Coal Company, ...	1,800 00	C. S. 1899. Pending.
Jefferson and Clearfield Coal and Iron Company.	17,055 92	C. S. 1899. Pending.
Highland Coal Company, ...	3,153 96	C. S. 1899. Pending.
Galeton and Eastern Railroad Company.	312 50	C. S. 1899. Pending.
Mahoning Valley Railroad Company,	1,250 00	C. S. 1899. Pending.
Allegheny and Western Railroad Company.	14,847 69	C. S. 1899. Pending.

SCHEDULE I.

PROCEEDINGS HAVE BEEN INSTITUTED BY THIS DEPARTMENT AGAINST THE FOLLOWING INSURANCE COMPANIES AND BUILDING AND LOAN ASSOCIATIONS.

Name.	Result.
Keystone Mutual Benefit Association, Allentown.	Dissolved. Receiver.
United States Mutual Fire Insurance Company, Philadelphia.	Dissolved. Receiver.
Textile Mutual Fire Insurance Company, ...	Dissolved. Receiver.
Automatic (now Arlington) Mutual Fire Insurance Company.	Dissolved. Receiver.
Protective Mutual Fire Insurance Company, ...	Dissolved. Receiver.
Commonwealth Saving Fund and Loan Association, Philadelphia.	Dissolved. Receiver.
North American Life and Surety Company, ...	Defunct. No service.
Commonwealth Mutual Life Insurance Company,	Dissolved. Receiver.
Susquehanna Mutual Fire Insurance Company,..	Dissolved. Receiver.
Penn Germania Building and Loan Association,	Dissolved. Receiver.
Quaker City Mutual Fire Insurance Company, ..	Dissolved. Receiver.
Union Real Estate Company, ...	Dissolved. Receiver.
Electric Mutual Casualty Association, Philadelphia.	Dissolved. Receiver.
Economy Building and Loan Association, Lebanon.	Dissolved. Receiver.
Workingman's Building and Loan Association, Beaver Falls.	Pending in Dauphin county court.
Cash Building and Loan Association, ...	Pending in Dauphin county court.
Industrial Building and Loan Association, ...	Pending in Dauphin county court.
Globe Mutual Building and Loan Association, ...	Pending in Dauphin county court.
Fifth Avenue Savings and Loan Association of McKeesport.	Dissolved. Receiver.

SCHEDULE J.

INSURANCE COMPANY CHARTERS APPROVED.

Black Diamond Mutual Fire Insurance Company, Shamokin, December 28, 1900.
Commercial Mutual Fire Insurance Company, Lebanon, July 31, 1899.
Conestoga Fire Insurance Company, Lancaster, January 30, 1900.
Friendship Mutual Fire Insurance Company, Chambersburg, July 12, 1899.
General Accident Insurance Company, Philadelphia, June 26, 1899.
Hazleton Mutual Fire Insurance Company, Hazleton, August 23, 1900.
Pennsylvania Mutual Indemnity Company, Philadelphia, April 17, 1899.
Pennsylvania Casualty Company, Scranton, September 28, 1899.
Philadelphia Casualty Company, Philadelphia, November 21, 1899.

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