REPORT

OF THE

Attorney General

OF

PENNSYLVANIA

FOR THE

Two Years Ending December 31, 1902.

WM. STANLEY RAY,
STATE PRINTER OF PENNSYLVANIA.
1903.

REPORT

OF THE

Attorney General of Pennsylvania.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 1, 1903.*

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

In obedience to the legal requirements, I have the honor to submit to your honorable bodies the report of the official business transacted by this Department during the two years ending the 31st day of December, 1902.

The large increase in the number of corporations in Pennsylvania from year to year imposes additional burdens upon the Attorney General. The collection of delinquent claims certified to me by the Auditor General constitutes a large part of the work of the Department, and it is the duty of the Attorney General 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 two years covered by this report a large number of appeals have been taken, and, in nearly all cases arising upon them, verdicts have been rendered.

Under our practice, it is the duty of the Attorney General's office to grant hearings to all parties who desire to have quo warranto proceedings instituted against corporations. The Department requires parties making application for such writs to present a petition reciting the facts, after which a hearing is granted and all parties in interest are given an opportunity to be present before final action is taken. If evidence is given at the hearing to satisfy the Attorney General that there is sufficient merit in the complaint to warrant judicial action, he files his suggestion in the proper court, stating the grounds upon which he relies to have the corporate franchises forfeited either for misuser or non-user. Many applications

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of this nature were presented during the past two years and some important ones are referred to more at length in this report.

Applications are also made to this Department to have mandamus proceedings instituted in the name of the Commonwealth, under the provisions of act of 1893, and in these cases hearings are also given, and if the duty sought to be enforced is a public one, the application is granted.

In addition to these duties, the Attorney General is required by law to act as a member of the Board of Pardons, Board of Property and the Board of Public Accounts, and is also frequently called upon to give opinions to the various Departments of the State government upon matters of public interest. He is often consulted by various State officials relative to the performance of their duties. Elsewhere in the report the work of the Department in this respect will be set forth in greater detail. During the past two years this Department has acted upon 474 claims, appeals and suits, and from these I have collected and paid into the State Treasury $570,274.70. A few of these suits are still pending in the court of Common Pleas of Dauphin county and in the Supreme Court. Schedules of all of these claims, appeals and suits are hereto appended, showing the disposition made and the present status of each one as it appears in the records of this office.

During the four years I have served as Attorney General there have been special efforts made by the Auditor General to collect taxes and bonus owing to the State from delinquent corporations. Both Auditors General McCauley and Hardenbergh have been especially active and vigilant in this regard, and whenever legal action was necessary to secure the desired result, claims have been promptly certified for collection under the law. In some instances the delinquent corporations are insolvent and therefore claims cannot be collected by adverse legal proceedings, but must await final distribution of the assets by the courts. Many of these corporations are defunct, and there are no officers upon whom service of process can be made, and no tangible assets from which claims can be collected, but the vigilant and effective methods of the Auditor General have resulted in the winding up and final dissolution of many corporations of this kind. The general prosperity throughout the Commonwealth for the past two years has resulted in more prompt payment of taxes by corporations and this has necessitated the bringing of fewer suits.

It will be observed from the summary of business, printed on a subsequent page, that during the past two years thirty-four proceedings under the act of June 3, 1895, have been instituted in the court of common pleas of Dauphin county for the rebuilding of county bridges destroyed by fire, flood or other casualty. Many of

these bridges cross large rivers and are expensive in construction. We have felt it our duty to insist upon a strict compliance with every provision of the law, and have objected to the building of any bridge, under the said act, unless the facts brought the applicants wholly within its requirements. I desire, however, to call your attention to the very great burden that is now being, and will continue to be, imposed upon the Commonwealth unless the Legislature shall deem it proper to make a modification of the act of 1895. The contracts already let for the rebuilding of these bridges will require the payment of several hundred thousand dollars of money by the State. This will be a constantly increasing burden unless relief is afforded by the Legislature. It is most natural that the local authorities will cast all these burdens upon the Commonwealth if the law permits them so to do. The building by the State of bridges across rivers and other streams declared to be public highways is a new departure from the long established customs and usages of the Commonwealth. The Legislature should give to this subject most serious consideration, so that it may properly determine whether the State can afford to bear this increasing burden. It would seem just and fair that the counties interested should bear at least half the expense of rebuilding these bridges.

The Governor in the exercise of the veto power, in passing upon bills enacted by the Legislature during his term of office, approved a certain portion of the item making an appropriation to the common schools of the State and disapproved of a certain other portion of the same item. This raised the question of the right of the Governor to approve part of an item in an appropriation bill. Since the adoption of the new Constitution this has been a vexed question with the Chief Executives of the Commonwealth, and it was thought best to have it finally determined in the courts. A suit was instituted by a school district in the county of Center, claiming its pro rata share on the basis of the whole appropriation made by the Legislature, without regard to the action of the Governor in disapproving a part of the appropriation made in the item. The court below sustained the action of the Governor in the exercise of the veto power in this respect, whereupon the case was appealed to the Supreme Court, where it was decided that the Governor may approve part of an item in a general appropriation bill and disapprove part of the same item. This case will be found in 199 P. S., 161.

A number of suits were instituted by the Commonwealth under what is known as The Store Order Act, approved the 24th day of June, 1901 (P. L. 546). These cases were brought in the court of common pleas of Dauphin county upon appeal made from the settlement of the accounting officers. The defendants in most of the cases contended that the facts did not bring them within the pro-

visions of the law. The court sustained this contention in a number of instances, but recently an opinion was handed down by the learned president judge of the Dauphin county courts, holding that the act is invalid and unconstitutional. In most of the cases the court did not pass upon the constitutionality of the act, but, inasmuch as the constitutional question has been raised and decided against the Commonwealth in the court below, an appeal has been taken to the Supreme Court and will be heard at its next sitting in the city of Harrisburg.

A number of other important cases have been tried in the courts, and a record of all such will be found in the Department as well as in the court of common pleas of Dauphin county in the Commonwealth docket kept for that purpose.

SUMMARY OF BUSINESS OF THE ATTORNEY GENERAL'S DEPARTMENT FROM JANUARY 1, 1901, TO JANUARY 1, 1903.

Tax appeals,	474
Cases argued in Supreme Court of Pennsylvania,	25
Formal opinions rendered,	37
Insurance company charters approved,	11
Cases now pending in Supreme Court of Pennsylvania,	2
Quo warranto proceedings,	44
Mandamus proceedings,	48
Bridge proceedings under act of June 3, 1895,	34
Equity proceedings,	19
Orders to show cause, etc.,	4
Actions in assumpsit,	5

Collections.

For 1901,	$349,785 69	
For 1902,	199,387 89	
		$549,173 58

Commissions.

For 1901,	$13,520 21	
For 1902,	7,580 91	
		21,101 12
Grand total,		$570,274 70

QUO WARRANTO CASES.

POTTER IMPROVEMENT COMPANY.

On the 3rd day of January, 1901, a petition was presented to the Attorney General by William H. Sullivan, stating that The Potter Improvement Company had been incorporated on the 10th day of March, 1897, under the act of April 29, 1874, and its supplements, and that after its incorporation the company had proceeded to carry out the purposes for which it was organized, and had continued to do so until it was found unprofitable longer to continue in business when all the company's property and assets had been disposed of. It was alleged that there was no property or assets of any kind belonging to the company; that, by reason of its failure further to perform the purposes for which it was incorporated it should be subjected to a forfeiture of its charter; and the Attorney General was asked to institute proceedings by quo warranto to the end that its charter might be forfeited. A suggestion was filed in the court of common pleas of Dauphin county and a writ awarded. On the 8th day of January following an answer was filed admitting the facts as set forth in the petition. On same day a decree of ouster was entered against said company.

CONTINENTAL TRUST AND FINANCE COMPANY OF PHILADELPHIA.

Charles M. Rhodes, of the city of Philadelphia, presented his petition to the Attorney General on February 7, 1901, asking that a suggestion for a writ of quo warranto be filed against the Continental Trust and Finance Company of Philadelphia. It was alleged by the petitioners that the Continental Trust and Finance Company of Philadelphia should not be permitted to do business as a corporation under the Constitution and laws of Pennsylvania, because it had been incorporated by a special act of Assembly, approved June 2, 1871, under the name and style of the Susquehanna Improvement Company, which name had afterwards been changed to the Continental Trust and Finance Company of Philadelphia.

It was further alleged, that the third section of the act, incorporating the Susquehanna Improvement Company, required that there should be certain subscriptions made to the capital stock, and 10 per cent. paid thereon, before the incorporators could lawfully organize as a corporation.

It was also alleged that the Susquehanna Improvement Company did not properly organize and in good faith commence business prior to the adoption of the new constitution; that after the adoption of said constitution, the incorporators named in the act, had no authority to organize a corporation; and that under the circumstances, it could have no corporate existence. The petitioner asked that a quo warranto proceeding should be instituted to inquire by what right the said company claimed to exercise the powers and privileges of a corporation. At the time of the hearing the defendant appeared through its counsel, and while denying the facts on which the petition is based, it consented that a writ of quo warranto should issue so that the matters in dispute might be finally determined in a court of proper jurisdiction. The suggestion was filed in the court of common pleas of Dauphin county on the 8th day of February, 1901. On the 18th day of February following, the answer was filed. On the 8th day of March, 1901, by agreement filed, the case was tried without a jury, under the act of 1874. On the 29th day of March, 1901, judgment was entered in favor of the defendant.

JAMES MOIR, RECORDER OF THE CITY OF SCRANTON.

On the 8th day of March, 1901, a petition was presented to the Attorney General by the Hon. M. E. McDonald, a resident of the city of Scranton, acting for himself as well as other residents, citizens and taxpayers of said city. The petition represented that on the 7th day of March, 1901, an act for the government of cities of the second class was approved, and was then the law regulating the government of cities of the second class unless it should be declared inoperative and unconstitutional. The petitioner represented that he believed the act to be unconstitutional, inoperative and void, and that proceedings should be instituted which would fairly raise all the questions before a court of competent jurisdiction. It was represented that James Moir, at the municipal election held in the city of Scranton on the third Tuesday in February, 1899, had been elected mayor of said city for a full term of three years, which term began on the first Monday of April, 1899, and which would extend until the first Monday of April, 1902; and that the said mayor, so elected, had about one year of service before his term would expire. It was also represented that the act for the government of cities of the second class, above referred to, in express terms, had abolished the office of mayor in cities of the second class, and had provided for the appointment of a recorder who, under the terms of said act, is made the chief executive officer of said city.

It was further represented that, after the approval of said act, the Governor had exercised his powers thereunder, and had appointed a recorder for the city of Scranton, and that, as citizens and

taxpayers of said city of Scranton, interested in having a stable and legal form of municipal government, they denied the right of the Legislature to enact a law which would deprive an officer elected by the people from exercising the duties and receiving the emoluments of office during the term for which he had been elected.

The petitioners denied the right of the Legislature to confer upon the Governor the authority to remove officials duly elected by the people and to appoint a chief executive officer of a city of the second class, whose term would extend until the first Monday of April, 1903, thus permitting a municipal election to intervene without giving the people the right to elect their own chief executive at such municipal election. The petitioners further denied the right of the Governor to make a provisional and temporary appointment for the period fixed in the act or for any other period under the provisions of the said act of Assembly, for the reason that the act is unconstitutional and void. It was further contended that the act was unconstitutional and void because it is local and special legislation, expressly denied to the Legislature by the Constitution.

The petitioners asked that a suggestion for a writ of quo warranto should be filed in the court of common pleas of Lackawanna county against the recorder appointed by the Governor in order that his title to said office might be passed upon by the courts.

An answer was filed in due form. After due consideration the prayer of the petitioner was granted and a suggestion was filed in the court of common pleas of Lackawanna county for a writ of quo warranto, directed against the recorder of said city to answer by what right he claims the authority to act as the chief executive officer of the city of Scranton under his appointment. The whole question was very ably argued by learned counsel on both sides of the controversy.

The learned judge of the court of common pleas of said county, who presided, handed down an opinion in which he held that the act of March 7, 1901, entitled "An act for the government of cities of the second class," was constitutional; that the Governor had the right to make an appointment of a recorder in a city of the second class, as provided in said act of Assembly; and that the recorder so appointed could exercise all the powers conferred upon him by said act of Assembly.

An appeal was taken to the Supreme Court, and was argued at a sitting of said court in the city of Philadelphia a few weeks later. This case was of such public interest that many of the ablest and most learned attorneys of the State participated in the arguments before the court. The Supreme Court sustained the court below.

The opinions of the court of Common Pleas of Lackawanna county and of the Supreme Court are hereto attached, and will be found under the proper headings in the Appendix.

PORT ALLEGHENY WATER COMPANY.

On the 6th day of September, 1900, the burgess and town council of the borough of Port Allegany, in the county of McKean, presented a petition to the Attorney General, which represented that said company was incorporated for the purpose of supplying the citizens of the borough of Port Allegany with a water for fire, domestic and manufacturing purposes. It was represented that, because of its charter privileges, it was the duty of said corporation to the Commonwealth, to the public and to the citizens of said borough to perform and carry out the purposes of its incorporation. It was alleged that said corporation had failed and neglected to supply the public in said borough with water for the extinguishment of fires, and that it had failed to su[illegible] that portion of the borough, wherein its mains had been laid, w[illegible]ient supply of water for domestic purposes. It was further alleged that said corporation had failed to supply large and populous portions of said borough with water, and that it had refused to lay mains, pipes and connections in a large part of the most populous portions of said borough. It was further alleged that it had failed and neglected to supply the citizens of said borough with a supply of water for manufacturing purposes. The petitioners therefore asked the Attorney General to file a suggestion for a writ of quo warranto for the purpose of forfeiting the charter of said corporation by reason of its failure and neglect to perform its duties and obligations imposed and required by its charter.

A hearing was fixed on the 12th day of February following, which was continued until the 27th day of February by consent of parties interested, at which time the representatives of the borough of Port Allegany, with their counsel and the representatives and counsel of the Port Allegany Water Company also appeared. After a full hearing in the case the Attorney General, upon due consideration, granted the prayer of the petitioners and directed the filing of a suggestion for a writ of quo warranto as requested. The suggestion was filed in the court of common pleas of Dauphin county on the 27th day of March, 1901. On the 9th day of April of the same year the answer was filed, and the whole proceeding was then conducted in the court of common pleas of Dauphin county until the 22d day of October, 1901, when the case was continued, in accordance with an agreement of the parties, and all matters in controversy were referred to the Hon. T. A. Morrison, president judge of the Forty-eighth judicial district, for his determination. On the 22d day of September, 1902, the report of the referee, adjusting the matters in controversy, was filed in said court.

OLD FORGE COAL MINING COMPANY.

Mortimer B. Fuller filed a petition on the 23d day of April, 1901, in this Department, asking for a suggestion for a writ of quo warranto to issue against the Old Forge Coal Mining Company. It was alleged in said petition that said company had been incorporated on the 24th day of July, 1893, under the general corporation act of 1874. It was further alleged that said company proceeded to carry out the purpose for which it was incorporated and continued to do so until the 27th day of February, 1901, on which date all the property of said company, real, personal and mixed, had been conveyed by deed and other proper conveyances to the Seneca Coal Company, a corporation of this State, for certain valuable considerations, and for the further reason that the property of the Old Forge Coal Mining Company could be no longer operated at a profit. It was alleged that said defendant company was then out of business and had no property or assets of any kind, and that it did not propose to engage in any further business under its charter, but that it had abandoned the enterprise, and therefore asked that a suggestion for a writ of quo warranto should be filed to forfeit its charter.

An answer was filed, admitting these facts, whereupon the Attorney General, on the 24th day of April, 1901, filed in the court of common pleas of Dauphin county a suggestion for a writ of quo warranto against said company. On the 1st day of May, 1901, an answer was filed to the suggestion in the court, and on the 6th day of May following the court entered a decree of ouster against The Old Forge Coal Mining Company.

HAWLEY AND EASTERN RAILROAD COMPANY.

Henry H. Sivelly presented his petition on the 3d day of July, 1901, showing that the Hawley & Eastern Railroad Company was incorporated on the 3d day of March, 1900, under the provisions of the act of April 4, 1868, and the supplements thereto. It was further alleged that said company had not proceeded to carry out the purpose for which it was incorporated, and it had no property or assets of any kind. It had abandoned the enterprise for which it was incorporated, and that it had worked a forfeiture of its charter. The Attorney General was asked to file a suggestion for a writ of quo warranto in the proper court, praying for a decree of ouster against the defendant company.

A suggestion was accordingly filed in the court of common pleas of Dauphin county on the 5th day of July, 1901. An answer was filed on the 9th of July and a hearing before the court had. On the 19th of July, 1901, the court decreed a dissolution of the corporation and an ouster of its corporate franchises.

NORTHERN CAMBRIA STREET RAILWAY COMPANY.

On the 14th day of September, 1901, a petition was filed by the counsel for the corporation known as the Northern Cambria Street Railway Company, showing that on the 31st day of July, 1901, said street railway company was incorporated under the street railway act of May 14, 1889, for the purpose of constructing and operating a passenger railway in the borough of Patton, Cambria county, in the State of Pennsylvania, and the townships adjacent thereto, by a certain route or routes set forth in the certificate of incorporation. It was alleged that before letters patent had been granted the aforesaid company, known as the Northern Cambria Street Railway Company, covering the routes therein mentioned, another company, called by the same name, to wit, the Northern Cambria Street Railway Company, had filed a petition with the Secretary of the Commonwealth for a charter over the same streets and highways as the company to which the letters patent had been granted on the 31st day of July, 1901, as aforesaid. It was further alleged, that on account of the companies bearing the same name, a mistake had been made in the office of the Secretary of the Commonwealth, and letters patent had been granted to both companies, bearing the same name, but composed of different persons.

It was alleged by the counsel of the Northern Cambria Street Railway Company, which lodged the complaint with the Attorney General, that the application of the said company had been filed in the office of the Secretary of the Commonwealth, accompanied by checks or drafts for the necessary fees and bonus due the Commonwealth, prior to the time when the application for the other company, called by the same name, and to which letters patent had been granted, had been filed. The petitioners contended that letters patent had been improvidently granted to the corporation bearing its name, but which had not filed its application in the office of the Secretary of the Commonwealth until after the first named company had filed its application, and was entitled to letters patent thereunder.

It was also alleged that such company had not paid into the treasury the ten per centum required by law prior to its incorporation. The petitioners asked that a suggestion for a writ of quo warranto be filed in the proper court asking for a decree of ouster against the company about which the complaint had been made. A hearing was fixed and on the 31st day of April, 1902, a decree of ouster was handed down by said court.

PHILADELPHIA AND NESHAMINY ELECTRIC RAILWAY COMPANY.

On the 16th day of October, 1901, Frank F. Bailey presented his petition to the Attorney General showing that on October 8, 1894, a charter was granted to the Philadelphia and Neshaminy Electric Railway Company for the purpose of constructing, maintaining and operating a street railway for public use in conveying passengers by route other than locomotive, under the provisions of the act of May 14, 1889. It was shown that the said company had not secured the right of way over the route authorized by its charter; had not laid any rails or ties, nor constructed any part of the railway for which the charter was granted, and that it had no cars, wires, poles, dynamos, power houses or other equipment necessary for the operating of street passenger railways.

It was further alleged that said company had never carried on any business in the city of Philadelphia, or elsewhere, or performed any other act or duty authorized or required by its charter, and that, by reason of these facts, the Commonwealth should proceed to oust it from the exercise of its franchise and privileges.

The hearing was fixed for the 29th day of October following, and after due consideration, a suggestion was filed in the court of common pleas of Dauphin county on the 12th day of November, 1901. An answer was filed in due time, and after hearing and consideration by the court, the corporation was ousted from the exercise of its privileges and franchises as a corporation.

JUNIOR ORDER UNITED AMERICAN MECHANICS.

On December 5, 1901, a petition was filed in this Department asking that proceedings in quo warranto be instituted against Amos L. Cray, et al, claiming to be a corporation of the State of Colorado, and the same parties constituting the Board of Control of the Beneficiary Degree of the Junior Order United American Mechanics, claiming to exercise the franchise of the corporation in Pennsylvania. A hearing was fixed in this case at which the parties in interest were represented by counsel, and at the hearing it appeared that this proceeding grew out of an unfortunate disagreement existing among the members of the Junior Order of United American Mechanics, a highly prosperous and popular secret order, having many members in this State.

It was alleged on the part of the petitioners that the defendants were engaged in issuing policies of life and accident insurance contrary to the laws of the State of Pennsylvania, and that they were exercising the functions of a mutual aid and funeral benefit association throughout the State of Pennsylvania through the me-

dium of the lodge system, without legal warrant, and divers other allegations were made tending to show the unlawful exercise of corporate rights and privileges. After a thorough examination of the evidence adduced, the writ was allowed and the proceedings are now pending in the court of common pleas of Philadelphia county.

SAMUEL G. MALONEY, SELECT COUNCILMAN.

On the 16th day of April, 1902, the president of the Municipal League of the city of Philadelphia filed with the Attorney General a petition showing that Samuel G. Maloney, who was elected select councilman from the Fifth ward in said city on the 18th day of February, 1902, and who was serving as select councilman at the time the petition was filed, then held and did on the day of his election hold the office of harbor master for the harbor of Philadelphia by an appointment of the Governor of the Commonwealth. It was alleged that the office of harbor master is a State office, and it was contended that the said Samuel G. Maloney was ineligible to serve as select councilman from the Fifth ward and hold the office of harbor master at the same time. The Attorney General was requested to file a suggestion for a writ of quo warranto against the said Samuel G. Maloney, requiring him to show by what warrant he held and exercised the duties of both offices.

The Attorney General being of the opinion that a legal question was involved in the controversy of such importance that it should be inquired into and passed upon by a court of competent jurisdiction, permitted a suggestion to be filed in court of common pleas No. 4, of the county of Philadelphia. The proceeding is pending there.

PHILIPSBURG AND HOUTZDALE STREET PASSENGER RAILWAY COMPANY.

George W. Zeigler, counsel for the Center and Clearfield Street Railway Company, a corporation created under the provisions of the act of June 7, 1891, presented a petition, showing that on the 16th day of September, 1892, a charter had been granted to the Philipsburg and Houtzdale Street Passenger Railway Company for the purpose of constructing and operating a passenger railway in Philipsburg, Chester Hill, Osceola Mills, Stirling and Houtzdale, and between the said points for a distance of about ten miles. It was also shown that letters patent had been granted on the 18th day of July, 1894, to the Clearfield Traction Company, a corporation organized under the act of March 22, 1887, for the purpose of the construction and operation of cables, motors and electrical appliances and

other machinery for supplying motive power to passenger railways. It was also alleged that on the 31st day of August, 1894, the Philipsburg and Houtzdale Passenger Railway Company made, executed and delivered to the said Clearfield Traction Company, for the term of ninety-eight years, a lease or transfer of all its corporate privileges. It was further shown that the Philipsburg and Houtzdale Street Passenger Railway Company had never carried on any business in Clearfield county or elsewhere, that it had not issued any stock nor certificates thereof, nor maintained an office for the transaction of the business of the company, and that it had never constructed or operated, in whole or in part, a passenger railway at the points or between the same, as set forth in its charter. It was alleged that its lessee, the Clearfield Traction Company, had never constructed and operated, in whole or in part, a passenger railway in or between said points, but that said companies had wholly neglected or failed to carry out the purposes for which they were incorporated. The Attorney General was requested to file a suggestion for a writ of quo warranto against said companies, compelling them to show by what right they claimed to exercise the franchises of a passenger railway company. The suggestion was filed in the court of common pleas of Clearfield county, and a decree of ouster was entered after proper hearing before the court.

MANDAMUS.

APPROPRIATION TO THE PUBLIC SCHOOLS.

On the 19th day of December, 1900, the attorney for the school directors of Patton township, in the county of Centre, State of Pennsylvania, presented a petition to the Attorney General, stating that the act of May 13, 1899, making an appropriation to the public schools for the two years commencing the first day of June, 1899, contains a provision appropriating the sum of $11,000,000 to be paid to the public schools during the two years therein designated; that said act had passed the Legislature with an appropriation of the amount indicated, and was then sent to the Governor for his approval or disapproval, as required by the Constitution; that the Governor claimed to exercise the right to approve of said appropriation for the sum of $10,000,000, and disapprove of the additional item of $1,000,000, and that the Superintendent of Public Instruction and the State Treasurer, believing that they had no

authority to make payment for the two years in question beyond the amount approved by the Governor, refused to pay to the several school districts of the Commonwealth, and to the school district represented by the petitioners, the pro rata amount to which they would be entitled, if the entire $11,000,000, as appropriated by the Legislature, had been approved by the Governor.

It was further represented to the Attorney General that the petitioners claimed that the district was entitled to its pro rata share of the $11,000,000 appropriated by the Legislature, notwithstanding the disapproval of the sum of $1,000,000 by the Governor. It was alleged that the Governor, in the exercise of his veto power, should have approved the item making the school appropriation either as a whole or disapproved it as a whole, and that his act in disapproving it in the sum of $1,000,000 was wholly void. It was further alleged that the appropriation should be paid on the basis of $11,000,000 for the two years designated in the act of Assembly, being at the rate of $5,500,000 annually. The petitioners represented that they were entitled to their pro rata share of the appropriation, as indicated, in the full sum of $11,000,000, and the State Treasurer and Superintendent of Public Instruction, having refused to make payment on the basis of $11,000,000 appropriation, asked that a suggestion for a writ of mandamus be filed in the court of common pleas of Centre county against the State Treasurer, requiring him to designate the amount to be paid to said district on the basis of $11,000,000, and that the Superintendent of Public Instruction be notified in writing that there were sufficient funds in the State Treasury with which to make said payment. It was represented by the petitioners that it would be more convenient for them to have the case tried in the court of common pleas of Centre county, and asked that a suggestion should be filed in said court by the Attorney General.

Upon the filing of said petition in the office of the Attorney General a hearing was fixed for the 31st day of December, 1900, which hearing, by consent of counsel, was continued until January 8, 1901, at which time, after a full hearing, it was ordered that a suggestion for a mandamus in the name of the Commonwealth should be filed against the State Treasurer in the court of common pleas of Centre county, as asked for in said petition. The suggestion was filed and the case was placed on the argument list in said county for the 24th day of January, 1901. The Attorney General represented the Governor and the State Treasurer in the hearing before the common pleas of Centre county, and argued the question at length, taking the position that, under the provisions of our Constitution, the Governor could approve an item of an appropriation bill either in whole or in part. The learned judge who presided in said court,

after due consideration, filed an opinion sustaining the contention of the Attorney General, and refused to issue the writ of mandamus against the State Treasurer, compelling him to pay the appropriation on the basis of $11,000,000 for the two years in question.

This was an important case, inasmuch as it was the first instance in which the question was raised under the Constitution, involving the right of a Governor to approve part of an item in an appropriation bill and disapprove another part of the same item. The counsel for the school district of Patton township took an appeal to the Supreme Court. The case was heard in that court sitting in the county of Philadelphia, in the following month, and the ruling of the court below was affirmed. Both courts held that the Governor in the exercise of the veto power conferred upon him by the Constitution, had the right to approve part of an item in an appropriation bill and disapprove part of the same item. The effect of this decision is far reaching and places in the hands of the Governor the power to protect the credit of the Commonwealth by reducing appropriations made by the Legislature from time to time to such an amount as will keep the expenditures of the State within the limit of its revenue.

The opinions of the learned court of common pleas of Centre county, as well as of the Supreme Court, are hereto attached and made part of the Appendix of this report.

PROCEEDINGS IN EQUITY.

PHILADELPHIA, TRENTON AND LEHIGH VALLEY R. R. CO., ET AL.

On the 6th day of May, 1901, a petition was presented by James A. Logan, general solicitor of the Pennsylvania Railroad Company, asking for the use of the name of the Commonwealth in an equity proceeding against the Philadelphia, Trenton and Lehigh Valley Railroad Company and certain other individuals and corporations therein named as defendants. It was represented in said petition that there was an unlawful combination of the lines of one or more railroad companies with several street passenger railway companies, for the purpose of constituting a continuous line of railroad and railways, and that such lines were to be constructed in part on township roads and borough and city streets and in part on property to be acquired by one or more railroad corporations under the powers possessed by such corporations under the laws of the Commonwealth. It was alleged that said combination or corporations and

individuals had undertaken to control and dominate, by the ownership of stock or otherwise, the corporations complained against, with all of their powers and franchises, for the purpose of constructing, maintaining and operating a through and continuous line of combined railroads and railways, and a continuous movement thereover of cars for the carriage of passengers and probably freight not warranted by law and against the statutory policy of the Commonwealth and against public policy. It was alleged that, if this unlawful combination were permitted to continue its operations, great injury would result to other railroad corporations, whose powers and privileges were limited by the laws and the Constitution of the State. It was further alleged that this combination of railroads and railways intended to operate steam roads and electric railways for the carrying of passengers and freight over the same system against the policy of the State. The Attorney General was asked permission to use the name of the Commonwealth in an equity proceeding to restrain said corporations and individuals from making an unlawful combination of their interests in a manner not authorized by law.

After hearing and due consideration the Attorney General made the following order:

> "And now, May 6, 1901, the foregoing bill in equity having been presented to the Attorney General, and a petition having been presented at the same time asking that proceedings be instituted in the name of the Commonwealth for the purpose of restraining the defendants in the exercise of certain privileges and franchises, which it is alleged they do not possess, and the exercise of which, it is contended, would be contrary to law.
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> "Wherefore, after due consideration, the use of the name of the Commonwealth is allowed so that all matters in dispute may be fairly and properly raised in the courts having jurisdiction thereof."

The bill was accordingly filed in the common pleas of Philadelphia county, No. 5, where the proceedings are pending.

ARDMORE RAILROAD COMPANY.

On July 29, 1901, counsel for the Philadelphia, Devon and West Chester Street Railway Company filed a petition in this Department showing that certain persons had applied for a charter for a corporation known as The Ardmore Railroad Company, and that letters patent had been duly granted by the Secretary of the Commonwealth to said company on the 14th day of May, 1901. It was also shown that the Philadelphia, Devon and West Chester Street Railway Company and the Philadelphia, Bridgeport and Schuylkill Street Railway Company had been duly incorporated on the 10th and 12th of June, 1901. It was alleged that the Ardmore Railroad Company was or-

ganized under the provisions of the general railroad act of 4th April, 1868, and the supplements thereto. It was further alleged that, notwithstanding the fact that the Ardmore Railroad Company had been incorporated under the general steam railroad act, the incorporators were attempting to organize and build said road with the further intent of operating a street railway under the act of May 14, 1889. It was alleged that the plan of the incorporators of said Ardmore Railroad Company was unlawful and against the statutory and public policy of the Commonwealth. The petitioners asked that the use of the name of the Commonwealth should be permitted in a proceeding to prevent and restrain the defendant company from building and operating a street railway under a charter obtained under the general railroad act of April 4, 1868.

After due consideration the Attorney General, in order that all of the questions should be properly raised before a court of competent jurisdiction, permitted the use of the name of the Commonwealth in an equitable proceeding. The petition was filed in the court of common pleas of Philadelphia county. All the questions involved were raised in that proceeding, and the court decided in favor of the contention of the petitioners.

DELAWARE VALLEY RAILROAD COMPANY.

Charles Shuman filed an affidavit with the Attorney General showing that he is a stockholder of the Delaware Valley Railroad Company, and alleging that the said company had issued stock and bonds in violation of section 7, article XVI, of the Constitution, and of the act of May 7, 1887 (P. L. 94). The petition alleged that the Delaware Valley Railroad Company was incorporated under the laws of Pennsylvania on the 6th day of October, 1899, with a capital stock of $1,000,000, and had for its purpose the building of a steam railroad from Saylorsburg, Monroe county, to Matamoras, Pike county, a distance of fifty-four miles. The petition further alleged that the Delaware Valley Construction Company was incorporated under the laws of the State of New Jersey, and that on the 13th day of July, 1901, the Delaware Valley Construction Company entered into an agreement in reference to the construction and equipment of the Delaware Valley Railroad over the above mentioned rout; and that in pursuance of said agreement, the Delaware Valley Construction Company proceeded to buy the right of way, and grade and construct a section of the road from East Stroudsburg, Monroe county, to Bushkill, Pike county, a distance of thirteen miles, and had proceeded so far with the work that trains had been operated over the said section of thirteen miles since September, 1901; that on the 21st day of June, 1902, the Delaware Valley Railroad Company, by resolution of its directors, authorized the issuance to the

Delaware Valley Construction Company of five thousand shares of stock of the par value of $50.00 per share, or a total par value of $250,000.00 of its capital stock; and also by resolution authorized the assigning and transfer of $190,000.00 first mortgage bonds of said Delaware Valley Railroad Company, said capital stock being issued and bonds assigned to the Delaware Valley Construction Company for the purpose of paying said construction company for the building and equipping of said road.

It was further alleged that at no time previous to the issuance of said stock of the Delaware Valley Railroad Company to the Delaware Valley Construction Company, nor since, had the president of said Delaware Valley Railroad Company, either with or without oath or affirmation by himself and the chief engineer of said company, filed, as required by the act of Assembly of May 7, 1887, in the office of the Secretary of the Commonwealth, a statement showing in detail that the prices paid or to be paid for the several kinds of labor done by the Delaware Valley Construction Company or the Delaware Valley Railroad, and for the property received or to be received by the said Delaware Valley Railroad Company from the said Delaware Valley Construction Company, were not in excess of the prices for which, at the time, labor was done or the property contracted for, it could have been obtained for money paid.

The petition further alleged that no certificate of stock had been filed by the president of the Delaware Valley Railroad Company, showing that no certificate of stock had been or would be issued in payment of said labor or property for a larger amount than the actual cash value of the labor or the property detailed in such statement.

It was further alleged that the sum of $175,000.00 mentioned as having been the actual cost of the property and material furnished by the construction company to the railroad company was greatly in excess of the market price of labor and material at the time the same was furnished.

It was further alleged that the construction company had not, at the time of the issuance of capital stock and assignment of bonds nor since, paid for all the right of way over the land through which the railroad company is constructed, there being several suits pending against the railroad company to determine the amount of damages due various parties on account of the construction of said railroad by the said construction company.

A hearing was fixed so that all of the parties might appear and be heard before the proceedings were instituted. At the hearing representatives of the Delaware Valley Railroad Company and the Delaware Valley Construction Company, as well as the Franklin National Bank, of the city of Philadelphia, which bank holds a large number of bonds issued by this company, appeared. After

full hearing, it was determined that the facts presented made a prima facie case under the act of 1887, and it was decided that the proceeding in equity should be instituted in the court of common pleas of Dauphin county to decide the matters in controversy.

STORE ORDER CASES.

An act was passed by the Legislature and approved by the Governor on the 24th day of June, 1901 (P. L. 546), entitled "An act to tax all orders, checks, dividers, coupons, pass-books or other paper representing wages or earnings of an employe, not paid in cash to the employe or member of his family; to provide for a report to the Auditor General of the same, and for the failure to make reports." This is what is commonly known as "The Store Order Act." It was passed by the Legislature to correct the supposed faults growing out of the company store business. Soon after this legislation went into effect the Auditor General made settlements against a number of companies doing a store order business, which settlements were based upon reports made to the Auditor General of the business done and the manner in which it was transacted. Settlements were made against the

Bethlehem Steel Company, No. 130, Com'th Dk. 1901.
Lehigh Coal and Navigation Co., No. 131, Com'th Dk. 1901.
Rochester and Pittsburg Coal and Iron Co., No. 132, Com'th Dk. 1901.
Buffalo and Susquehanna Railroad Co., No. 133, Com'th Dk. 1901.
J. S. Moyer & Co., No. 134, Com'th Dk. 1901.
Empire Coal Mining Co., No. 135 Com'th Dk. 1901.
A. Pardee & Co., No. 136, Com'th Dk. 1901.
Harvey & Sullivan, No. 137, Com'th Dk. 1901.
Hyatt School Slate Co., No. 138, Com'th Dk. 1901.
Susquehanna Coal Co., No. 290, Com'th Dk. 1901,
and several other companies.

The defendant companies thereupon took an appeal from the settlements made by the Auditor General to the court of common pleas of Dauphin county, and all questions relating to the act of 1901 were presented and argued to the court at that time.

In these cases the Attorney General was ably assisted by the Deputy Attorney General and by Messrs. Joseph P. O'Brien, D. J. McCarthy, John M. Carr and William Wilhelm, who were the special attorneys for the mine workers interested in the enforcement of the law.

The Commonwealth found it difficult to present to the court for its consideration a statement of facts in each particular case such

as would bring the companies under the express terms of the store order act. The first section of said act, among other things, provides, that:

> "Every person, firm, partnership, corporation or association, shall, on the first day of November, of each and every year, make report under oath or affirmation to the Auditor General of the number and amount of all orders, checks, dividers, coupons, pass books, and all other books and papers representing the amount, in part or whole, of the wages or earnings of the employe that was given, made or issued by him, them or it for payment of labor."

The court held that under the express provisions of the act of Assembly it was necessary for the Commonwealth to show that the person, firm, partnership, corporation or association had issued the order, check, divider, coupon, pass-book and any other book and paper, and that it had failed in its contention unless these conditions were made apparent; or, in other words, it was held that the order, of check, or coupon must be issued by the company to the employe before the act would apply at all.

In most of the cases above enumerated the testimony submitted showed that the order, check or coupon was issued by the employe upon the company and not by the company upon the employe. The court, therefore, following this line of reasoning, decided all cases thus far disposed of, in favor of the defendant.

On the 31st day of December, 1902, the court handed down an opinion in the case of the Lehigh Coal and Navigation Company, No. Commonwealth Docket, 1901. This case was heard at the same time others were presented to the court, but the opinion was not handed down until the date above mentioned. The opinion in this case reaffirms what was said in the former cases; but goes one step further, and decides in the third conclusion of law as follows:

> "The execution imposed on defendant by said company and charged against it in said settlement was intended to, and if the act were sustained, would inflict a penalty on defendant for doing that which it has no legal and constitutional right to do, and the act is therefore invalid and unconstitutional."

In this case, the court went further than in any other of the preceding cases, by declaring the act invalid and unconstitutional. The Attorney General has directed exceptions to be filed in this case, with a view of taking it to the Supreme Court so that the matter may be finally disposed of.

There is still one case pending before the Dauphin county court; that is to say, Commonwealth vs. A. Pardee & Co., No. 136, Com-

monwealth Docket, 1901. This is the case on which the Commonwealth most strongly relied to sustain its position. It was the only case where such facts were submitted in evidence as would clearly bring the company within the provisions of the law, if the act were held to be valid and constitutional. Inasmuch as appeals have been filed in these cases and they are still pending in the court, the Commonwealth feels justified in its report concerning the same to state at length its reasons in support of the validity and constitutionality of the act.

The Commonwealth contends that the Legislature had the power to enact a statute containing the provisions of the act of June 24, A. D. 1901 (P. L. 596). This is "An act to tax all orders, checks, dividers, coupons, pass books or other paper representing the wages or earnings of an employe not paid in cash to the employe or member of his family."

The real question involved in this controversy is whether the Legislature has such power. If it has, then the act in question, in its general provisions at least, must be held good. If it does not have the power to make such a classification for the purposes of taxation, then, of course, the act is bad. Counsel for the Commonwealth do not doubt the proposition that the Legislature had the power to make a classification of taxable subjects, imposing a tax upon orders, checks, dividers, coupons, pass books and other papers representing the wages or earnings of an employe.

It may be conceded that the legislation in question seeks to impose a tax in the nature of a penalty upon persons, firms, partnerships, corporations or associations which undertake to pay their employes as suggested in this act of Assembly. It may very properly be called a privilege or franchise tax. For upwards of a quarter of a century a sharply defined contest between mining, manufacturing and other companies and their employes has been waged within our State on this vexed question. The company store, in its dealings with laboring men, has caused more sharp friction between the employed and the employer than any other question affecting capital and labor. This friction has resulted from very natural causes. Those who control mining and manufacturing companies are anxious to make the largest earnings possible out of their enterprises, and it was found that, in selling merchandise to their employes, large profits arose. The owners of these stores, feeling that their employes were dependent upon them for their daily wages and were under such obligations that they could not dispute prices, very naturally charged exorbitant prices for the goods sold to them. This always produced unrest and discontent among the employes.

On the other hand, the employe who had agreed to work for

his employer for a certain amount per day or per ton, felt that he had performed his part of the contract when the labor was properly done, and that he should receive in cash the price of his wages. He naturally felt that he had earned his daily wages by honest toil, and that he had a right to take that money and spend it like a king if he so chose. He felt that he had the natural and inalienable right to do with the wages of his labor what he chose to do. He had the right to spend it where he wanted to spend it. He had a right to buy his goods, wares and merchandise wherever he chose to purchase the same. The employer and the employe looked upon the question from different points of view, as a result, these question have reached the Legislature and the courts many times.

As far back as June 29, A. D. 1881 (P. L. 147), an act was passed "to secure to operatives and laborers engaged in and about coal mines, manufactories of iron and steel and all other manufactories the repayment of their wages in regular intervals and in lawful money of the United States." This act was broad and sweeping in its terms, and was intended to drive out of existence what is knowu as "The Company Store." It would have been a wise thing for the owners of the company stores, as well as for the laboring men, if the company stores had ceased to do business then. While it is no part of the argument of this case, yet as an economic problem it may be doubted whether the profits reaped from the company store have repaid the great cost in the nature of labor agitation that has grown out of this controversy.

It is true that the act of 1881 was declared unconstitutional in the case of Godcharles & Co. v. Wigeman, 113 P. S., 431. It was declared to be unconstitutional, however, on the ground that that act undertook to deprive the employer and the employed from entering into contracts with each other. The learned Mr. Justice Gordon, in his very short opinion, expressly places his objections to that act on the ground that it interferes with the right of contract between persons, in the following language:

> "The act is an infringement alike of the right of the employer and the employe; more than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States."

The declaring of the act of 1881 to be unconstitutional did not put an end to this controversy. The issue was more sharply defined than before. For ten years, at every session of the Legislature, bills were presented and hard pressed by representatives of labor throughout the State. The result of this agitation was the passage of the act, ten years later, on June 9, 1891 (P. L. 266). This

act prohibits mining and manufacturing corporations from engaging in the business of carry on stores known as company and general supply stores. The act of 1891 must be considered as the expression of legislative authority and public policy on the question of the company store. It was then declared to be the policy of Pennsylvania to prohibit corporations from engaging in the business of carrying on these stores. This prohibition is absolute within the limitations of the act. It is made the duty of the Attorney General to proceed against all corporations and forfeit their charters when they are found to be engaged in the comapny store business. If the corporations and persons engaged in mining and manufacturing had accepted in good faith the provisions of the act of 1891, and had ceased to do a company store business with their employes, this agitation would have stopped long ago. These companies, however, undertook, in some instances, to devise ways and means to escape the provisions of the act of 1891. Mining and manufacturing companies did not directly operate their stores after the enactment of that law, but separate stores were organized, largely composed of the same persons who were interested in the mining and manufacturing business. There were two companies instead of one, but the same people, as a rule, were interested in both enterprises, and the profits of the store as well as of the mining and manufacturing concern, went into the same pockets. As a result of this attempt to evade the provisions of the act of 1891 a system was devised between the mining and manufacturing company and the store company by which the employe was either required or expected to deal in the store and his store bills were paid by the mining and manufacturing company to the store company. Different companies devised different systems. In some cases orders were issued; in others, checks; in others, dividers; in others, coupons; in some pass books; and in others a written agreement of some nature was entered into between the companies and the employes, but in whatever form the business was transacted it meant in the end that the employe should deal in the store, and that the employer would pay his store bills and deduct those bills from his wages of labor upon pay day.

In this connection it is only just to say that many of the leading corporations of the State accepted the provisions of these laws in good faith, and, knowing that it was the declared policy of the Commonwealth not to permit the company store business either directly or indirectly, have abandoned their business and permitted their employes to buy their goods, wares and merchandise wherever they chose to purchase them. In nearly every instance, where this policy has been pursued, pleasant relations have been established between the contending parties. There are not many companies in

the State, engaged in the store business at present. Those companies engaged in such business are running counter to the spirit of our laws and the declared policy of the Commonwealth. The act of 1901 is the latest attempt of the Legislature to bring this business within the control of properly constituted authority.

What is this act of 1901? It is simply a classification of certain kinds of business for the purposes of taxation. It imposes a tax upon orders, checks, dividers, coupons, pass books and other papers representing the wages or earnings of employes, not paid in cash by the employer. It is a natural classification of subjects in the first instance. It is a classification that has been made by twenty-five years of sharply defined controversy. The issuing of checks, orders, coupons, dividers, pass books and other papers is an indirect method of doing a business which cannot be done directly, and we therefore contend that it is a classification which is the natural outgrowth of this kind of business. These companies have themselves made a classification of taxable subjects which the Legislature and the courts should respect. It is not an unnatural or an unreasonable classification. It is both natural and reasonable. It is natural because it has grown out of the business methods of these companies. It is reasonable because these companies having made a classification themselves in order to evade at least the spirit of the law, should not now be permitted to say that it is unreasonable for the Legislature to take cognizance of a classification of subjects such as they themselves have brought into existence.

The learned counsel for the companies has said that this act was intended to tax this business out of existence. Well, suppose it is. That does not say that the Legislature had not the authority to do it. This kind of business is under the ban of the law now in a certain sense; it is against the spirit of our statutes. Why, therefore, is it not a proper thing for the Commonwealth, under its taxing power, to say, "If this kind of business is transacted we will require you to pay a large tax for the privilege of so doing?" Our contention is that there is no provision of the Constitution that denies the right of the Legislature to impose such a tax, and if there is no provision of the Constitution that expressly limits this power, then the right of the Legislature to pass such an act is unquestioned.

The Legislature has time and again passed laws making a classification for the purpose of imposing such taxes, as for illustration, the act of June 7, A. D. 1879 (P. L. 112). This act imposes a tax on mortgages, money owing by solvent debtors, also articles of agreement and accounts bearing interest, shares of stock in banks, public loans, and stocks and other evidences of indebtedness. This act has been amended and its provisions extended from time

to time, but the right of the Legislature to impose a tax upon mortgages, money owing by solvent debtors, promissory notes, penal or single bills, bonds or judgments, articles of agreement and accounts bearing interest has never been questioned.

The exceptions to the act of 1879 and its supplements might be enumerated in the same detail that the learned counsel has enumerated objections to the act of 1901. For instance, the act of 1879 imposed tax only upon money owing by solvent debtors. If the money were owed by an insolvent debtor the tax was not imposed. The tax was imposed upon articles of agreement and accounts bearing interest. Articles of agreement and accounts that did not bear interest, though they might be of as great value as those that did, were not taxed. The act of 1901 imposes a tax upon an order or a check or a divider or a coupon or a pass book or other paper issued for wages in the transactions between companies and the stores and their employes. The Legislature has just as much right to impose a tax upon an order, or check, or coupon, or divider, or pass book issued in the manner stated as it has to impose a tax upon a mortgage or a promissory note or a penal or a single bill.

It is argued on the other side that this act imposes a tax upon orders, checks, dividers, coupons, pass books and other papers representing the wages or earnings of labor of an employe, and therefore limits the taxation to a certain class of these orders, checks, coupons, etc. The answer to that suggestion is that orders, checks, dividers, coupons, pass books and other papers representing wages and earnings are never issued except to or by stores run by mining and manufacturing companies where labor is employed. The stores of other merchants and employers do not issue such checks, orders, dividers, coupons and pass books. The contention of the Commonwealth, therefore, is that the act of 1901 is as broad as the subjects intended to be covered; that it does include the whole taxation of orders, checks, dividers, coupons, pass books issued for the wages of labor, and, inasmuch as these checks and orders are not issued by any other persons except mining and manufacturing companies having some kind of a relationship with these stores, the whole subject is included.

It is the plain intention of this legislative enactment to impose a tax upon all orders, checks, dividers, coupons, pass books and other papers representing the wages or earnings of an employe not paid within thirty days from the date of the issuing of such order, check, etc. If the orders, checks, dividers, coupons, pass books and other paper are paid in cash within thirty days to the employe or a member of his family, then the act does not operate. The act is general in its terms and applies to every person, firm, partnership, corporation or association issuing such orders, checks, etc. The

Legislature had the right to make such a classification. The Supreme Court of the United States, in the case of the State Tax on Foreign-held Bonds, 15 Wall., 300, said that the subjects of taxation are "persons, property and business." Under this rule, the Legislature has the right to impose a tax upon persons, property and business. In that case Mr. Justice Field, who delivered the opinion of the court, very properly said, at page 319:

> "Whatever form taxation may assume, whether as duties, imposts, excises, or licenses, it must relate to one of these subjects. It is not possible to conceive of any other, though as applied to them, the taxation may be exercised in a great variety of ways. It may touch property in every shape, in its natural condition, in its manufactured form, and its various transmutations. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction."

In revenue laws, classification is absolutely necessary in order to arrive at anything like uniformity in taxation, and almost every kind of classification has been made and sustained by the courts.

As far back as 1799 the right to make classification of hawkers and peddlers was recognized. The provisions of the old law were re-enacted and extended by the act of April 2, 1830 (P. L. 147), wherein it was provided that a peddler on foot should pay eight dollars license; a peddler with one horse and cart or wagon, sixteen dollars; a peddler with two horses and wagon, twenty-five dollars. This act was held by the Supreme Court not to apply to tin and clock peddlers. Here there was a classification, not only to peddlers, but a distinction as to the particular kind of peddlers.

Again, in the act of April 29, A. D. 1844 (P. L. 497), the right to classify animals by their ages for the purpose of paying taxes was recognized. In that act it was provided that horses, mares, geldings, mules and neat cattle over the age of four years should pay a personal property tax, while those under that age were exempted from the payment of such taxes.

In the same act, at page 499, pleasure carriages and watches owned and kept for use were taxed according to a certain classification. Gold lever or other gold watches of equal value, one dollar. Upon every other description of gold watches and upon silver

lever watches, or other silver watches of like value, seventy-five cents. Upon every other description of watches of the value of twenty dollars or upwards, fifty cents.

The borough act of 1851 (P. L. 322), gave the right to levy and collect annually a tax on the owners of dogs and bitches, not exceeding one dollar on the owner of one dog and two dollars on the owner of but one bitch.

The act of 24th March, A. D. 1868 (P. L. 444), recognizes the right to make a classification of lands for the purpose of taxation. In that act it was made the duty of the Board of Revision in the city of Philadelphia to classify the real estate in such manner and upon testimony produced before them as to discriminate between the rural and built-up portions of said city. That act authorized one classification to be agricultural and farm land; another classification was rural and suburban lands; and the other class the built-up portions of the city. This right to classify lands has existed from time immemorial. In the rural portions of the State lands are divided into arable or cultivated land, and timber or unimproved lands. Taxes are assessed at a higher rate upon arable and cultivated land than upon timber lands.

The right to make a classification of coal has been judicially sustained. It has been held that it was competent for the Legislature to place a tax upon anthracite coal and exempt bituminous coal from the same kind of tax.

The right to classify persons as to their being married or unmarried has also been recognized. A per capita tax of one dollar is levied and collected against all male unmarried persons over the age of twenty-one years for the support of schools. Married persons are not subject to the payment of this tax. The right to make such a classification has not been questioned.

The act of May 25, A. D. 1893 (P. L. 136), provides a classification of dogs for the purposes therein specified. Each male dog is to be taxed at a rate not exceeding two dollars per annum, and each female dog is to be taxed at a rate not exceeding four dollars per annum.

The act of June 25th, A. D. 1895, recognizes the right to make a classification of wagons by the width of the tires, by making a rebate in the taxes assessed against the person who owns the wagon. In other words, certain taxes are paid by the owner of a wagon having a tire more than four inches in width.

Such classification, whether of persons, things or property dealt in, is matter of frequent legislative action, and has always been sustained.

In Kitty Roup's case, 81* Pa., 218, the court in a per curiam opinion, announced their decision in the following language:

> "No opinion is given except that we all agree that the power to classify subjects of taxation is not taken away by the new Constitution."

So prior to the Constitution in Durach's Appeal, 62 Pa., 494, Mr. Justice Sharswood, in delivering the opinion of the court, said:

> "But in the legitimate exercise of the power of taxation, persons and things always have been and may constitutionally be classified. No one has ever denied this proposition. To hold otherwise would logically require that all the subjects of taxation, as well persons as things, should be assessed and an equal rate laid ad valorem. Practically, no more unequal system could be contrived."

So in Bell's Gap R. R. Co. vs. Penna., 134 U. S., 237, the court held that the fourteenth amendment to the Constitution of the United States did not prohibit classification by State Legislatures in matters of taxation; and the court, per Mr. Justice Bradley, said (page 237):

> "The provision in the fourteenth amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases. They must be decided as they arise. We think that we are safe in saying that the fourteenth amendment was not intended to compel the State to adopt an iron rule of equal taxation. If that were its proper construction, it would not only supersede all those constitutional provisions and laws of some of the States, whose ob-

ject is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every State, in one form or another, deems it expedient to adopt."

We have cited at considerable length a number of cases bearing on the subject of classification, for the reason that the learned counsel for the defendant company has based his argument almost entirely upon the proposition that the Legislature did not have the power to make a classification of taxable subjects such as is contained in the act of 1901 taxing orders, checks, coupons, etc. We contend that, under the voluminous authorities above cited, the Legislature had ample power to make the classification set out in the act of 1901.

THE ACT OF 1901 DOES NOT CONTRAVENE THE PROVISIONS OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

This question, if it had been in doubt heretofore, was conclusively settled in an opinion handed down by the Supreme Court of the United States on October 21, A. D. 1901. Inasmuch as this case does not appear in any of the reports, we take the liberty of printing it in full as contained in advance sheets certified by the clerk of the Supreme Court at Washington.

The Dayton Coal and Iron Company, (Limited), Plaintiff in Error,
vs.
T. A. Barton.

In error to the Supreme Court of the State of Tennessee.

"This was an action tried in the circuit court of Rhea county, Tennessee, wherein T. A. Barton, a citizen of Tennessee, sought to recover from the Dayton Coal and Iron Company (Limited), a corporation organized under the laws of Great Britain, and doing business as a manufacturer of pig iron and coke in said county. The company owns a store, where it sells goods to its employes and other persons. The company also has a monthly pay day, and settles in cash with its employes on said pay day. In the meantime, and to such of its

employes as see fit to request the same, it issues orders on its storekeeper for goods.

"On March 17, 1899, the Legislature of Tennessee passed an act requiring 'all persons, firms, corporations and companies, using coupons, scrip, punchouts, store orders, or other evidences of indebtedness to pay laborers and employes for labor or otherwise, to redeem the same in good and lawful money of the United States in the hands of their employes, laborers, or a bona fide holder, and to provide a legal remedy for collection of same in favor of said laborers, employes and such bona fide holders.'

"This was a suit brought by said Barton to recover as a bona fide holder of certain store orders that had been issued by the defendant company to some of its laborers in payment for labor. The defendant company denied the validity of the legislation, as well under the laws and constitution of Tennessee as the fourteenth amendment of the Constitution of the United States. The plaintiff recovered a judgment against the company in the circuit court of Rhea county, and this judgment was affirmed by the Supreme Court of Tennessee, whereupon a writ of error from this court was allowed by the Chief Justice of the Supreme Court."

Mr. Justice Shiras delivered the opinion of the court.

"The only question presented for our consideration in this record is the validity, under the fourteenth amendment of the Constitution of the United States, of the act of the Legislature of the State of Tennessee, prescribing that corporations and other persons, issuing store orders in payment for labor shall redeem them in cash, and providing a legal remedy for bona fide holders of such orders.

"In the case of The Knoxville Iron Company v. Samuel Harbison, in error to the Supreme Court of Tennessee, decided at the present term, we affirmed the judgment of that court sustaining the constitutional validity of the State legislation in question, and the cause now before us is sufficiently disposed of by a reference to that case.

"The only difference in the cases is, that in the former the plaintiff in error was a domestic corporation of the State of Tennessee, while, in the present, the plaintiff in error is a foreign corporation. If that fact can be considered as a ground for a different conclusion, it would not help the present plaintiff in error, whose right, as a foreign corporation, to carry on business in the State of Tennessee, might be deemed subject to the condition of obeying the regulations prescribed in the legislation of the State. As was said in Orient Insurance Co. v. Daggs (172 U. S. 577), that 'which a State may do with corporations of its own creation it may do with foreign corporations admitted into

the State * * * The power of a State to impose conditions upon foreign corporations is certainly as extensive as the power over domestic corporations, and is fully explained in Hooper v. California (155 U. S. 648).'

"We do not care, however, to put our present decision upon the fact that the plaintiff in error is a foreign corporation, nor to be understood to intimate that State legislation, invalid as contrary to the Constitution of the United States, can be imposed as a condition upon the right of such a corporation to do business within the State. (Home Ins. Co. v. Morse, 20 Wall. 445; Blake v. McClung, 172 U. S. 239, 254).

"The judgment of the Supreme Court of Tennessee is

Affirmed.

"Mr. Justice Brewer and Mr. Justice Peckham dissent."

The ruling in the above case was based upon another decision of similar import, the opinion of the Supreme Court being handed down the same day. The whole question was more fully discussed in the other case, and we set it out in full in our brief of argument.

"Many of the defendant's employes have never drawn an order on the defendant, and many others have used them only in the purchase of coal for themselves; but the defendant in this way pays off about seventy-five per cent. of the wages earned by its employes. Many of the employes who draw these orders get small wages, ninety cents to one dollar and twenty cents per day, and sell these orders to get money to live on, but those who get the largest wages, $65 to $175 per month, draw more of such coal orders in proportion than do those who get small wages. Defendant has never insisted upon any of its laborers giving any such orders but has been willing to accept such orders when any employe would draw them and ask their acceptance. Defendant, however, sets apart every Saturday afternoon, from one o'clock to five o'clock, for the acceptance of such orders. It makes some profit in accepting said orders in that, instead of paying the wages of its employes in cash, it pays them in coal at 12 cents per bushel, and also, to some extent, its coal business is increased thereby. On the other hand, such orders are a convenience to the defendant's employes in the way of enabling them to realize on their wages before the regular monthly pay day and up to that pay day. When these orders are drawn by defendant's employes and accepted, defendant credits himself with said orders on its accounts with the persons so drawing them at the rate of twelve cents per bushel for the amount of coal called for by said orders. There is no proof of an express agreement

between the defendant and its employes that the orders should be paid only in coal, unless the face of the order shall be construed as setting forth such an agreement. The only proof of any implied agreement to that effect is to be found in such inferences as may be drawn from the face of the orders and from the custom of the company to issue them and the employes to receive them on other than the regular cash pay days and the fact that no employe has ever presented one of such orders for redemption in anything else than coal. There is no proof of any compulsion on the part of the defendant upon its operatives, except in so far as compulsion may be implied from the fact that unless defendant's operatives take their wages in coal orders they must always on each monthly pay day suffer the defendant to be in arrears about twenty days—that is, that on the regular pay day on that Saturday which is the nearest the 20th of the month the defendant will not pay wages, except up to the last day of the preceding month, but will pay in coal orders the whole wages due at the end of each week, and that such is the course of business between the defendant and its employes. The complainant purchased six hundred and fourteen of said accepted orders from defendant's employes, and within thirty days from the issuance of each of said orders he presented each of them to the Knoxville Iron Company, defendant hereto, and demanded that it redeem them in cash, which was refused by defendant. Complainant is a licensed dealer in securities and sent his agents among the employes of the defendant to buy these coal orders. They had previously been selling at seventy-five cents on the dollar—that is, before the passage of chapter 11, acts of 1899—but he instructed agents to give eighty-five cents on the dollar, and the orders now in suit were purchased at that price. They amount in dollars and cents to $1,678.00. There is no evidence of bad faith on the part of the complainant in the purchase of said orders."

The orders sued on in this case were issued after the passage of the act of March 17, 1899.

From the decree of the Chancery Court of Appeals an appeal was taken by the company to the Supreme Court of Tennessee, by which court the decrees of the courts below were affirmed. The case was then brought to this court by a writ of error allowed by the Chief Justice of the Supreme Court of Tennessee.

Mr. Justice Shiras delivered the opinion of the court.

This is a suit in equity brought to this court by a writ of error to the Supreme Court of the State of Tennessee, involving the validity, under the Federal Constitution, of an act of the Legislature of Tennessee, passed March 17, 1899, requiring the redemption in

cash of store orders or other evidences of indebtedness issued by employers in payment of wages due to employes.

The caption and material portions of this act are as follows.

"An act requiring all persons, firms, corporations and companies using coupons, scrip, punch-outs, store orders or other evidences of indebtedness to pay laborers and employes for labor, or otherwise to redeem the same in good and lawful money of the United States in the hands of their employes, laborers or a bona fide holder, and to provide a legal remedy for collection of same in favor of said laborers, employes and such bona fide holder.

"Section 1. Be it enacted by the General Assembly of the State of Tennessee, That all persons, firms, corporations and companies, using coupons, scrip, punch-outs, store orders or other evidences of indebtedness to pay their or its laborers and employes, for labor or otherwise, shall, if demanded, redeem the same in the hands of such laborer, employe or bona fide holder, in lawful money of the United States: Provided, The same is presented and redemption demanded of such person, firm, company or corporation using same as aforesaid, at a regular pay day of such person, firm, company or corporation to laborers or employes, or if presented and redemption demanded as aforesaid by such laborers, employes or bona fide holders at any time not less than thirty days from the issuance or delivery of such coupon, scrip, punchout, store order or other evidence of indebtedness to such employes, laborers or bona fide holder. Such redemption to be at the face value of said scrip, punchout, coupon, store order or other evidence of indebtedness: Provided further, Said face value shall be in cash the same as its purchasing power in goods, wares and merchandise the commissary, company store or other repository of such company, firm, person or corporation aforesaid.

"Section 2. Be it further enacted, That any employe, laborer or bona fide holder referred to in section 1 of this act, upon presentation and demand for redemption of such scrip, coupon, punchout, store order or other evidence of indebtedness aforesaid, and upon refusal of such person, firm, corporation or company to redeem the same in good and lawful money of the United States, may maintain in his, her or their own name an action before any court of competent jurisdiction against such person, firm, corporation or company, using same as aforesaid for the recovery of the value of such coupon, scrip, punchout, store order or other evidence of indebtedness, as defined in section 1 of this act."

"The Supreme Court of Tennessee justified its conclusions by so full and satisfactory a reference to the decisions of this court as to render it unnecessary for us to travel over the same ground. It will be sufficient to briefly notice two or three of the latest cases.

"In Holden v. Hardy (169 U. S. 366), the validity of an act of the State of Utah, regulating the employment of workingmen in underground mines and fixing the period of employment at eight hours per day, was in question. There, as here, it was contended that the legislation deprived the employers and employes of the right to make contracts in a lawful way and for lawful purposes; that it was class legislation, and not equal or uniform in its provision; that it deprived the parties of the equal protection of the laws; abridged the privileges and immunities of the defendant as a citizen of the United States, and deprived him of his property and liberty without due process of law. But it was held, after full review of the previous cases, that the act in question was a valid exercise of the police power of the State, and the judgment of the Supreme Court of Utah, sustaining the legislation, was affirmed.

"Where a contract of insurance provided that the insurance company should not be liable beyond the actual cash value of the property at the time of its loss, and where a statute of the State of Missouri provided that in all suits brought upon policies of insurance against loss or damage by fire, the insurance company should not be permitted to deny that the property insured was worth at the time of issuing the policy the full amount of the insurance, this court held that it was competent for the Legislature of Missouri to pass such a law even though it places a limitation upon the right of contract. (Orient Insurance Co. v. Daggs, 172 U. S. 557.)

"In St. Louis Iron Mountain Railway v. Paul (173 U. S. 404), a judgment of the Supreme Court of Arkansas, sustaining the validity of an act of the Legislature of that State which provided that whenever any corporation or persons engaged in operating a railroad should discharge, with or without cause, any employe or servant, the unpaid wages of any such servant then earned should become due and payable on the date of such discharge without abatement or deduction, was affirmed. It is true that stress was laid in the opinion in that case on the fact that, in the Constitution of the State, the power to amend corporation charters was reserved to the State, and it is asserted that no such power exists in the present case. But it is also true that, inasmuch as the right to contract is not absolute in respect to every matter, but may be subjected to the restraints demanded by the safety and welfare of the State and its inhabitants, the police power of the State may, within defined limitations, extend over corporations outside of and regardless of

the power to amend charters. (Atchison, Topeka and Santa Fe Ry. v. Matthews, 174 U. S. 96.)

"The judgment of the Supreme Court of Tennessee is

Affirmed.

"Mr. Justice Brewer and Mr. Justice Peckham dissent."

BRIDGE PROCEEDINGS UNDER THE ACT OF JUNE 3, 1895.

Under the act of June 3, 1895 (P. L. 130), the Commonwealth is required to rebuild all bridges known as county bridges which are, or may hereafter be erected over navigable rivers and such streams as have been declared public highways by act of Assembly, which may be carried away or destroyed by flood, fire or other casualty. During the period from 1895 to 1899, while the Honorable Henry C. McCormick served as Attorney General, two bridges were rebuilt by the Commonwealth in accordance with the provisions of said act. The first one across the North Branch of the Susquehanna river at Catawissa, Columbia county, in 1896-1897. The second across the Juniata river near Birmingham, Huntingdon county, in 1897-98.

During the term of office of the present incumbent proceedings have been instituted under said act for the rebuilding of thirty-four additional bridges. Of this number, proceedings in thirty-one cases have been instituted during the past year. The first bridge built at Catawissa cost the Commonwealth about $82,400.00. While the majority of bridges are being constructed over creeks and small rivers, in the aggregate, they will entail the expenditure of thousands of dollars upon the Commonwealth, if the past year serves as a criterion with regard to floods and the destruction wrought thereby. The business of bridge building during the coming years, so far as the superintending and providing for their construction is concerned, will not only prove a great burden to the Commonwealth, but will also prove a serious menace to the State Treasury.

In four cases, after the proceedings had been regularly instituted, the Attorney General, in behalf of the Commonwealth, filed exceptions to the reports of the viewers in each case because in his judgment the act of Assembly had not been strictly complied with, either by the county seeking the new bridge or by the viewers recommending its construction. In the case of the bridge over the Loyalsock creek in Sullivan county, the said creek had not been declared to be a public highway by act of Assembly, and on this ground the

rebuilding of the bridge by the Commonwealth was resisted. In the case of the bridge across Towanda creek, in Bradford county, at Monroeton, exceptions were filed by the Attorney General on the ground that the bridge alleged to be destroyed was not entirely carried away by the flood within the meaning of the act; a portion of the bridge remaining. The court sustained the contention of the Commonwealth in an elaborate opinion.

In the case of the bridge over the Lehigh river at Allentown, exceptions were filed by the Attorney General on the ground that the viewers appointed by the court recommended a more elaborate and costly bridge than was necessary, considerably increased the height, width and length as compared with the old bridge, and further recommended a bridge for the joint use of the public and a traction company, and other features which were desired by the Central Railroad Company of New Jersey in order to obviate a grade crossing. The proposed cost was $225,000. For these reasons the Attorney General thought it proper to halt the rebuilding of the bridge at least until satisfactory arrangements could be entered into with the corporations affected thereby.

In the case of the bridge over Tunkhannock creek, in Nicholson township, Wyoming county, exceptions were filed to the report of the viewers on the ground that the stream to be bridged was not only not a public highway, so declared by act of Assembly, but that it was not a "navigable river" within the meaning of act of Assembly. After taking a number of depositions, tending to show that the stream had been used for rafting logs for the past half century, and that in this sense, it was a navigable river within the meaning of the act, and after argument thereon, Judge Simonton handed down an elaborate opinion in which he sustained the contention of the Commonwealth holding that even though the said stream had been used for rafting, that this did not constitute it navigable within the true meaning and intendment of the act of Assembly.

The procedure for rebuilding county bridges by the Commonwealth under said act is as follows:

The commissioners of the county in which the bridge was destroyed, or carried away, or the commissioners of one or more counties, when such bridge crosses the boundary line between them, petition the court of common pleas of Dauphin county setting forth the location of the bridge, the time when a bridge was first erected in the same location, the time the bridge was carried away or destroyed, the character of the bridge so carried away or destroyed and the probable cost of replacing the same, whereupon the court shall appoint five viewers, one of whom shall be a civil engineer, and not more than two of whom shall be residents of the county wherein such bridge is proposed to be built. The viewers so appointed, after

having been qualified to perform their duties with fidelity, shall view the location of the proposed bridge and make report, at such time as the court may direct, which report shall contain a statement of the kind or character of the bridge destroyed or carried away, the length of time since first bridge was built, the length of bridge, with a recommendation as to the kind of bridge needed, and the probable cost thereof. The viewers shall also inquire whether the accommodation of the travelling public in the locality demands the rebuilding of the bridge. After the report of the viewers is filed, both the county and the Commonwealth have the right to file exceptions thereto within the period of thirty days. The court, after hearing by deposition or otherwise, shall determine all question raised by the petition or the exceptions, and either party shall have the right to appeal to the Supreme Court within thirty days. If the viewers, or a majority of them, recommend that the bridge be rebuilt by the State, and no exceptions have been filed thereto, the court shall confirm said report and shall order and decree such bridge to be rebuilt by the Commonwealth, and the Board of Public Grounds and Buildings shall immediately have prepared, in conformity with the report of the viewers, such plans and specifications of the proposed bridge as may be necessary, and after advertising for bids for a period of three weeks shall proceed to let the contract for the rebuilding of such bridge, and on behalf of the Commonwealth, enter into contract for the same with the successful bidder.

After the bridge has been erected the court shall appoint six fit persons to inspect the bridge, none of whom shall be residents of or property holders in the county wherein the bridge is located, and make a report of the result of their inspection to the court; such report shall be approved by the court when it appears that the bridge has been erected according to the contract. If the inspectors shall not approve of the same, they shall report to the court what sum, in their judgment, ought to be deducted from the sum stipulated in such contract, and, thereupon, the court shall grant a rule upon the builder or contractor to show cause at a time and place to be fixed. After service and return of such rule, the builder or contractor may file a declaration or statement in said court upon the contract made by him with the Commonwealth, and proceed to trial as if an action had been regularly commenced by him upon such contract. If, however, it appears by the report of the inspectors that such bridge has been built in conformity with the contract and specifications, after such report has been approved by the court, the Auditor General shall draw a warrant upon the State Treasurer for the contract price of such bridge. The fees and expenses to be allowed the viewers and inspectors, the cost of advertising, the cost of preparing the plans and specifications and all other costs and

expenses whatsoever shall be paid by the county or counties in which the bridge is located, and the court shall fix the amount of fees and expenses allowed, according to the circumstances of the case and upon notice to the county commissioners. The bridges erected under this act shall be maintained and kept in good repair by the county in which the same may be located, at its own expense, and, in case such bridge is over the stream forming the boundary line between two counties, the same shall be maintained and kept in repair at the joint expense of such counties.

MARTIAL LAW.

CASE OF ARTHUR WADSWORTH.

This unusual case grew out of the strike in the counties of Schuylkill, Luzerne, Carbon, Lackawanna, Northumberland, Columbia and Dauphin during the summer of 1902, when about one hundred and fifty thousand miners and employes went out on a strike about May 12th and continued out until about October 28, 1902. During the progress of this strike there was a great deal of violence and disorder at different places from time to time, and among the places at which serious rioting occurred was Shenandoah, in Schuylkill county. About July 30, 1902, a riot occurred in that town, which was participated in by hundreds of men, most of whom were striking miners, and during which a deputy sheriff was clubbed to death by the strikers. The civil authorities were unable to preserve order, and the sheriff of Schuylkill county appealed to the Governor for troops, many of the citizens joining in the petition, asking that troops be sent to preserve peace and order and the property and lives of the citizens. Shortly afterward the Governor ordered a portion of the National Guard, under command of General Gobin, into the affected regions, for the purpose of enforcing the laws and maintaining peace and order. Violence and disorder continued, however, and the Governor becoming convinced that the troops in the field were inadequate to effect the desired result, on October 6, 1902, issued orders to Major General Miller, commanding him to place the entire division of the National Guard on duty, distributing them in such localities as would render them most effective for the preservation of the public peace.

About the time of the last mentioned order several houses occupied by non-union men in the borough of Shenandoah had been dyna-

mited and attempts had been made to dynamite others. In pursuance of the orders of the Governor it became, therefore, the duty of the military authorities to guard and protect such houses and their occupants against outrages of this kind. The Eighteenth regiment of the National Guard of Pennsylvania was stationed in Shenandoah, and on the night of October 8, 1902, Arthur Wadsworth, a private in Company A of that regiment, was one of a number of men in charge of two corporals who were placed by the provost-marshal on duty to guard the house of Barney Bucklavage at 1118 West Coal street, in the borough of Shenandoah. This was one of the houses that had been dynamited on two previous occasions and was occupied by a woman and four small children, the husband being away at work. The guard was placed there under express orders to protect the house and its occupants, and to halt all suspicious persons prowling about the premises, and if the persons so halted refused to recognize and obey the challenge, to shoot and shoot to kill. About 11.30 o'clock on the evening of October 8th, Wadsworth, who was posted as the sentry in the front yard, discovered a man approaching along the side of the road nearest the house, and, in accordance with his orders, commanded him to halt. The man not obeying the challenge, but continuing on to the gate, and thence through the gate into the yard, the sentry fired and killed the man. Excitement was running very high at that time in that section and the coroner's jury recommended that the district attorney proceed against the soldier for the shooting, and in accordance with such recommendation, a warrant was sworn out charging Wadsworth with murder, and an attempt was made by William Shortall, constable of the borough of Shamokin, to arrest the soldier. Colonel Rutledge, of the Eighteenth regiment, acting under advice of the legal officers of the Commonwealth, declined to permit the warrant to be served. A writ of habeas corpus was then obtained from the court of Schuylkill county directed to Colonel Rutledge demanding that the soldier be delivered to the civil authorities.

This proceeding was resisted and finally discontinued by agreement until after the regiment was mustered out of service and the soldier had returned to private life, when, on November 7th he was arrested in Pittsburg. A representative of this Department thereupon appeared before the Supreme Court, then in session at Pittsburg, and secured a writ of habeas corpus, directing that the soldier be brought before that court for a hearing upon the merits of the case. After argument the court directed that the case be transferred to the Eastern District of Pennsylvania and be placed at the head of the list for full argument and hearing on the first Monday of January, 1903. The case was argued on the date mentioned and the whole question is now pending in the Supreme Court.

ELECTION CONTEST.

CAMBRIA COUNTY JUDICIAL CONTEST.

On the 3d day of December, 1901, seventy-eight citizens of the county of Cambria presented their petition to the Attorney General showing that they were citizens and qualified electors of the Forty-seventh judicial district, consisting of the county of Cambria, in the State of Pennsylvania; that a general election had been held in said county on Tuesday, the 5th day of November, 1901, and that they had voted at said election for one person for the office of president judge of the said judicial district. The petitioners further alleged that the election officers of said county had returned that at said election Francis J. O'Connor received in said district 9,023 votes for the office of president judge, and that A. V. Barker had received in said district for said office 8,952 votes; and that the said Francis J. O'Connor had been elected by a plurality of 71 votes. The petitioners made complaint that the returns so made were false, and that the said Francis J. O'Connor had not received a plurality of the votes cast for the office of president judge of said district, and they contested his right to said election. The petition was in the form prescribed by the act of Assembly regulating an election contest in a judicial district. It alleged that on a proper return of the legal votes cast the said A. V. Barker had been elected. The petitioners therefore asked that a process might issue in accordance with the act of Assembly in such cases made and provided, to the end that the complaint, as set forth in this petition, may be heard and determined, and that it may be decided which of the candidates voted for in said district had received the greatest number of legal votes and is entitled to the office of president judge of said district. The petition was regular in form and all the requirements of the act of Assembly had been complied with.

After due consideration the following order was endorsed on said petition:

> "December 3, 1901, the within petition presented to me and the Governor notified thereof by letter, as required by law."

On the same day the petition was filed in the office of the Secretary of the Commonwealth. The Attorney General, as required by the act of May 19, 1874, certified to the Governor that the president

judges residing nearest to the court house of Cambria county were the Honorable Harry White, of Indiana, in the county of Indiana, president judge of the Fortieth judicial district; Hon. Martin Bell, of Hollidaysburg, Blair county, president judge of the Twenty-fourth judicial district, and Hon. John M. Bailey, of Huntingdon, Huntingdon county, president judge of the Twentieth judicial district. The Governor thereupon issued a process to the three judges above named to convene, without delay, the court of common pleas of Cambria county, and to proceed to hear and determine the complaint of said petitioners, as required by law. The three judges designated by the Governor did convene the court of common pleas of Cambria county and proceeded to organize for the purpose of hearing the complaint of the petitioners. After due consideration the contestants withdrew and the court made the proper order therein.

FOREIGN INSURANCE COMPANIES.

On June 6, 1901, Amanda Daly filed a petition in the Insurance Department, asking the Honorable Israel W. Durham, Insurance Commissioner of Pennsylvania, to revoke the certificate or license of the Travellers' Insurance Company of Hartford, to do business in this State, for the reason that the corporation had removed into the United States Court for the Eastern District of Pennsylvania, a cause of action brought by the petitioners against the said insurance company to recover $5,000 on a policy which the said company had issued on the life of her husband, William F. Daly, who, it was alleged, had died in a hospital in Pittsburg in January, 1900.

The petition further stated that Amanda Daly was a citizen of Pennsylvania and that William F. Daly had likewise been a citizen of this State prior to his death, and that the action of the insurance company in removing the suit into the Federal Court would result in increased expense to her, the petitioner, and was a direct violation of the stipulation which the said company had been obliged, under the law of Pennsylvania, to file in the office of the Insurance Commissioner before receiving its license to do business in this State. The papers in this case were referred to this Department by Insurance Commissioner Durham, and a hearing was fixed before the Attorney General and the Insurance Commissioner, at which hearing both parties in interest were represented by counsel.

The material facts in the petition were not denied, but the defendant did deny that such removal of a cause into the United States Court was a violation of its stipulation filed in the Insurance Department, which constitutes the contract between the State and the insurance company, under which the latter was permitted to do business in this Commonwealth. The company further showed that it had complied fully with the requirements of the Constitution and the acts of Assembly of this State, made and provided for the regulation of foreign insurance companies, so that the question which this Department was called upon to decide was whether or not a foreign insurance company, which had complied with all the legal requirements to do business in this State, was debarred from taking into the United States courts any action arising between itself and its policy holders.

After a careful examination of the stipulation required to be filed by the company, under the provisions of the act of June 20, 1883 (P. L. 134), the Insurance Commissioner was advised in a written opinion, which will be found in full in the Appendix to this report, that such action by a foreign insurance company is not in violation of the stipulation required to be filed, and that, therefore, the right of the Travellers' Insurance Company to do business in this State should not be revoked.

JOHN P. ELKIN,
Attorney General.

OPINIONS OF THE ATTORNEY GENERAL.

CONSTRUCTION OF ACT OF JUNE 27, 1895.

The act of 1895 creating office of County Controller in counties containing 150,000 inhabitants is in full force and effect and applies to every county of the State having a population of more than 150,000, as ascertained in the recent decennial census.

Section 16 of said act confers upon the Governor the right to appoint a Controller only in counties where the act of 1895 became operative immediately after its passage, but it does not carry with it the continuing right to appoint in the future to such counties as shall be ascertained to have the necessary population.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 18, 1901.*

MR. R. A. RANKIN, *Chairman Republican County Committee, Greensburg, Pa.:*

Sir: I am in recipt of your favor of the 15th inst., asking whether the act of 27th day of June, A. D. 1895, creating the office of county controller in counties of this Commonwealth containing 150,000 inhabitants and over is in force in your county.

This whole question has been before the Governor on several occasions. Our opinion is that the act of 1895 is in full force and effect, and that it applies to every county in the State having a population of more than 150,000, as ascertained in the recent decennial census. The only question which arises is whether the Governor has the right to appoint to fill a vacancy in the first instance under the authority of the act of 1895. Section 16 of this act provides that the Governor shall, immediately after the passage of the act, appoint a person in each county where the act becomes operative. It has been our opinion that section 16 conferred upon the Governor the right to appoint only in counties where the act of 1895 became operative immediately after its passage, and that it did not carry with it the continuing right to appoint in the future to such counties as should be ascertained to have the necessary population. We have not doubted at any time that the act was in force, but have doubted

the right of the Governor to make an appointment to fill the vacancy. Last fall the Democrats of Berks county elected a controller on the theory that their county had the necessary population, but the census was not taken at that time, and the final announcement was not made until after the election. Even under those circumstances, the controller there has assumed the duties of his office and claims the right to act. The Governor, however, did not feel like taking the responsibility of making an appointment in such cases where the right to make it might be considered doubtful. For this reason an act has been presented in the Legislature which will relieve any doubts as to the right of the Governor to make the appointment. It is my opinion, however, that the office of controller exists under the provisions of the act of 1895 in all counties having a population of more than 150,000; hence in Westmoreland county, and that a controller will be elected at the general election this fall. I think the question of the Governor's right to appoint is not controlling in the matter.

Very respectfully,

JOHN P. ELKIN,
Attorney General.

PHARMACEUTICAL EXAMINING BOARD—Act of 24th of April, A. D. 1901. This act takes effect from the date of its approval and will apply to all cases where certificates were not issued prior thereto. The registration fee will be paid under the provisions of the new law.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 24, 1901.*

DR. CHARLES T. GEORGE, *Secretary State Pharmaceutical Board:*

Sir: I am in receipt of your communication of the 23d inst. in reference to the effect of what is commonly known as the Newhard bill. You desire to know whether the law will take effect immediately so as to apply to examinations which have already been held but where certificates are not yet issued.

The act takes effect from the date of its approval and will apply to all cases where certificates were not issued prior thereto. The registration fee will be paid under the provisions of the new law.

Very respectfully yours,

JOHN P. ELKIN,
Attorney General.

REMISSION OF FORFEITURE OF BAIL BOND.

The Governor has the power under the ninth section of article IV of the Constitution to remit forfeitures. The only question to be considered by the Governor in such cases is whether such equities are presented as should appeal to the judgment and discretion of the Chief Executive officer of the Commonwealth.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 24, 1901.*

TO THE HON. WILLIAM A. STONE, *Governor:*

Sir: Sarah Frey, of the township of Springfield, in the county of Bucks, has presented her petition asking for a remission of the forfeiture of her bail bond, made in the court of quarter sessions of Northampton county, in the case of the Commonwealth v. Eastburn Frey. The petition asking for a remission of the forfeiture is accompanied by a certified record of the case, together with several letters, stating why the application for the remission of the forfeiture should be granted.

It seems that Eastburn Frey was arrested in the county of Northampton, charged with having uttered a forged check and gave bail for his appearance at court, Sarah Frey and one, J. S. Weirback, being sureties on his bond. Before the sessions of the court, at which the defendant was bound to appear, he absconded from the jurisdiction and the bail bond was regularly forfeited. Subsequently an application was made to the county commissioners for a remission of said forfeiture, and a motion was unanimously adopted by said board, granting the application, because it was made to appear that if the forfeiture proceedings were prosecuted they would strip the petitioner, Sarah Frey, of her sole means of support, and that she would become a charge upon the public, as, in consequence of her advanced age, she is totally unable to support herself. The forfeiture was not remitted in consequence of the interposition of the court, which for reasons that do not appear, prevented an action being taken. The prosecutor in the case joins in the petition and asks for the remission of the forfeiture. The district attorney also joins in the request, and one of the county commissioners states that the board had unanimously decided to ask for the remission of the forfeiture, as prayed for in the petition of the applicant.

Your power to remit a forfeiture is conferred by the ninth section of article IV of the Constitution, which provides that "the Governor shall have power to remit fines and forfeitures." The only question to be considered by the Governor in such cases is whether such equities are presented as should appeal to the judgment and discretion of the chief executive officer of the Commonwealth. From

the facts in the case as they appear, I am of the opinion that this is a case where, in the interest of the public and common humanity, there should be a remission of the forfeiture.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

ANTHRACITE MINE LAW—Act of 2d June, A. D. 1891.

Rule 48 of Article 12 which provides that "No miner or laborer shall run cars out of any breast or chamber or on any gravity road unless he is a suitable person employed by the mine foreman for that particular work, and no person shall be employed by any mine foreman to perform such work under the age of sixteen years," does not direct that the person performing this work shall perform it to the exclusion of all other service.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 25, 1901.*

HON. JAMES E. RODERICK, *Chief Bureau of Mines, Harrisburg, Pa.:*

Sir: I have before me your letter of recent date, asking for a construction of Rule 48 of Article 12 of the Anthracite Mine Law of Pennsylvania, approved the second day of June, A. D. 1891, which reads as follows:

> "No miner or laborer shall run cars out of any breast or chamber or on any gravity road unless he is a suitable person employed by the mine foreman for that particular work, and no person shall be employed by any mine foreman to perform such work under the age of sixteen years."

The language of this rule is plain and its provisions mandatory. No person other than a suitable one above the age of sixteen years employed by the mine foreman and designated to perform that particular work, can do so without violating the law.

I understand that the contention is made that the person performing this work shall perform it to the exclusion of all other service. In other words, that the miners and laborers employed about the mine shall not be designated or allowed to run the cars on gravity roads under any condition. After careful consideration, I can find nothing in the language of the act to justify this contention, and am therefore of the opinion and advise you that any suitable person above the age of sixteen may be employed and designated by the mine foreman to perform this service, either alone or in conjunction with his other labors.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

CONSTRUCTION OF THE ACT OF MAY 15, 1893, SECTION 5, ARTICLE 10—RIGHT OF THE BOARD OF EXAMINERS OF THE BITUMINOUS COAL MINES TO INCREASE THE NUMBER OF INSPECTION DISTRICTS IN THE STATE.

The Board of Examiners of the Bituminous Coal Mines have the right to revise from time to time the various inspection districts in the Bituminous Coal Field, and it is their duty to increase or decrease the number of districts and to change the lines of the various districts in accordance with the restrictions imposed by the act. No district should be created which contains less than sixty or more than eighty coal mines in active operation.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 25, 1901.*

HON. JAMES E. RODERICK, *Chief Bureau of Mines, Harrisburg, Pa.:*

Sir: Your letter of recent date to the Attorney General, requesting an opinion upon the right of the board of examiners of the bituminous coal mines to increase the number of inspection districts in the State under the authority of section 5 of article 10 of the act of Assembly approved the 15th day of May, 1893, received. The section referred to reads as follows:

> "The Board of Examiners may also at their meeting or when at any time called by the Governor together for an extra meeting, divide the bituminous coal region of the State into inspection districts, no district to contain less than sixty or more than eighty mines, and as nearly as possible equalizing the labor to be performed by each inspector, and at any subsequent calling of the Board of Examiners this division may be revised as experience may prove to be advisable."

It is clear from the language of this section that the board of examiners have the right to revise from time to time the various inspection districts in the bituminous coal field, and it is their duty to increase or decrease the number of districts and to change the lines of the various districts in accordance with the restrictions imposed by the act.

In consequence of the growth of the mining industry of the State new mines are continually being opened and operated in terriory hitherto undeveloped, while old mines are from time to time abandoned as their resources become exhausted. So far as I can learn there has been no attempt made to redistrict the bituminous coal region since the passage of the act of 1893. If the actual conditions justify such a course, it should be done by the board of examiners

at their next meeting, but no district should be created which contains less than sixty or more than eighty coal mines in active operation.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

CONSTRUCTION OF ACT OF APRIL 6, 1830—PAYMENT OF FIFTY CENTS TAX BY U. S. GOVERNMENT UNDER ACT OF APRIL 6, 1830.

Under decisions of the court, the fifty cent tax imposed under the act of 1830 on deeds and other instruments or agencies of the United States Government, cannot be collected.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 10, 1901.*

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

Sir: Your communication of recent date, asking for an opinion upon the question whether the United States government is relieved from the payment of a fifty cent tax, as required by the act of April 6, A. D. 1830, has received our careful consideration.

It has been held that the means or agencies provided or selected by the federal government as necessary or convenient in the exercise of its functions cannot be subjected to the taxing power of the States. It has been further held that States have no power, by taxation or otherwise, to retard, impede, burden or in any manner control the operations of the constitutional laws enacted by Congress, and which carry into execution the powers vested in the general government. Under this same principle it has been held that a State cannot tax the bank of the United States, and that any attempt on the part of its agents or officers to enforce the collection of such a tax against the property of the bank may be restrained by injunction.

Under these and many other similar decisions of the courts, I am of opinion that the fifty cent tax imposed under the act of 1830 on deeds and other instruments or agencies of the United States government should not be imposed by the State.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

COMMUTATION OF SENTENCES—Act of May 11, 1901.

The act named meets the requirements of the Constitution as to the Board of Pardons, and is therefore constitutional.

The Legislature had the power to enact a law regulating the commutation of sentences as well of those prisoners who are serving out their terms as those who shall be sent to prison after the enactment of the law. The act applies to all persons confined in penal institutions in the State.

The act of May 21, 1869 is repealed.

The act does not apply to Federal prisoners confined in our State penal institutions.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 13, 1901.*

HON. WILLIAM A. STONE, *Governor:*

Sir: There have been referred to this Department several communications addressed to you from the Board of Inspectors of State Prisons, asking for instructions in reference to the act approved May 11, A. D. 1901, providing for the commutation of sentences for good behavior of convicts in prisons, penitentiaries, workhouses and county jails, and in answer thereto I beg leave to submit the following suggestions and opinion.

A question has been raised about the constitutionality of the act referred to, because the commutation therein provided might be construed to interfere with the pardoning power ordained by the Constitution.

The answer to this contention is found in the act itself. The Board of Prison Inspectors makes a monthly report to the Governor, recommending prisoners who are or will be entitled to the benefits of the act. All the facts are laid before the Board of Pardons, which Board, after full hearing upon due public notice, and in open session, makes recommendation to the Governor, who finally grants the pardon or commutation in the manner provided by the Constitution. It will thus be seen that every constitutional requirement in the granting of a pardon has been set out in the act, and therefore the question of the validity of the statute on these grounds cannot be sustained.

A question has been raised as to whether the new act should apply retroactively; that is to say, whether convicts confined in prisons for crimes committed prior to the approval of this act, and who are serving out sentences for pre-existing crimes committed, are entitled to the benefits of the commutation provided under the new act.

The new commutation act is general in its terms, and applies to prisoners confined in the penal institutions therein designated, over which the State exercises control. There are no limitations in the act itself, but it has been suggested that if it were made to apply

to prisoners serving out terms for crimes antecedently committed, it would be an ex post facto act, and therefore come within the inhibition of the Constitution forbidding the enactment of such laws. This contention can not be sustained on authority.

Mr. Justice Chase, as far back as 1798, settled this question in an opinion handed down in the case of Calder vs. Bull, 3 Dallas, at page 390, wherein, among other things, he states the following principle:

> "Every law that takes away or impairs rights vested, agreeable to existing laws, is retrospective, and is generally unjust, and may be oppressive; and it is a good general rule, that a law should have no retrospect; but there are cases in which laws may justly, and for the benefit of the community, and also of individuals, relate for a time antecedent to their commencement; as statutes of oblivion or pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto, within the prohibition, that mollifies the rigor of the criminal law; but only those that create or aggravate the crime, or increase the punishment, or change the rules of evidence, for the purpose of conviction."

Under this authority and a number of others following in the same line, the principle is well settled that an ex post facto law is one which declares an act previously done criminal and punishable and which was not so when the act was committed, and which declares a much higher punishment than existed at the time; but an act plainly mitigating the punishment of an offense is not ex post facto; on the contrary, it is an act of clemency. Following these decisions a number of cases may be cited showing that the prevailing doctrine in such cases is that a law is not ex post facto which mitigates the punishment in any manner whatever.

> American and English Encyclopoedia of Law, Vol. 7, page 530.
> State v. Kent, 65 North Carolina, 311.
> Dolan v. Thomas, 12 Allen, Miss., 421.
> McIntire v. State, 20 Texas Appeals, 335.

From these authorities it clearly appears that the Legislature had the power to enact a law regulating the commutation of sentences as well of those prisoners who are serving out their terms as those who should be sent to prison after the enactment of the law. That the act in question applies to all prisoners confined in penal institutions in our State is plainly apparent from its express provisions.

I am of opinion, therefore, that all prisoners convicted in our

State courts and serving out their terms of imprisonment in the prisons, penitentiaries, workhouses and county jails of this State are entitled to the commutation provided in the act.

The act repeals all former acts or parts of acts in conflict with its provisions, and must, therefore, be held to take the place of the old commutation act of 21st of May, 1869, so that hereafter in the recommending of prisoners for the benefits of the commutation the later act should be followed.

The question has been raised whether the new commutation act should apply to federal prisoners confined in our State penal institutions. Persons convicted in the United States courts for the commission of crimes over which such courts have jurisdiction, may be sentenced to imprisonment in our State penitentiaries. The power, however, that sent them to prison as well as the power which can relieve them from such imprisonment is necessarily lodged in the federal government. The President alone has the right to grant a pardon to such prisoners, and the State authorities have no right to interefere with federal prisoners confined in our State prisons. There is no provision in the new commutation law applicable to United States prisoners, and such prisoners must look to the act of Congress for the commutation to which they are entitled. The act of Congress of May 3, 1875, is in force, and federal prisoners should receive such commutation as is provided therein.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

COMMUTATION OF SENTENCES.

Where a prisoner is serving several different sentences in prison, there is no objection to the terms which the prisoner is to serve being consolidated and treated as one sentence.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 12, 1901.*

HON. WILLIAM A. STONE, *Governor:*

Sir: I return herewith the communication of Edward S. Wright, warden of the Western Penitentiary, asking for an opinion from this Department upon the proper construction of the new law regulating the commutation of sentences of prisoners. The question raised is as to how the commutation should be applied where a prisoner is serving under different sentences from different courts, and from different counties in some instances. In such cases a

prisoner may be serving several different sentences at one time in a penal institution.

It seems to me that the act was passed as a humanitarian measure, and that it should be construed so as to carry out the purpose intended. I can see no objection to the suggestion made by the warden, that is to say, that the terms which the prisoner is to serve in the penitentiary under several commitments should be consolidated and treated as one sentence. This is the common sense view to take of the question, and I believe it will most nearly satisfy the requirements of the act.

Very respectfully,

JNO. P. ELKIN,
Attorney General.

IN RE-ELECTION AND SALARY OF E. E. STITZINGER—SUPERINTENDENT OF PUBLIC SCHOOLS OF FOREST COUNTY.

It appears that a convention of school directors of Forest county made an official return showing the election of E. E. Stitzinger as County Superintendent and fixing his salary at $1,500 per year. After two years had elapsed a second return is filed, containing the affidavits that the convention did not fix any salary but that the words $1,500 were written in by mistake or error. Under the circumstances the Superintendent of Public Instruction is advised to take no action in the matter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 31, 1901.*

HON. N. C. SHAEFFER, *Superintendent of Public Instruction:*

Sir: Your letter of recent date, to the Attorney General, enclosing letter of T. F. Richey, attorney for the school directors of Forest county, and other papers relative to the election of E. E. Stitzinger, superintendent of the public schools of said county, and requesting an opinion upon the facts therein stated, has been referred to me.

It appears from the letter, affidavits and other papers filed in the case, that a convention of the school directors of Forest county was held in Tionesta on Tuesday, May 2, 1899, for the purpose of electing a county superintendent. There were several candidates for the position, but the official return shows that of the 59 directors present 32, more than a majority of all present, voted for E. E. Stitzinger, who was thereupon declared elected. The official return also shows that his salary was fixed at the rate of fifteen hundred dollars ($1,500) per year, and this return is certified to by the secretaries of the convention, as required by law. Since that time Mr. Stitzinger has officiated as county superintendent, and has performed

his duties and received his salary in accordance with the official return originally filed in your Department.

Now, after a lapse of two years, the charge is made by certain school directors of Forest county, through their attorney, that the original return was improperly made out and that the convention which elected Mr. Stitzinger did not, in fact, fix any compensation whatever and therefore he is entitled to only one thousand dollars ($1,000) per annum under the law; and it is requested that he be compelled to refund the amount in excess of that sum, which has already been paid him, to the school directors of Forest county. In support of this contention a new return is filed, to which is attached the affidavit of the secretaries of the convention, in which they state that the original return was defective in that the convention did not fix any salary, but that the words "fifteen hundred dollars" were filled in by mistake or error.

The question raised is a novel one, and a careful research discloses no precedent, but in view of the fact that the original return bears every mark of regularity, and the further fact that there is no allegation of fraud, nor is there any excuse offered for the long delay on the part of those now complaining, it seems to me that you are justified in taking no action at this late day. It would, in my opinion, establish a dangerous precedent if those upon whom is devolved the duty of making returns in cases of this kind were to be permitted, after a silence of two years, to decrease or increase the salary of a superintendent upon a plea of mistake or error.

The last Legislature passed an act, which was signed by the Governor on the 17th day of May, 1901, prescribing a different method of fixing the salaries of county superintendents, and, inasmuch as the term of office for which Mr. Stitzinger was elected is so nearly at an end, and the mistake or error complained of is directly attributable to the action of those in control of the convention which elected him, I am satisfied that your Department ought not to be asked to move in this matter.

I therefore advise you that, after a careful consideration of the facts submitted to me, I am of the opinion that you would be warranted in refusing to be a party to the present proceedings, and that the complainants must seek their remedy in another tribunal.

I return herewith the papers submitted.

Respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

COMPULSORY ATTENDANCE LAW.

Constitutional law—Time when statutes take effect—Compulsory Attendance Law—Act of July 11, 1901.

In the construction of statutes, the invariable rule is that every law goes into effect upon its approval, unless it is provided otherwise in the act itself, or it is impossible of enforcement by reason of the provisions contained therein. Hence, as the Compulsory Attendance Law of July 11, 1901, is silent on the question of when it goes into effect, it takes effect on the day of its approval, to wit, July 11, 1901.

Constitutional law—Statutes—Enforcing all provisions of the same at the date of approval—Allowing for lack of knowledge on the part of those affected by the act.

It is not necessary that all the provisions of an act be enforced as of the date when it was approved. Persons affected thereby are not required to do impossibilites. Hence, the proviso of the act of July 11, 1901, which authorizes school boards at their June meetings to reduce the period of compulsory attendance to not less than seventy per centum of the school term, need not be enforced during the present school year.

In the enforcement of a law, where the individual rights of citizens are involved, it is proper for those in authority to make allowance for delinquencies that may happen by reason of a lack of knowledge on the part of those affected by its provisions.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *September 11, 1901.*

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

Sir: I am in receipt of your communications of recent date, enclosing some letters addressed to your Department from persons representing school boards in different parts of the State, asking when the new compulsory attendance law went into effect.

The act in question was approved on the 11th day of July, A. D. 1901, and, inasmuch as the acts of May 16, A. D. 1895, and of July 12, A. D. 1897, in reference to the same subject-matter, were repealed in express terms by this act, it necessarily follows that the only law on the question of compulsory attendance of children in the common schools of our State is contained in the act of July 11, 1901. In the construction of statutes the invariable rule is that every law goes into effect upon its approval unless it is provided otherwise in the act itself, or it is impossible of enforcement by reason of the provisions contained therein. The new law is silent on the question of when it goes into effect, and it therefore becomes necessary to apply the general rule of construction and say that the compulsory attendance law went into effect on the day of its approval, to wit, July 11, 1901.

It does not follow, however, that all of the provisions of the act in question must be enforced as of the date when it was approved. In the construction of statutes the courts will not require persons

affected thereby to do impossible things, and, therefore, that proviso of said act, which authorizes school boards at their June meetings to reduce the period of compulsory attendance to not less than seventy per centum of the school term, cannot be enforced during the present school year. The school year begins on the first Monday of June, and the new compulsory attendance law was not approved until the 11th day of July following, which makes it absolutely impossible for school boards to comply with that provision of the law during the present school year. The other provisions of the act can be enforced without reference to the proviso above mentioned, and I can see no good reason why they should not be so enforced.

In the enforcement of a law, where the individual rights of citizens are involved, it is proper for those in authority to make allowance for delinquencies that may happen by reason of a lack of knowledge on the part of those affected by its provisions. The new law has been in force since the date of its approval, but most of our people are not yet familiar with its provisions, and I deem it the part of wisdom that you should take cognizance of this fact in the enforcement of the law during the first school year. Some months will elapse before the boards of school directors, and the people generally, become acquainted with all the requirements of the new law. It is my opinion that this law is in full force and effect, but I take the liberty of suggesting that, in its practical enforcement during the ensuing school year, due allowance should be made for any derelictions on the part of school boards or the people in the observance of its provisions by reason of unfamiliarity with its requirements.

Very respectfully,

JNO. P. ELKIN,
Attorney General.

FORESTRY RESERVATION COMMISSION—FORESTRY—RESERVATION COMMISSION—CONTROL OF WATERS—ACT OF FEBRUARY 25, 1901.

The act of February 25, 1901, P. L. 11, confers upon the Forestry Reservation Commission the right to control the water supply on forest lands as well as timber and minerals, and it can grant the privilege of using the waters on these reservations for private purposes, with such limitations and restrictions as may protect the interests of the Commonwealth.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *October, 15, 1901.*

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

Sir: Your communication of recent date, addressed to this Department, asking whether it is within the purview of the power conferred upon the Forestry Reservation Commission to grant the privilege of using the water on such lands for private purposes, has been received and considered.

The act of February 25, A. D. 1901 (P. L. 11), confers upon the Forestry Reservation Commission very general powers in reference to the management and control of lands purchased by the State for forestry purposes. The act gives the Commission the right to sell timber, to lease minerals and to make all contracts necessary for these and other purposes. It is true the act does not expressly confer upon the Commission the right to grant water privileges, and I doubt whether it would be within the power of the Commission to grant any permanent water rights to persons or corporations. But it was the intention of the Legislature, in providing for the purchase of forest lands to protect and cultivate the forest lands of the State and provide protection for our water supply. There could not be much sense in providing protection for the water supply if the water could not be made use of.

Under all the circumstances, it is my opinion that your Commission has a right to control the water supply on forest lands as well as timber and minerals. This power is fairly implied from the provisions of the act. I can see no good reason why your Commission should not grant the privilege of using the water on these reservations, with such limitations and restrictions as may protect the interests of the Commonwealth.

Very respectfully,

JNO. P. ELKIN,
Attorney General.

COMMUTATION OF SENTENCE—CONSTRUCTION OF SECTION 4 OF THE ACT OF MAY 11, 1901.

Section 4 of above named act applies to every prisoner who commits a felony in the interval between the date of his release under the commutation act and the time when his original sentence would have expired. The fact that a prisoner for the second offence is confined in a different prison than for the first offence does not affect the operation of the statute.

The provisions of the act are in force. The prisoner must serve for the second offence the balance of time from his first term for which he received commutation in addition to the full time imposed for the second offence. The remainder of the original term of imprisonment and the term for which the prisoner must serve for the second offence should be considered as two separate sentences. He must serve out his full time for the first offence without commutation, receiving commutation only for the second offence.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 11, 1902.*

MR. R. C. MOTHERWELL, JR., *Superintendent Philadelphia County Prison, Philadelphia, Pa.:*

Sir: I am in receipt of your communication of recent date, in which it is stated that a prisoner convicted of a felony on the 9th day of September, 1901, had been sentenced to twelve months imprisonment in the Philadelphia county prison. It is also stated that this prisoner had been released from the Eastern penitentiary on the 11th day of July, 1901, having received the commutation to which he was entitled under the provisions of the new commutation act of May 11, A. D. 1901. You desire to be informed how this prisoner is affected by the fourth section of the said act.

The section in question provides that, when a prisoner receives the commutation to which he is entitled under the provisions of said act, a condition is annexed, which, stated briefly, is that, if a prisoner, released under the new commutation act, commits a felony in the interim between the date of his release and the time when his original sentence would have expired had he not received the benefit of the commutation, he will then be compelled to serve out the remainder of his original sentence in addition to the sentence imposed for the felony committed as aforesaid.

Under the provisions of this fourth section you desire to be advised on four points, and I shall answer them in the order in which the questions have been asked:

1. Section 4 applies to the prisoner named in your communication of recent date, and to every other prisoner who commits a felony in the interval between the date of his release and the time when his original sentence would have expired. The fact that a prisoner for the second offense may be sentenced to serve his term of con-

finement in a different prison, penitentiary or workhouse does not affect the operation of the statute. The fourth section applies whether the prisoner serves out his new term in the prison in which he served his original term or in some other prison.

2. The provisions of the law are in force, and the prison authorities will see that they are executed in this respect, independently of any action by the Chief Executive or Board of Pardons.

3. A prisoner should serve in the prison, penitentiary or workhouse in which he or she may be confined for the felony for which he or she is convicted. The act of Assembly provides for the situation you have mentioned, in the following language:

> "He or she shall, in addition to the penalty which may be imposed for such felony committed in the interval (that is, the second offense) as aforesaid, be compelled to serve in the prison, penitentiary or workhouse in which he or she may be confined for the felony (being the second offense) for which he or she is convicted, the remainder of the term without commutation."

In my opinion this means that the prisoner named by you, who was released from the Eastern penitentiary on the 11th day of July, 1901, under the new commutation law, and was convicted and sentenced on the 9th of September, 1901, to twelve months imprisonment in the Philadelphia county prison, must serve in the said Philadelphia county prison the remainder of his original term, to wit: two years and six months, in addition to the term of one year for the felony for which he was convicted on the 9th of September, 1901.

4. The remainder of the original term of imprisonment and the term which the prisoner must serve for the second offense should be considered as two separate sentences. The new commutation law was intended to put prisoners who received the benefits of that commutation on their good behavior, and provided a penalty in case they did not properly observe the provisions of the law. When a prisoner violates the spirit of the law the penalty attaches. He must then serve out his full original term without commutation, and his new term in addition. The commutation should be allowed only on the new term.

Respectfully yours,

JNO. P. ELKIN,
Attorney General.

RIGHT OF NORMAL SCHOOL TO ISSUE BONDS—CONSTRUCTION OF ACT OF MAY 20, 1857, AND MAY 22, 1901.

The right of Normal Schools to execute mortgages and issue bonds depends upon the authority contained in acts of Assembly, and in a number of instances this power has been granted by special acts. Where mortgages have been given, the act of May 22, 1901, confers the right to execute new mortgages and issue new bonds covering the old indebtedness at a lower rate of interest.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 11, 1902.*

PROF. JOHN F. BIGLER, *Principal State Normal School, Edinboro, Pa.:*

Sir: I am in receipt of your favor of the 5th inst., which called to my attention the inquiry of the Hon. E. W. Smiley in reference to the right of your school to issue bonds under certain conditions.

The trustees of State normal schools, under our law, do not have the power to execute mortgages upon real estate belonging to these institutions in the absence of legislative authority. The act of May 20, A. D. 1857, empowered normal schools to receive, hold and use, under the direction of their trustees, any devise, bequest, gift, grant or endowment of property, whether real or personal, which might be made to them. They have been given the general power to purchase real estate for the purposes of these institutions. In a number of instances special acts of Assembly have been passed, conferring upon the board of trustees the right to execute mortgages on the real estate and issue bonds thereon, but the right to execute mortgages and issue bonds depends entirely upon the authority contained in the act of Assembly. The act of May 22, A. D. 1901, (P. L. 290) authorizes the trustees of any State normal school to refund its bonded indebtedness at a lower rate of interest, and to include in the re-issue of bonds a limited amount of additional indebtedness contracted prior to the passage of that act. It will be observed that this act does not give the right to execute an original mortgage and issue bonds thereon. If there was an original mortgage on the real estate belonging to your institution you have the right to execute a new mortgage and issue new bonds at a lower rate of interest, and to include in the new mortgage and bonds issued such loans or indebtedness of the institution as had been contracted prior to the approval of the act in question. I do not have before me the exact facts relating to your institution and cannot therefore advise you specifically as to your case, but have indicated the above as the general rules governing in such cases.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

2—23—1902

RIGHT OF CORPORATION TO CONSTRUCT WING WALLS OR DAMS IN THE SUSQUEHANNA RIVER, SO FAR AS SUCH AN ARRANGEMENT WILL HAVE EFFECT UPON THE FISH—Section 13 and 14 of act of May 29, 1901 cited.

Under Section 13 of said act, if upon completion of the wing walls or dams, the Commissioners of Fisheries are satisfied that some artificial devices are necessary to enable the fish to ascend and descend the river, freely at all seasons of the year, they have the power to compel the erection of such devices; and upon failure of the parties in question to build them within three months after notice to do so, it is the duty of the Commissioners to construct them and to compel the corporation to pay for the same by legal methods.

Section 14 of said act also clearly defines the duties of the Commissioners for the protection of the fish and needs no comment.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 23, 1902.*

H. C. DEMUTH, ESQ., *Treasurer Board of Fish Commissioners, Lancaster, Pa.:*

Sir: Your letter of recent date to this Department, received. You state therein that the York Haven Paper and Power Company, a corporation operating a paper mill at York Haven, Pa., is constructing a set of wing walls or dams in the Susquehanna river at that point for the purpose of diverting the waters into the wheels of a power plant which it is erecting there, and ask an opinion upon the following questions:

1. Has the above corporation authority to erect a permanent building in the river, and if so, can it be compelled, upon the completion thereof, to place fish ways in the wing walls or dam?

2. Can it be required to place in the head race or canal leading into its wheels such screen or screens as will prevent the passage of fish into and their consequent destruction by the same?

I find upon examination of the records that the corporation in question was organized under the general corporation laws of this State, and has no especial privileges other than those contained in such general laws. In this opinion, however, it is not necessary to pass upon its legal right to build the wing walls or dam mentioned. I assume that your concern in this matter is simply as to the effect which such an arrangement will have upon the fish.

Section 13 of the act approved 29th May, 1901 (P. L. 302), provides as follows:

> "That from and after the passage of this act, any person, company or corporation owning or maintaining a dam or dams, or who may hereafter erect or maintain a dam or dams in any waters in this Commonwealth, shall immediately, on a written order from the Fish

Commissioners, erect therein such chutes, slopes, fishways or gates as the Commissioners may decide necessary, to enable fish to ascend and descend the rivers at all seasons of the year; and any person, company or corporation refusing or neglecting to comply with the provisions of this section. shall forfeit and pay the sum of fifty dollars for every month he or they so neglect, which sum or sums shall be recovered by civil suit and process, in the name of the Commonwealth, and when collected shall be paid into the Treasury of the State for the use of the Fish Commissioners. If, after the lapse of three calendar months, the person, company or corporation owning or maintaining said dam or dams, still neglect or refuse to erect or place the appliances as directed by the Fish Commissioners, the Board of Fish Commissioners are empowered to enter upon such dam or dams, and erect such slopes, chutes, or fishways or gates as they may decide necessary; and the cost thereof shall be charged against the person, company or corporation owning or maintaining such dam or dams, to be recovered by hte Board of Fish Commissioners by civil suit and process, in the name of the Commonwealth: Provided, That where, by reason of any dam or dams having been constructed prior to the requirement by law of the placing of chutes, slopes or fishways therein, or for any other reason, the owner or owners of, or person or persons maintaining such dam or dams cannot be compelled by law to pay the cost of erecting slopes, chutes or fishways, as provided in this section, the cost of erecting such slopes, chutes and fishways by the Fish Commissioners, as provided in this section shall be paid by the Commonwealth of Pennsylvania, out of the funds not otherwise appropriated, upon warrants drawn by the Auditor General upon the State Treasurer. The Auditor General to be furnished by said Fish Commissioners with an itemized statement of the cost of such construction, which must be approved by him before he shall draw a warrant for the payment of the same."

This language is plain and unequivocal. It is clearly the duty of the Fish Commissioners to see that it is carried out fully in every respect, and for that purpose they are given the power of enforcing their orders in the courts.

1. I am, therefore, of the opinion, and advise you, that, if upon the completion of the wing walls or dam the Commissioners of Fisheries be satisfied that some artificial devices are necessary to enable the fish to ascend and descend the river freely at all seasons of the year, they have the power under the law to compel the erection of such devices; and upon the failure of the parties in question to build them within three months after having been notified so to do,

it is the duty of the board to construct them and to compel the corporation to pay for the same by the ordinary legal methods.

2. The law bearing upon your second inquiry is contained in section 14 of the above mentioned act, which provides:

> "That from and after the passage of this act, any person, company or corporation owning or operating a raceway, flume or inlet pipe, leading to a water wheel, turbine, pump or canal, shall, immediately upon receipt of a written order from the Board of Fish Commissioners, place and maintain a screen or net at the upper end of such raceway, flume or inlet pipe, sufficient to prevent fish from entering therein. Any person, company or corporation refusing or neglecting to comply with such order for a period of one month, shall forfeit and pay the sum of fifty dollars, which sum shall be recovered by civil suit and process, in the name of the Commonwealth, and when collected shall be paid in the Treasury of the State for the use of the Fish Commissioners. If one month after notification, the person, company or corporation, owning or operating such raceway, flume or inlet pipe has not placed such screen or net as may have been directed, the Fish Commissioners are empowered to enter upon such raceway, flume or inlet pipe and place such screens or nets as they may decide necessary; and the cost thereof shall be charged against the said person, company or corporation, and if not promptly paid, such cost may be recovered by the Board of Fish Commissioners by civil suit and process, in the name of the Commonwealth."

What I have said in reference to your first inquiry is equally applicable to your second. The language is so plain and unambiguous, the intention of the Legislature to provide for such cases as this is so clear, and the method marked out for your board to pursue is so unmistakable as scarcely to call for comment. The large sums of money annually appropriated by the State to protect and propagate game and food fish in the waters of the Commonwealth, and the laws passed to provide safeguards against their wanton destruction, as well as the energetic and thorough work of your board, should enlist the hearty co-operation of every citizen.

I am therefore of the opinion and advise you that it is the duty of your board, under the authority conferred upon you by the Legislature in the act above quoted, to see that the proper steps are taken at once to provide for the safeguards required in such cases as the one before us.

Very resepctfully yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

FEES OF OFFICE OF DISTRICT ATTORNEY OF PHILADELPHIA—CONSTRUCTION OF ACT OF MAY 17, 1901, AND SECTION 5 OF ARTICLE XIV OF THE CONSTITUTION.

The District Attorney must earn in fees an amount sufficient to cover the salaries of himself and his clerks. The District Attorney and assistants are paid monthly or quarterly, and they may be paid the full amount at the end of each month or quarter, providing only that the fees collected during the whole term of his office shall equal the amount of salaries paid during that time.

HARRISBURG, PA., *February 17, 1902.*

HON. JOHN WEAVER, *District Attorney of the County of Philadelphia, Philadelphia, Pa.:*

Sir: I am in receipt of your communication of recent date asking for a construction of the act of May 17, A. D. 1901, P. L. 261, so far as the same applies to the duties of district attorneys and their assistants in keeping records of fees collected by or for them.

This act is a supplement to the act of 24th May, A. D. 1887, P. L. 182, which was a supplement to the act of March 31, A. D. 1876, P. L. 13. All of these acts were passed for the purpose of carrying into effect section 5 of article XIV of the Constitution, relative to the salaries of county officers in counties containing over 150,000 inhabitants. Section 5 of article XIV of the Constitution provides, among other things, as follows:

> "In counties containing over one hundred and fifty thousand inhabitants all county officers shall be paid by salary, and the salary of any such officer and his clerks, heretofore paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him."

This provision of the Constitution must necessarily control in placing a construction upon the several acts of Assembly passed for the purpose of carrying into effect its provisions.

The act of 1901, above referred to, includes district attorneys and assistants, in the payment of their salaries, with county solicitors, county jailors, county commissioners, county comptrollers, county surveyors or engineers, county detectives, county treasurer and interpreters of courts. The act requires that district attorneys and their assistants shall be paid monthly or quarterly, and shall be paid the full amount allowed them by law. It further requires that all fees and emoluments that may accrue to any of the officers designated in this act shall be paid by them to the county treasurer in the manner required by law. The act further provides that:

> "All other officers shall be paid the amounts assigned them by law only when the net receipts of their respective offices shall reach the amounts respectively fixed for them."

It is my opinion that this provision of the act of Assembly applies only to officers not theretofore enumerated in the act of Assembly. Inasmuch, therefore, as district attorneys and their assistants are included in the enumeration of officers in the first part of the section, it is my opinion that they are not included within the designation of the latter part of the act of Assembly, to wit, "all other officers."

The question you raise would be quite clear if it depended entirely upon a construction of the provisions of the acts of Assembly, but, in my opinion, all of the provisions of these acts of Assembly must necessarily come within the rule laid down by the constitutional provision contained in section 5 of article XIV. It is clearly ordained by that section of the Constitution that:

> "The salary of any such officer and his clerks, heretofore paid by fees, shall not exceed the aggregate amount of fees earned during his term and collected by or for him."

It is quite clear from this constitutional provision that the district attorney must earn in fees an amount sufficient to cover the salary of himself and his clerks. In this view of the case it will be necessary for the district attorney to keep a record of the fees earned in his office for the purpose of giving the proper information to the comptroller so that the provisions of the Constitution may be properly complied with.

Under the provision of the law, however, the district attorney and his assistants should be paid monthly or quarterly, as the rule of law or practice may require, and I can see no reason why they should not be paid the full amount at the end of each month or quarter as the Constitution only requires that:

> "The salary of any such officer and his clerks shall not exceed the aggregate amount of fees earned during his term and collected by or for him."

This would seem to indicate that the aggregate amount of fees collected during a whole term of office, if equal to the salary of a district attorney and his assistants for the same term, would satisfy the constitutional requirements. I do not believe that either the Constitution or the acts of Assembly require that the fees collected in each month or quarter must necessarily equal the amount of

salaries paid for the same period. The term mentioned in the constitutional provision means the whole term for which the officer is elected.

Very respectfully,

JOHN P. ELKIN,
Attorney General.

RIGHT OF A COLLECTION AGENCY OF A FOREIGN STATE TO TAKE BY ASSIGNMENT CLAIMS OF CREDITORS AGAINST RESIDENTS OF THIS STATE AND PROCEED TO COLLECT SAME BY WRITS OF ATTACHMENT.

Under the act of April 15, 1845 (P. L. 460), the wages of any laborer or the salary of any person in public or private employment are not liable to attachment in the hands of the employer.

Under the decisions of the courts a non-resident of the State may take an assignment of a claim against a citizen thereof and issue an attachment thereon, if such proceedings can be issued under the laws of the foreign State.

The act of May 23, 1887 (P. L. 164) makes it unlawful for any person or persons being a citizen of this Commonwealth, to assign or transfer any claim for debt against a resident of this Commonwealth, for the purpose of having the same collected by proceedings in attachment in Courts outside of this Commonwealth, and provides that as a penalty for the violation of the provisions of the act that the person so transferring or assigning any claim for the purpose aforesaid, shall be liable in action of debt to the person or persons from whom any such claim shall have been collected, by attachment or otherwise, outside of the courts of this Commonwealth, for the full amount of debt, interest and costs so collected.

This act has been declared constitutional by our Courts and is in full force and effect.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 3, 1902.*

MESSRS. B. FRANK SNAVELY, C. A. JOHNSON AND OTHERS, *Committee of Railroad Employes, Harrisburg, Pa.:*

Gentlemen: I am in receipt of your communication of recent date asking for an opinion upon the question of the right of a collection agency of a foreign State to take by assignment claims of creditors against residents of our State and proceed to collect the same by writs of attachment.

It appears from your letter that you represent a considerable number of the employes of the Pennsylvania Railroad Company, a corporation of the State of Pennsylvania. It further appears that a West Virginia collection agency, through its representatives, has come into the city of Harrisburg and purchased from some merchants and other creditors, at a large discount, certain small claims

for bills due by said employes to such merchants and creditors. The collection agency, having taken an assignment of these claims and bills in due form, carries them into the State of West Virginia, enters suit for the collection of the same, and issues writs of attachment against the Pennsylvania Railroad Company, garnishee, for the purpose of attaching the wages of its employes. I am also informed that similar proceedings have been instituted against the employes of railroad companies in other cities of the Commonwealth. There is thus accomplished, by this circuitous route and technical method, a result that cannot be obtained directly against a laborer in our State.

For upwards of sixty years it has been the policy of our lawmakers to prevent the attachment of the wages of laborers in the hands of their employers within the State. The act of April 15, A. D. 1845 (P. L. 460), provided among other things, that the wages of any laborer or the salary of any person in public or private employment shall not be liable to attachment in the hands of the employer The policy of the law in this respect has never been questioned by our people or by the courts in which it has been considered. In order to protect the family and home of the laboring man our State has been liberal in the enactment and enforcement of exemption laws. The purpose of these acts, intended for the protection of laborers, is set aside by the method employed by the collection agency of West Virginia to which you refer. It thus happens that, not only is the policy of our laws defeated in this manner, but many suits are instituted and costs are added as large as, and in many instances larger, than the original debt itself. I do not believe that any fair-minded person will contend that this system ought to be encouraged, or that such a method for the collection of claims against poor people should be looked on with favor.

The injustice of the system is one thing, however, and the legal right to enforce such claims quite another. It seems to have been decided in the cases of Mahaney vs. Kephart, 15 W. Va., 609; Stevens vs. Brown, 20 W. Va., 480; Morgan vs. Neville, 74 P. S., 52, and Bolton vs. Pennsylvania Company, 38 P. S., 261, that a non-resident of our State may take an assignment of a claim against a citizen thereof and issue attachments thereon, if such proceedings can be instituted under the laws of the foreign State. It occurs to me, however, that if our merchants and other creditors understand the penalty that attaches to the assignment of claims and bills to a collection agency, such as you have mentioned, they would not be willing to assume the risks incurred by such a transaction.

The Legislature of our State has set the seal of disapproval on methods of this kind for the collection of claims against laborers. The act of May 23, A. D. 1887 (P. L. 164), was passed for the pur-

pose of securing to laborers the benefit of the exemption laws of this Commonwealth and to prevent the assignment of claims for the purpose of securing their collection against laborers by attachment processes outside of the Commonwealth. It provides, among other things, that "From and after the passage of this act it shall be unlawful for any person or persons, being a citizen or citizens of this Commonwealth, to assign or transfer any claim for debt against a resident of this Commonwealth, for the purpose of having the same collected by proceedings in attachment in courts outside of this Commonwealth." As a penalty for the violation of the provision of the act just cited, it is provided that "The person or persons assigning or transferring any such claim, for the purpose or with the intent aforesaid, shall be liable in an action of debt to the person or persons from whom any such claim shall have been collected, by attachment or otherwise, outside of the courts of this Commonwealth, for the full amount of debt, interest and costs so collected.

The validity of the act of 1887, supra, has been sustained in a very able opinion by Mr. Justice Sterrett in the case of Sweeney vs. Hunter, 145 P. S. 363. The learned justice, in discussing the question, said, among other things:

> "The defendant, a resident of this State, assigned his claim to a resident of West Virginia for the purpose of gaining an advantage which he could not enjoy under the law of this State. In doing this he committed, as the verdict establishes, acts which are forbidden by the law under consideration. The law, in effect, compels him to make restitution by way of penalty to his aggrieved debtor. We think the court was right in holding that the act of 1887 is constitutional, and we discover no error in any of the rulings."

It is clear, therefore, that the act of 1887 is in full force and effect. It necessarily follows that if the collection agency in West Virginia presses these writs of attachments and compels the railroad companies to pay the debt, interest and costs of the claims assigned to it, the debtors in our State may proceed against the merchants or other creditors making assignments of these claims for the purpose mentioned in the act of Assembly, and recover from them as a penalty the full amount of debt, interest and costs so collected.

In my opinion this whole system of making collections is vicious, savors of sharp practice, and should not be encouraged. It seems to me that, when our merchants and other creditors fully understand the true character of the suits instituted and the penalty which they must pay in case suits are pressed against them, they will refrain from making assignments of claims for this purpose.

Very respectfully yours,

JOHN P. ELKIN,
Attorney General.

MILEAGE OF COMMON PLEAS JUDGE—CONSTRUCTION OF SECTION 3, ACT OF JUNE 4, 1883.

There is nothing to indicate that the act intended the payment of mileage to a judge who does not live at the county seat to and from his place of residence to the county seat where he must hold court. The decisions of the Supreme Court, so far as they throw light upon the question, are clearly against allowing the mileage. The Auditor General is instructed not to pay the same.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 8, 1902.*

HON. E. B. HARDENBERGH, *Auditor General:*

Sir: Your letter of recent date, to the Attorney General, has been referred to me. In it you ask to be advised whether or not a common pleas judge, in a district composed of but one county and residing some distance from the county seat, is entitled to compensation for mileage in traveling from his home to the court house or to his office and returning to his place of residence after his day's labors are concluded, under section 3 of the act of June 4, 1883 (P. L. 74), which reads as follows:

> "The said judges shall receive, in addition to such annual salary, the sum of fifteen cents for every mile necessarily traveled within their respective districts, in performing the duties of their offices."

The records in your department disclose the fact that heretofore only judges holding office in districts composed of more than one county have made claims for such mileage and then only for traveling from the county seats of the counties in which they reside to the county seats of the other counties in which they are obliged to hold courts.

The fact that no such claim has heretofore been made seems to indicate that the section above quoted has not been considered to apply to cases other than those mentioned. The intention of the Legislature, as expressed in the language of the section in question, is not altogether clear and I have not been able to find any decisions of the courts upon the precise point involved, so we are without express legal interpretation to guide us in this research. There is nothing in the Constitution or any act of Assembly which requires a judge to reside at the county seat. Section 19 of article V of the Constitution, however, provides that:

> "The judges of the Supreme Court, during their continuance in office, shall reside within this Commonwealth, and the other judges, during their continuance in office shall reside within the districts for which they shall be respectively elected."

The contention of the claimant in the case now before us is that in the absence of any such restriction he is entitled to mileage for his daily travel from his place of residence to the county seat and returning therefrom. This claim would be undoubtedly well-founded if such travel were necessary for the proper discharge of his official duties. Upon this point, however, we have the opinion of the Supreme Court in the case of Mansel et al. vs. Nicely, 175 P. S. 375, which seems to me to be conclusive. That case arose in Lycoming county, on an appeal from the report of the county auditors of that county, in allowing the county commissioners traveling expenses from their homes to their office in the county seat, under the provisions of the act of May 13, 1889 (P. L. 200), which reads as follows:

> "That from and after the passage of this act, directors of the poor and county commissioners of this Commonwealth shall be allowed their traveling expenses necessarily incurred in the discarge of their official duties, and the same shall be paid on warrants drawn in their favor on the county treasurer out of the county funds: Provided, That this act shall not apply to poor directors in counties having local or special laws, under which each poor director is allowed an annual compensation of one hundred and fifty dollars or more."

The lower court having decided in favor of the auditors allowing the compensation claimed, an appeal was taken to the Supreme Court, which reversed the judgment of the court below in a very able opinion by Mr. Justice Fell, in which he states the conclusion of the court as follows:

> "If then the allowance for all individual expenses is forbidden, and only traveling expenses necessarily incurred in the discharge of official duties can be recovered, has the appellee a right to have repaid to him the expenses which he incurred each day in going from his home to his office and return? These would seem to come under the head of individual expenses, the collection of which from the county is forbidden by the act of May 7th. Whenever the official duties of the commissioner call him from his home or his office to different parts of the county, or it may be of the State, his traveling expenses are incurred in the performance of an official duty, and he is entitled to an allowance for them under the act of May 13th. Such an expense, we think, is the only one within the meaning of the act. The purpose of the legislation to exclude all individual expenses, and to allow only for traveling expenses incurred in the discharge of an official duty seems to be clear. Of the former the officer knew when he accepted the office, and he took it with the additional burden

> which his place of residence might impose. Of the latter he could not know certainly, as it would depend upon future exigencies, and it was a burden which might be made greater or less by the requirements of his official duties."

It is true that in the case of Mansel vs. Nicely there is another act of Assembly passed concurrently with the act of May 13, which provides that the county shall not be liable for personal expenses of the commissioners, and it may be urged that in that respect it differs from the case before us, but as the compensation for mileage fixed by the act of 1883 is specifically restricted to cover only travel made necessary in the performance of official duties, a claim for the same can be considered only when it falls properly under that head. The rule of construction adopted by the Supreme Court in Mansel v. Nicely must, it seems to me, under all the facts in this case, be applied here.

The public is not concerned in the place of residence of a judge so long as he complies with the constitutional restriction and fixes it within the judicial district for which he is elected or appointed, and he may with propriety live elsewhere than the county seat should he so desire, but in that event he cannot require the State to pay him fifteen cents a mile for traveling from his home to the place where the law requires him to perform his duties, as this is a matter within his own control, of which he had knowledge prior to his election, and which is not necessary for the performance of his official duty.

I am therefore of the opinion and advise you that there is nothing to indicate that the Legislature contemplated the payment of mileage in cases like this; the decisions of the Supreme Court, so far as they throw any light upon it at all, are clearly against it, and you should, therefore, not allow it.

Respectfully yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

TRANSFER OF UNDERTAKERS' LICENSE—CONSTRUCTION OF SECTION 8 ACT OF JUNE 7, 1895.

An undertaker's license to an individual cannot be transferred or assigned, and can be used only for the purpose of carrying on the business in the place designated in the license.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 30, 1902.*

DR. J. LEWIS GOOD, *President State Board of Undertakers, Philadelphia, Pa.:*

Sir: Your letter of recent date, to the Attorney General, has been received. You ask therein whether or not a license granted to an individual to carry on the business of undertaking, under the provisions of the act of June 7, 1895 (P. L. 167), can be transferred to or used by a stock company of which this original licensee becomes a member, or whether it will be necessary for the new company to take out a license in its own name.

The 8th section of the above mentioned act deals directly with this question and is in the following language:

> "No license granted or issued under the provisions of this act shall be assignable or transferrable, and every such license shall specify by name the person, persons or corporation to whom it is issued, and shall designate the particular place or places at which the business shall be carried on."

From the language of this act it is perfectly clear that the Legislature intended that the license should be granted to an individual, and that it should not be assigned or transferred, but could be used only for the purpose of carrying on the business in the place designated in the license. It therefore follows that no corporation could legally transact the business of undertaking by virtue of a license issued to an individual or at a place other than that set forth therein. A corporation attempting to do business under a license issued to an individual would do so in violation of the law and would subject itself to the penalty prescribed in the 7th section of the said act.

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

VACANCY IN SCHOOL BOARD OF FERMANAGH TOWNSHIP, JUNIATA COUNTY—CONSTRUCTION OF SECTION 7, ACT OF 1854.

Where the regularly elected school directors resigned and the vacancies were filled by the remaining members of the Board, the persons thus selected shall serve until the expiration of the school year in June, when the directors elected at the preceding February election shall begin the term of three years for which they were elected.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 14, 1902.*

HON. NATHAN C. SCHAEFFER, *Superintendent of Public Instruction:*

Sir: Your letter of recent date, to the Attorney General, enclosing communication from Wilberforce Schweyer, Esq., of Mifflintown, relative to vacancies in the membership of the board of school directors of Fermanagh township, Juniata county, and asking for an official construction of section 7 of the act of 8th May, 1854 (P. L. 618), received.

It appears from the correspondence in the case that at the February election in 1899, two school directors were elected in Fermanagh township to serve the full term of three years, and that in the summer of 1901 they both resigned their offices to which they were elected. The vacancies caused by their resignation were filled by the remaining members of the board under authority of the above mentioned 7th section of the act of 1854, which reads as follows:

> Section 7. "That each board of directors shall have power to fill any vacancy which may occur therein by death, resignation, removal from the district or otherwise, until the next annual election for directors, when such vacancy shall be filled by electing a person from the district in which the vacancy occurs to supply the same."

It further appears that at the February election in 1902 the electors of the said township of Fermanagh elected two directors for a period of three years, and also elected two other directors, as indicated by the official ballots, to fill the "vacancies expiring June 2, 1902." The contention in this case seems to be that the board had authority to fill the existing vacancies only until the date of the election, and that the electors of the township had the right at that election to elect two persons to serve from the day of the election until the 2d of June, when the regularly elected directors should begin their three year term.

The language of the section above quoted is not free from am-

biguity, and, standing by itself, might be open to question on this point. So far as I can learn from a careful examination of the reports, this precise point has never been passed upon by the Supreme Court, and the opinions of the lower courts do not agree. I understand, however, that the uniform decisions of yourself and your predecessors in office have been that "an appointment made by a board of school directors to fill an existing vacancy therein qualifies the person so appointed to fill the office until the first Monday in June following the first annual election next ensuing such appointment, at which time the person elected at the preceding annual February election will be qualified to fill the office for the remaining part of the unexpired term." This rule has been acquiesced in so long and is so fair and equitable that I am loath to disturb it.

The case of Commonwealth v. Evans, 102 P. S. 394, which is cited in support of the contention that the directors so appointed by the board shall hold only until the following February election, does not, in my opinion, sustain the principle claimed. All that case decided was that, under the forty-first section of the act of 23d May, 1874 (P. L. 254), providing for the election of a school controller in each ward of a city of the third class, and fixing the term at four years, did not repeal the act of 1854 in reference to filling vacancies, but that a vacancy created by death or resignation must be filled at the succeeding annual February election, notwithstanding the act of 1874 provided for elections for school controller biennially, and that the person could not hold over until the second February election.

It did not pass upon the right of the directors so appointed to serve until the organization of the board in June, and therefore is not applicable here.

In Commonwealth ex rel. E. L. Acher v. Elijah Thomas, 10 Phila. Reps., page 600, Judge Ross, of Montgomery county, held that the term of a newly elected director begins immediately after the February election, but in the more recent case of Hatz v. Gilbert, 19 County Court Reps., page 413, Judge Simonton, of the Dauphin county court, in a carefully considered opinion, decides that the appointee of the board shall hold until the expiration of the school year in June, when the regularly elected director shall begin the term of three years for which he is elected. This latter decision, which reviews all the former cases, and is in accordance with the uniform construction of the act by your Department for many years, in my opinion, is conclusive on this question.

I am therefore of the opinion, and advise you, that the persons appointed by the board of directors of Fermanagh township, Juniata county, to fill the vacancies existing on the said board, are entitled

to hold office and perform the duties of school directors of said township until June, 1902, notwithstanding the result of the election held in February.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

COMMUTATION OF SENTENCES—CONSTRUCTION OF SECTION 4, ACT OF MAY 11, 1901.

The loss of commutation gained by good conduct while in prison is in the nature of a penalty and is only to be imposed where the crime is committed by the prisoner subsequent to his release. Where the second offence was committed prior to imprisonment upon the first offence, this does not work a forfeiture of the commutation which good behavior in prison has earned.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 15, 1902.*

MR. W. M. JOHNSON, *Warden Western Penitentiary, Allegheny, Pa.:*

Sir: Your letter of recent date, to the Attorney General, has been received. You therein set forth the fact that one, Frank Davis alias Burwell Fox, who was sentenced in the court of quarter sessions of Somerset county, February 28, 1900, to serve two years and six months in the Western Penitentiary for larceny and horse stealing, and discharged on January 28, 1902, having been allowed seven months commutation, was immediately arrested and taken to Clarion county, where he was tried and convicted of larceny by bailee. He was then returned to your institution on March 7, 1902, to serve a term of two years and six months.

You desire to know whether, under the provisions of section 4 of the act of Assembly of 11th May, A. D. 1901, he should be required to serve the time gained by reason of his commutation on his first sentence before his second sentence commenced.

A careful consideration of this act leads me to the conclusion that the loss of commutation gained by good conduct while in prison is in the nature of a penalty and only to be imposed where the crime is committed by the prisoner subsequent to his release. The language of section 4 is capable of no other construction:

> "Section 4. The Governor shall, in commuting the sentences of convicts as provided for in this act, annex a condition to the effect that if any convict so commuted shall, during the period between the date of his or her discharge by reason of such commutation and the date

of the expiration of the full term for which he or she was sentenced, be convicted of any felony, he or she shall, in addition to the penalty which may be imposed for such felony committed in the interval as aforesaid, be compelled to serve in prison, penitentiary or workhouse in which he or she may be confined for the felony for which he or she is convicted, the remainder of the term, without commutation, which he or she would have been compelled to serve but for the commutation of his or her sentence as provided for in this act."

As I understand the facts in this case, the second offense for which the prisoner was tried and convicted, was committed prior to his original incarceration, and if this be true his subsequent conviction should not work a forfeiture of the commutation which his good behavior in prison has earned for him.

I am therefore of the opinion and advise you that the prisoner is entitled to the seven months' commutation on his first sentence, without reference to his having been afterwards convicted of a crime committed prior thereto, and for which he is now serving the penalty.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

CONSTRUCTION OF ACT OF JUNE 26, 1895.

Pure food—Act of June 26, 1895.

The Legislature had a right to enact the Pure Food Law of June 26, 1895, P. L. 317, and it should be liberally construed.

Public officers—Dairy and Food Commissioner—Adulterated Food—Act of June 26, 1895.

Under the Pure Food Act of June 26, 1895, P. L. 317, it is the duty of the Dairy and Food Commissioner, if he finds in the State any adulterated food, which includes preserved meats or any other food product containing poisonous or injurious substances, or substances which depreciate or injuriously affect the quality, strength or purity of the same, or which contain diseased, decomposed, putrid, infected or tainted substances, to see that the provisions of the law are enforced against the persons making sale of the same.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 16, 1902.*

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

Sir: The Philadelphia Live Stock Association has asked for an opinion on the question of the right of persons engaged in the business of selling meats in this State to do so in an adulterated or preserved form, when the same is or may be deleterious to health.

The act of June 26, A. D. 1895 (P. L. 317), provides that no person, within this State, shall manufacture for sale, offer for sale or sell any article of food which is adulterated within the meaning of this act. The provisions of the act are broad and comprehensive, and necessarily include all articles of food of whatsoever kind or nature. The act itself provides that the term "food" shall include all articles used for food or drink by man, and no one doubts, therefore, that meats are included within the general provisions thereof.

The only question that can arise in the enforcement of the law is whether any meat offered for sale is adulterated within the meaning of the act of Assembly. Section three defines what is an adulteration of any food product within the contemplation of the law. It is provided in this section that any food product shall be held to be adulterated in the following manner:

1. If any substance or substances have been mixed with it so as to lower or depreciate or injuriously affect its quality, strength or purity.

2. If it consist, wholly or in part, of a diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance or article, whether manufactured or not.

3. If it contains any added substance or ingredient which is poisonous or injurious to the health.

The act contains a number of other definitions of "adulterated food," but the three just mentioned are sufficient for the purpose of answering the question now under consideration.

It is clear that if preserved meats contain "any substance or substances which injuriously affect the quality, strength or purity thereof" they are adulterated within the meaning of the act. Again, it is apparent that if these meats contain "any diseased, decomposed, putrid, infected, tainted or rotten animal or vegetable substance," or any other substance inter-mixed therewith, they are adulterated under the law. Again, if these preserved meats contain "any added substance or ingredient which is poisonous or injurious to the health," there is an adulteration of which the act takes notice.

My information is that most of the preserved meats on sale in our State contain borax or boracic acid as a preservative, and that, in the opinion of your Department, these preservatives are or may be injurious and deleterious to health. If the fact be established that the preservatives used in meats are injurious or deleterious to health, then the sale of such meats would clearly be a violation of the act of Assembly. At all events, it would be a question for a jury to decide, in the trial of a case, whether or not these meats contain any substances which affect their quality, strength or purity, or whether they contain any substances which is "diseased, decom-

posed, putrid, infected or tainted," or whether they contain any substance that is poisonous or injurious to health.

It was the intention of the Legislature, in passing the act of 1895, to provide against the adulteration of food, and the courts have uniformly construed the provisions of the act broadly, so that this legislative purpose would not be defeated. Mr. Justice Mestrezat, in the case of Commonwealth v. Kevin, in a recent decision, discussed this question at length, sustaining the contention of the Commonwealth in almost every particular. In passing on the question he said, among other things:

> "The purpose of the Legislature, in the passage of the act, is most commendable, and the statute should receive a construction by the courts that will fully and effectively accomplish the object of its enactment."

The learned justice, in a further discussion of the right of the Legislature to enact such a law, said:

> "It is within the province of the General Assembly to determine whether the addition of a poisonous or injurious substance to a food article endangers the health of the citizens of the State who use the compound, and if it does, then it is clearly within the police power of the State to prohibit the manufacture and sale of the adulterated article, as well as to protect the public from imposition or fraud in the sale of it."

It will be observed that the highest judicial tribunal in our State has fully sustained the act of 1895, and its provisions must be held to be in full force and effect.

Section 6 of this act makes it the duty of the Dairy and Food Commissioner to enforce the provisions of the law. It is your duty therefore, if you find preserved meats or any other food product in our State, containing poisonous or injurious substances, or substances which depreciate or injuriously affect the "quality, strength or purity of the same," or which contain "diseased, decomposed, putrid, infected or tainted" substances, and to see that the provisions of the law are enforced against the persons making sale of the same. The pure food laws were passed for the purpose of providing against adulteration of food, of protecting the public health and of preventing deception and fraud in the sale of food products, and the officers entrusted with the enforcement of these acts should use due diligence in requiring their provisions to be observed by all persons dealing in such products.

Very respectfully yours,

JOHN P. ELKIN,
Attorney General.

PUBLICATION OF REPORT OF THE DEPARTMENT OF FORESTRY—CONSTRUCTION OF ACT OF FEBRUARY 25, 1901.

There is no direct provision of law for the publication of the report of the Department of Forestry, but this Department being a part of the Department of Agriculture, it is recommended that the report of the Department of Forestry be printed with the report of the Department of Agriculture.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 15, 1902.*

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

Sir: I am in receipt of your favor of recent date, asking whether, under the act of February 25, A. D. 1901 (P. L. 11), creating a Department of Forestry, provision is made for the publication of annual reports.

The publication of an annual report seems to have been overlooked in this act, although it is incidentally provided for in section 3, wherein the Department is required to "publish information respecting the extent and condition of the forest lands in the State." There is no specific provision made, however, as to the manner of publishing the information, and no appropriation is made to pay the expenses of the same. It is certainly very desirable that such a report should be prepared and published.

A somewhat similar question was raised by the Secretary of Agriculture in 1896, when the Attorney General was asked whether the report of the Commissioner of Forestry could be printed as Part II of his anual report, and it was then decided that such report could be so printed. This opinion was based on the fact that the Commissioner of Forestry was a part of the Agricultural Department.

Under the circumstances I can see no valid reason why the two reports might not be printed in one volume; in other words, you could combine the report of the Department of Agriculture with the report of the Commissioner of Forestry. At the next session of the Legislature the whole matter can be covered by proper legislation.

Very respectfully yours,
JOHN P. ELKIN,
Attorney General.

CONFINEMENT OF CHILDREN IN THE HUNTINGDON REFORMATORY UNDER THE JUVENILE COURT ACT—CONSTRUCTION OF ACT OF MAY 21, 1901 (P. L. 279).

Under the acts of June 8, 1881 (P. L. 63), and April 28, 1887 (P. L. 63) male criminals betwen the ages of fifteen and twenty-five years, not known to have been sentenced previously in this or any other State, can be sentenced to the Huntingdon Reformatory.

The act of May 21, 1901, limits the age of a child who shall be committed to the State Reformatory or House of Refuge to twelve years; provides that no Court shall commit a child under fourteen years of age to a jail or police station and further that when a child shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child in the same building with such adults or in the same yard or enclosure.

Under these conditions it is a physical impossibility for the Huntingdon Reformatory to care for such children, and it is therefore impossible to receive inmates and comply with the provisions of the Juvenile Court Act. If the State desires children to be sentenced to the Huntingdon Reformatory it must provide accommodations so that the provisions of the law may be complied with.

There is some conflict in the laws upon the subject, but reading them all together, under the Juvenile Court Act, male children over the age of fifteen years and under sixteen years may be confined in the Huntingdon Reformatory.

HARRISBURG, PA., *July 30, 1902.*

MR. T. B. PATTON, *General Superintendent, Pennsylvania Industrial Reformatory, Huntingdon, Pa.:*

Sir: I am in receipt of your communication of the 22d inst. asking for an interpretation and construction of the act of May 21, A. D. 1901 (P. L. 279), known as the Juvenile Court Act, in so far as the same relates to the duty of the board of managers of your institution.

You desire especially to know whether you are required to receive a child under the age of fifteen years when such child has been committed to the custody of your institution by a juvenile court.

The Pennsylvania Industrial Reformatory was erected under the provisions of the act of June 8, A. D. 1881 (P. L. 63), and the institution is regulated under the authority of said act and the supplementary legislation provided by the act of April 28, A. D. 1887 (P. L. 63). The eighth section of the act of June 8, A. D. 1881, above referred to, provides that: "courts of criminal jurisdiction may sentence to said reformatory any male criminal between the ages of fifteen and twenty-five years, not known to have been previously sentenced in this or any other State." The fourth section of the act of April 28, A. D. 1887, above mentioned, contains a similar provision.

Under the authority of these two acts the reformatory was constructed and is regulated, and it is perfectly clear therefore that

prior to the approval of the Juvenile Court Act in 1901, no person could be sentenced to confinement in your institution who was under the age of fifteen years, or over twenty-five.

These acts also provide that: "only male criminals can be sentenced to confinement in said reformatory." Your institution therefore has been erected, and is being regulated by the requirements of said acts of Assembly, unless changed, or altered by subsequent legislation.

The only question that now arises is whether the Juvenile Court Act has repealed or modified any of the provisions of these acts of Assembly. The Juvenile Court Act provides for the regulation and treatment and control of dependent, neglected and delinquent children under the age of sixteen years, and applies to both male and female. The proviso to section nine of said act limits the age of a child who shall be committed to the State Reformatory or House of Refuge to twelve years; section twelve makes it the duty of the board of managers of the State Reformatory and the board of managers of the House of Refuge to maintain an agent whose duty it shall be to examine the homes of children paroled from such institution.

These and similar provisions would seem to indicate that the Legislature contemplated the confinement of children in the reformatory, but section ten of the act of 1901, provided that: "no court shall commit a child under fourteen years of age to a jail or police station." And further provided that: "when a child shall be sentenced to confinement in any institution to which adult convicts are sentenced, it shall be unlawful to confine such child in the same building with such adults or to confine such child in the same yard or enclosure with such adult convicts; or to bring such child into any yard or building in which such adult convicts may be present." Under these conditions it would be a physical impossibility for your institution to care for such children. Your institution is arranged with cell houses intended to confine one man in a cell; it is enclosed by a wall around the institution inside of which your work shops are located, and as a necessary result of the plan upon which your institution is erected, it would be impossible to receive inmates and comply with the provisions of the Juvenile Court Act last mentioned.

If it is the desire of the State to have a child sentenced by the juvenile court to your reformatory, and cared for at the said institution, it will be necessary to provide necessary accommodations so that the provisions of the law may be complied with; this has not been done, and it will be impossible for you to care for such children until the Legislature shall provide you with the necessary conveniences for so doing. There seems to be some conflict in the several

acts of Assembly relating to the regulation and government of said reformatory, and it is our duty therefore to reconcile them, so far as possible, and when this cannot be done, the Legislature must be appealed to in the future.

Reading the seval acts relating to said reformatory together I am of opinion, that only male persons between the ages of fifteen and twenty-five years can be committed by the courts to the Pennsylvania Industrial Reformatory, but, inasmuch as the juvenile courts have jurisdiction over children under the age of sixteen years, it follows, that such courts may sentence male children over the age of fifteen years and under sixteen years to custody therein.

Very respectfully yours,

JOHN P. ELKIN,
Attorney General.

COMMISSIONS OF F. J. KRAUSE AND HENRY KRAUSKOPF AS JUSTICE OF THE PEACE FOR THE BOROUGH OF SOUTH BETHLEHEM.

South Bethlehem was entitled as a borough to two Justices of the Peace. At a regular municipal election the electors of the borough voted for the increase of the Justices of the Peace by three. A charge of irregularity in advertisement of the election and holding the same was made. *Held* that the election was regular and that Krauskopf and Krause who were elected to fill such vacancies are entitled to their commissions.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 31, 1902.*

HON. W. W. GRIEST, *Secretary of the Commonwealth:*

Sir: Your recent letter to the Attorney General, enclosing records and other papers relative to the issuing of commissions to F. J. Krause and Henry Krauskopf, who claim to have been elected as justices of the peace for the borough of South Bethlehem at the municipal election in February last, and asking for an opinion in regard to the same, has been referred to me.

From the papers and the evidence presented at a hearing before me, which was attended by all of the interested parties, together with their counsel, I find the following facts:

1. South Bethlehem is a borough, and, under the general borough laws of the Commonwealth, as well as article V, section 2, of the Constitution of 1874, is entitled to only two justices of the peace, unless such number be increased by a majority vote of the electors thereof.

2. At the regular municipal election held in the borough of South

Bethlehem on February 19, 1901, the electors voted in favor of increasing the number of justices of the peace by three.

3. At the regular municipal election held in the said borough on the 18th of February, 1902, Henry Krauskopf and F. J. Krause were duly elected by a majority of the voters thereof as additional justices of the peace, and, having filed their acceptances and their bonds, are now asking your Department for their commissions as such officials.

4. Several citizens of the borough of South Bethlehem, among them the two present justices of the peace, have filed a written protest in your Department, objecting to the issuing of commissions to the above named Krauskopf and Krause, alleging that the increase in the number of justices of the peace at the municipal election of 1901 is invalid for the reason that the advertisements of the same and the ballot used were illegal inasmuch as they provided for an increase of three, whereas the act of Assembly, providing for such increase, limits the number to two. If this contention is correct, it is clear that the commissions cannot issue, as no vacancies have been created and there exist no offices to be filled.

The legal authority for an increase in the number of justices of the peace in any ward, borough or township in the Commonwealth, is found in the fourth section of the act of June 21, 1839 (P. L. 377), which reads as follows:

> "That if the qualified voters of any ward, borough or township in this Commonwealth shall desire to elect more than the number of justices of the peace or aldermen prescribed by this law for such ward, borough or township, such qualified voters may at the times and places of holding constables elections express such desire and consent in the following manner, namely: Such of the said voters as are in favor of electing more justices or aldermen, shall vote tickers labelled on the outside with the word 'Justices' or 'Aldermen' and the inside of such tickets shall contain the words 'Increase one,' or 'Increase two,' as they may desire, and such of the said voters who are opposed to the election of more justices or aldermen shall vote tickets labelled 'Justices' or 'Aldermen' on the outside, and the inside of such tickets shall contain the words 'No increase.' And if it shall appear by such election that a majority of the qualified voters within such ward, borough or township are in favor of electing more justices or aldermen, then such additional number of justices or aldermen shall, at the next constables election thereafter be elected and commissioned in the same manner as the other justices and aldermen are under this act: Provided, That no election shall be held under this section unless at least fifty qualified voters of the proper ward, borough or township shall give notice in writing to

> the constable thereof, that they desire to vote, at the next constables election thereafter, for such increase, and on receiving such notice, the said constable shall, by at least ten written or printed handbills put up in the most public places in said ward, borough or township, at least twenty days before said election, give notice that at said election a vote will be taken to ascertain whether the qualified voters of said ward, borough or township, consent to the election of a greater number of justices or aldermen. And it shall be the duty of the officers and others holding such election under this section, to make out true duplicate returns of the same, and file one of said returns in the office of the prothonotary of the proper county, and in case a majority of the voters of such borough or township are in favor of an increase, the proper constable shall immediately transmit by mail to the Governor the other of the said returns, and no such increase in any ward, borough or township shall exceed two."

The only deviation in this case from the precise method pointed out by the act of Assembly was in the preparation of the ballot upon which the question was submitted in a single proposition, to wit: "Shall there be an increase of three justices of the peace for the borough of South Bethlehem?" and upon this question the voter was required to vote "Yes" or "No." The learned counsel for the protestants contends that the exact language of the law above quoted should have been followed and the electors given an opportunity to vote for an "Increase of one," or "an increase of two" or for "No increase," by printing the three propositions separately upon the ballot; that a failure to do so, together with the further fact that the increase voted for exceeded the legal number of justices provided for by the act, invalidates the entire election; and that consequently the subsequent election of Messrs. Krauskopf and Krause must also be set aside.

It is contended, however, on the part of the claimants that a mistake or error in the preparation of the ballot does not invalidate the election, but that the excess should be treated as surplusage and the expressed wishes of a majority of the electors of the borough for an increase of the number of justices of the peace should be respected. It is argued further, in support of the contention that the preparation of the ballot was a mistake, that only two candidates presented themselves for election subsequently and are now here claiming their commissions. If three had been elected it would undoubtedly have been impossible to ascertain which of them were entitled to commissions, and your Department would have been justified in refusing to issue them. But this question does not arise. The only one before us is whether the action of the voters

of the borough of South Bethlehem at the municipal election held on the 19th of February, 1901, providing for an increase of three justices of the peace, was in accordance with law and constitutes a valid increase to the limit fixed by the act of Assembly, to wit: two; or whether it is invalid and should be set aside.

The general principle governing elections is stated in the American and English Encyclopoedia of Law, first edition, Vol. 6, page 334, section 18, as follows:

> "The general principles drawn from the authorities are that honest mistakes or mere omissions on the part of the election officers, or irregularities in directory matters, even though gross if not fraudulent, will not avoid an election, unless they affect the result or at least render it uncertain."

After a careful consideration of all the facts and such authorities as tend to throw light upon the disputed question of law, I am of the opinion that a majority of the voters of the borough, having regularly expressed their desire to increase the number of justices of the peace, their wishes should be complied with, and I therefore advise you that the error complained of is not sufficient to justify you in withholding these commissions, particularly so in view of the fact that the objections may be raised in another tribunal and determined by a court of competent jurisdiction. The commissions asked for by Henry Krauskopf and F. J. Krause, as justices of the peace for the borough of South Bethlehem should, therefore, be issued forthwith.

Very respectfully yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

EXPOSITION OF NATIONAL CARRIAGE DEALERS ASSOCIATION—CONSTRUCTION OF ACT OF APRIL 22, 1874.

Where an exposition is held in which goods are shown for a limited time, and not thrown open to the public but to members of the Association, it is held this does not constitute such a doing of business in Pennsylvania as will require the payment of a mercantile tax or the registering in the Office of the Secretary of the Commonwealth to do business in this State.

HARRISBURG, PA., *September 15, 1902.*

HON. W. W. GRIEST, *Secretary of the Commonwealth:*

Sir: I am in receipt of your communication of recent date asking whether the Exposition, to be held in Philadelphia in the near future by the National Carriage Dealers' Association, comes within

the meaning of article 16, section 5 of the Constitution, which ordains that:

> "No foreign corporation shall do business in this State without having one or more places of business and an authorized agent or agents in the same upon whom process may be served."

You also desire to know whether these dealers will be subjected to the payment of a mercantile tax. It appears, from the facts submitted for my consideration, that the Exposition will continue for a limited time, perhaps about one month. The Exposition is not to be opened to the general public, and the persons who attend the same are members of the association, who are manufacturers of specialties in the construction of carriages. It also appears that some of the exhibitors are incorporated under the laws of states other than Pennylvania.

The act of April 22, A. D. 1874, was passed for the purpose of enforcing the constitutional provision above referred to in relation to foreign corporations.

The second section provides that it shall not be lawful for any foreign corporation to do business in this Commonwealth until it shall have filed in the office of the Secretary of the Commonwealth a statement showing the title and object of the corporation, the location of its office or offices, and the names of its authorized agent or agents therein.

The provision of the Constitution above recited, as well as the act of 1874, intended to enforce the same, applies to foreign corporations having capital invested, and doing permanent business in our State. These provisions do not apply to foreign corporations who transact business in our State through agents. This was decided in the case of Wolff, Dryer & Co. vs. Bigler & Co., 192 Pa. State, 406, wherein Mr. Justice Fell, in rendering the opinion, said:

> "The contention that the plaintiff could not maintain an action in this State because it was a foreign corporation, and had not complied with the provisions of the act of April 22, 1874, P. L. 108, is without merit, It had no office or other place of business in Pennsylvania, and no part of its capital was here. The machinery sold was shipped either directly from its factory in Chicago, or upon its orders given to other manufacturers. The fact that its agent came into this State and made contract for machinery to be delivered here did not bring it within the inhibition of the act of 1874."

To the same effect is the case of Mearshon & Co. vs. Lumber Co., 187 Pa. State, 12, wherein it was held, that a foreign corporation may execute orders for the delivery of goods given to its salesmen

in Pennsylvania without being required to comply with the provisions of the act of April 22, 1874, P. L. 108, relating to the appointment of a resident agent. The court in this case held, that the execution of such orders is not doing business in this State within the meaning of the act of Assembly.

It is my opinion, that the business transacted by the National Carriage Dealers' Association at the Exposition to be held in the city of Philadelphia will be analogous in principle in so far as the legal questions involved are concerned. The most that can be said of their business is, that they will take orders there to be delivered by their company at some future time. Their stay in the city will be limited to a few weeks, and the whole affair is in the nature of an Exposition intended for the promotion of trade. Under these circumstances, I do not think the business transacted comes within the purview of our mercantile tax license law. This opinion is based, however, entirely on the facts as they have been represented to this Department, to wit:

That this association meets only for a few weeks, transacts its business entirely with its own members, and does not intend to make a permanent and continuing business in this State.

Very respectfully yours,

JOHN P. ELKIN,
Attorney General.

PRIORITY OF LIENS OF MORTGAGES UPON NORMAL SCHOOL REAL ESTATE—CONSTRUCTION OF ACT OF MAY 22, 1901, P. L. 290.

Under the authority of the act of May 22, 1901, all mortgages given by Normal Schools to the State can be made prior liens.

The question whether or not these mortgages are prior liens without being recorded in the county where the Normal School is situate is not decided.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *September 15, 1902.*

MR. FRANCIS J. MAFFETT, *Attorney-at-Law, Clarion, Pa.:*

Sir: Since writing you to-day I have found time to consider the legal question stated in your favor of the 10th inst., in reference to the priority of liens of mortgages upon normal school real estate.

It has been the policy of our State for a quarter of a century at least to require a bond and mortgage to be executed for the moneys appropriated from time to time in aid of our normal schools. The question has never been raised in the courts or by any of the

departments of our State government in reference to the priority of the liens of such mortgages. The normal school at Indiana found it necessary, at the beginning of its career, to borrow money to carry out its purposes. The friends of the school succeeded in having the Legislature pass an act giving them the right to execute a bond and mortgage in the sum of $50,000, and make it a prior lien to all those held by the State for a period of ten years. This legislation was secured by the advice of Silas M. Clark, a late justice of the Supreme Court. That indebtedness has been continued until the present time, but special acts of Assembly were passed every ten years, giving the trustees the authority to execute a new mortgage and continue the prior liens. This legislation proceeded upon the theory that the mortgages held by the State were prior liens upon the real estate held by such schools.

The act of May 22, A. D. 1901 (P. L. 290), was passed for the purpose of making this authority general and permanent, so that special acts need not be passed hereafter for this purpose. Under the authority of this act all such mortgages can be made prior liens by following its provisions.

There is some doubt about these mortgages being liens without being recorded in the county where the mortgaged property is located. It is not the custom of the State to have such mortgages recorded in the counties. They are held by the authorities here. At this time I do not pass upon the question whether or not these mortgages, without being recorded, are prior liens upon the property intended to be affected, as I do not think it necessary to answer the concrete question raised by your inquiry. As I understand the facts stated in your letter, Mr. I. M. Shannon held a mortgage on certain real estate which had been recently purchased by the State normal school located at Clarion, and he desires to transfer that mortgage to one of your clients. It is my opinion that such a mortgage is a prior lien to those held by the State for annual appropriations made from time to time.

Very respectfully yours,

JOHN P. ELKIN,
Attorney General.

PENALTIES COLLECTED FROM DELINQUENTS UNDER THE MERCANTILE TAX LAW.

The penalties collected from delinquents under the mercantile tax law belong to the State and not to the City Treasurer as a personal perquisite or to the City of Philadelphia.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *September 17, 1902.*

HON. E. B. HARDENBERGH, *Auditor General:*

Sir: I am in receipt of your communication of recent date, enclosing a letter from Mr. Ira W. Williams, who is attorney for the Commonwealth in the collection of mercantile and other licenses in the city and county of Philadelphia, together with an opinion of this Department on the question involved, dated July 19, 1895 (Report for 1895, page 89); also an opinion of the city solicitor of Philadelphia, dated December 17, 1896, in reference to the disposition to be made of penalties collected from delinquents under the mercantile license tax law.

The county and city treasurers are made the agents of the State in the collection of mercantile license taxes. If the taxes are not paid at the time fixed in the act of Assembly a penalty is provided, which is collected from the delinquent. The question raised is whether this penalty belongs to the city treasurer as a personal perquisite, the city of Philadelphia or the State of Pennsylvania.

This question was fully discussed in the opinions above referred to. This Department held that these penalties belonged to the State. The city solicitor of Philadelphia, in a later opinion, took the opposite view, holding that the penalties belonged to the city of Philadelphia, for the reason that prior to 1876 they belonged to the treasurer making the collection, and that, under the authority of the act passed that year, all such fees and commissions belonged to the city of Philadelphia.

The acts of Assembly are not clear on this question, and it is not free from difficulty. It should be borne in mind, however, that the counties and cities are in no way interested in the collection of mercantile license taxes. These taxes are imposed by and belong to the State. It is true the State designates the county and city treasurers as its agents in making collections of the same, but all the duties imposed on these officers arise from the State making them its agents for the collection of this particular kind of tax. There does not seem to be any reason why any part of the taxes or penalties imposed for the collection of the same should belong to the authorities of the city or county wherein the taxes are collected. In the city of Philadelphia the treasurer is a salaried officer, and

all the fees and commissions which accrued to him under authority of law prior to the passage of the act making him a salaried officer, belonged to the city. A fair interpretation, however, of these acts would seem to indicate that penalties for the collection of mercantile license taxes, which do not belong to the city and in which the city has no interest, are not included within the fees and commissions of the city treasurer, which, under the authority of these acts, belong to the city.

This view of the law is still more strongly confirmed by the provisions of the act of July 10, A. D. 1901 (P. L. 630), wherein it is provided, in reference to the compensation and commissions of the treasurer of the city of Philadelphia, that "Any compensation or commissions in excess of that sum, which he might otherwise be entitled to receive or retain, shall belong to the Commonwealth, and shall be returned to the State Treasurer." Under the authority of the act of 1901, in addition to the general equities of the case, and following the former opinions of this Department, I am of opinion that these penalties belong to the Commonwealth and should be returned to the State Treasurer.

Very respectfully,

JOHN P. ELKIN,
Attorney General.

RIGHT OF THE COMMONWEALTH TO SELL STOCKS IN TURNPIKE AND PLANK ROAD COMPANIES.

Under the authority of the act of June 12, 1878 (P. L. 209) which has not been repealed, the Auditor General may sell at public sale at the Merchants' Exchange of Philadelphia for the highest and best price that can be obtained any or all issues of unproductive stock held by the Commonwealth in any turnpike or plank road company.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *September 23, 1902.*

HON. E. B. HARDENBERGH, *Auditor General:*

Sir: Your favor of recent date, asking for an opinion upon the question of your right to sell certain stocks held by the Commonwealth in turnpike and plank road companies, under the authority of the act of June 12, A. D. 1878 (P. L. 209), has been called to my attention.

Under the provisions of the act in question the Auditor General can sell at public sale at the Merchants' Exchange in the city of Philadelphia, for the highest and best price that can be obtained for the same, any or all issues of unproductive stock held by the

Commonwealth in any turnpike or plank road company. These provisions must be complied with before a transfer of such stock can be valid. This act has not been repealed and is still in force. If the State owns stock in turnpike and plank road companies that is unproductive—and the Auditor General is the judge of that question primarily—then you have the right to sell it under the provisions of the act above cited.

Very respectfully yours,

JOHN P. ELKIN,
Attorney General.

APPROACHES AND WING WALLS TO BRIDGES ERECTED BY THE STATE—CONSTRUCTION OF ACT OF JUNE 3, 1895.

Under the ruling of the Court the approaches and wing walls of a bridge are part of the bridge, and the State in rebuilding the bridges under the act of 1895 must construct the approaches and wing walls.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *September 23, 1902.*

MR. T. L. EYRE, *Superintendent of Public Grounds and Buildings:*

Sir: I am in receipt of your communication of recent date, enclosing a letter from the solicitor of Bradford county asking whether or not it is the duty of the State, under the authority of the act of June 3, A. D. 1895, to build the approaches and wing walls to bridges erected under the authority of that act.

Under the rulings of the court I do not think there can be any doubt about the proper answer to this question. In the case of Penn Township v. Perry County, 78 P. S., page 459, Mr. Justice Gordon, delivering the opinion of the court, among other things, said:

> "That the approach to a bridge is part of the highway is doubtless true, but so, also, is the bridge itself; and as the construction of this part of the highway is too expensive for the township to bear, therefore it is imposed on the county. The design of bridging is to provide a safe and convenient passage for the public over some stream or ravine, but no such passage is afforded when the structure cannot be approached. Can a house be said to be finished until there are steps up to its doors or stairs to its chambers? And how can a bridge be said to be completed without the proper means of access? Certainly this is so necessary to its use, that without it, the structure is a vain thing; utterly useless and of no account. The bridge is incomplete until everything necessary for its proper use has been sup-

plied, and every such necessary appliance is part of the bridge. When, therefore, the act of Assembly directed the counties of Dauphin and Perry to build this bridge over the Juniata, it meant that these two counties without the aid of the townships should provide a safe and convenient passage or highway over the river, and not merely that they should set up a structure which the public could not reach."

The authority of this case was followed in the case of the Commonwealth v. Loomis, 128 P. S. 174, in which case the principle was stated that in the erection of a county bridge it is the duty of the county commissioners to construct the approaches that are requisite to give to the traveling public access to it, such approaches being appliances necessary to the proper use and to be taken as parts of the bridge.

Under the authority of these two cases there is no doubt that, in the construction of a county bridge, it was the duty of the county to build the wing walls and make the necessary approaches for the convenient use of the bridge. These cases arose in a contest between the township and county authorities and the principle has been decided as above cited.

The only question that can now arise is whether, under the act of 1895, which requires the State to erect bridges over public streams that have been destroyed by flood, fire or other casualty, the State stands in the same position that the county did under the decisions stated.

Under the act of June 3, 1895 (P. L. 130), the Commonwealth is required to rebuild all bridges maintained, owned and controlled by the several counties, when said bridges cross navigable rivers or other streams declared to be public highways by act of Assembly, when the same have been carried away or destroyed by flood, fire or other casualty. It is quite clear that the principle laid down by the Supreme Court in the cases above cited applies as well to the case of a county bridge to be rebuilt by the State as if it were to be rebuilt by the county. There can be no difference in principle.

I am therefore of opinion that it is the duty of the State to erect the wing walls and other approaches to the bridges which it is required to build under the authority of the act above cited, so that the same may be convenient for the use of the traveling public.

I return herewith the letters submitted.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

4—23—1902

NOMINATION PAPERS FOR THE OFFICE OF MINE INSPECTOR—CONSTRUCTION OF ACT OF JUNE 8, 1901.

The Certificate of Nomination for Mine Inspector should be filed with the County Commissioners and not with the Secretary of the Commonwealth.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *September 24, 1902.*

MR. JAMES MARTIN, *Plains, Pa.:*

Sir: I am in receipt of your communication of yesterday, stating that you intend to be a candidate for the office of Mine Inspector in the First mine inspection district of Luzerne county, and that you desire to know whether your nomination papers should be filed in the office of the county commissioners or with the Secretary of the Commonwealth.

You are a candidate under the act of June 8, A. D. 1901 (P. L. 535), which provides for the election of mine inspectors in certain districts therein designated. Section 16 of said act provides that the nomination and election of mine inspectors shall be under the general election laws of the Commonwealth. There is no further provision in reference to the manner of holding elections. Section 8 of said act provides that the candidates for the office of mine inspector shall file with the county commissioners a certificate from the mine examining board before their names shall be allowed to go upon the ballot. It is further provided that the name of no person shall be placed upon the official ballot without having first filed the certificate required by the act of Assembly.

The act is silent upon the question of where a certificate of nomination or nomination papers shall be filed. It is contended, on the one hand, that the certificates of nomination or nomination papers should be filed in the office of the Secretary of the Commonwealth because a mine inspector is a State officer. It is contended on the other hand, that they should be filed in the county commissioners' office in the county or counties where the mine inspection district is located. It seems to me that the latter is the safe ground on which to stand. The act requires the certificate of qualification to be filed with the county commissioners, and makes it the duty of the commissioners to see that the certificate of qualification is so filed before the names of candidates can be printed upon the official ballot, and it is just as necessary that the same authority should have the supervision of the certificate of nomination or nomination papers. If a different rule were used it would often happen that the Secretary of the Commonwealth would certify the names of candidates for the office of mine inspector who do not have certificates of qualification filed with the county commissioners. The Secre-

tary of the Commonwealth would not have this information. It is also true that all State officers do not file certificates of nomination or nomination papers with the Secretary of the Commonwealth. A justice of the peace is a State officer, but a certificate of nomination or nomination papers naming candidates are filed in the office of the county commissioners. This has been ruled by the court of common pleas of Dauphin county.

Following the ruling of the courts and reading together all the provisions of the act in reference to the election of mine inspectors under the general election laws, I am of opinion that certificates of nomination or nomination papers in such cases should be filed with the county commissioners of the county wherein the inspection district is located.

Very respectfully yours,

JNO. P. ELKIN,
Attorney General.

CONSTRUCTION OF ACT OF FEBRUARY 25, 1901.

Red shale or clay, not occurring in a seam or vain, and which will not be mined, but simply a bank that can be dug or shovelled, is not a "valuable mineral," under the meaning of the act of February 25, 1901.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *December 3, 1902.*

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

Sir: In answer to your favor of recent date, asking whether or not red shale or clay is a mineral within the provisions of the act of February 25, A. D. 1901, I beg to state that the word "mineral" is used in many different senses. It is difficult to define its legal signification. Much depends upon the context of the act of Assembly, deed or other legal instrument in which it appears. I understand that the shale or clay, to which my attention has been called, is not in any seam or vein, and will not be mined, but that it is a bank that can be dug or shoveled and operated in that manner. I do not think that this is a mineral intended to be regulated by the provisions of the act aforesaid. It amounts to a gravel or clay bank, and certainly this is not a "valuable mineral" within the meaning of the act of Assembly.

Very respectfully yours,

JOHN P. ELKIN,
Attorney General.

REVOCATION OF LICENSE OF THE TRAVELERS' INSURANCE COMPANY OF HARTFORD, CONNECTICUT—CONSTRUCTION OF ACT OF JUNE 20, 1883

The removal from the State court to the United States Court by a foreign insurance company, duly registered and licensed to do business within this State, of an action brought against it by a citizen of this State to recover upon a policy of insurance issued by it, is not such a violation of the Constitution and laws of this Commonwealth as to justify the revocation of its license to do business within the State.

By the stipulation required to be filed by insurance companies under the act of June 20, 1883, P. L. 134, the company does not waive its right to remove into the United States courts any action brought against it by a citizen of this State in the State courts.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *December 22, 1902.*

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

Sir: Sometime ago you sent a letter to this Department, enclosing the petition of Amanda Daly, asking you to revoke the certificate or license of the Travellers' Insurance Company of Hartford, Conn., to transact business in Pennsylvania, and you requested a written opinion upon the same.

From your letter and the facts adduced at a hearing subsequently given the parties to the controversy, at which they appeared by counsel, I find that on the 16th day of July, 1900, Amanda Daly, the petitioner, brought an action against The Travellers' Insurance Company, a corporation of the State of Connecticut, in court of common pleas No. 2, of the city and county of Philadelphia, to No. 294 June Term, 1900, to recover the sum of $5,000 upon an accident policy which had been issued upon the life of William H. Daly, the husband of Amanda Daly, who, it was alleged, had died from the effects of injuries received by an accident in Pittsburg sometime before the bringing of the suit. On August 9, 1900, a petition was presented by the defendant company, asking that the cause be removed to the United States Circuit Court for the Eastern district of Pennsylvania, whereupon a rule to show cause why the record should not be so removed was granted, which rule was made absolute September 26, 1900, and on September 29th the record was removed to the United States Court. An affidavit of defense was then filed by the defendant company, denying that the death of William H. Daly had resulted from the effects of the accident. Subsequently, Amanda Daly filed her petition in your office, setting forth the above facts, and stating further that her husband was in his lifetime a citizen of this State, and that she was a citizen of this State; complaining that the removal of the aforesaid action by the defendant company

from the court of common pleas of Philadelphia county to the United States Court would cause additional expenses to be placed upon her; and alleging that this action of the defendant company was in violation of the stipulation filed by it in your office, as well as of the insurance laws of the State of Pennsylvania in denying the jurisdiction of the court of common pleas; and she prayed that the certificate or license of the Travellers' Insurance Company to transact business in this State be revoked, and that it should be prohibited from further carrying on business in Pennsylvania.

It also appeared that the defendant company had complied fully with section 5, article XVI, of the Constitution of Pennsylvania, which reads as follows:

> "No foreign insurance company shall do any business in this State without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served."

It had also complied with all the laws of the Commonwealth relating to foreign insurance companies.

The question you are asked to determine, and upon which you desire an opinion, therefore, is whether or not the removal of an action, brought by a citizen of this State in the local courts, to recover upon a policy of insurance issued by a foreign insurance company, duly registered and licensed to do business in this State, is such a violation of the Constitution and laws of this Commonwealth as to justify you in revoking the license of such insurance company, and denying it the right to do further business in Pennsylvania.

A careful examination of the acts of Assembly discloses the fact that a foreign insurance company is not required to file a stipulation that it will not remove into the Federal courts any action brought against it by citizens of this State. The laws of some of the States of the Union provide that such express stipulation and agreement must be filed in the office of the Insurance Commissioner before a foreign insurance company can proceed to transact business within their borders; and there is a line of cases which indicate that the constitutionality of such legislation is not free from doubt.

> Insurance Company v. Morse, 21 Wallace, 445, (1874).
> Doyle v. The Continental Insurance Co., 94 U. S., 535.
> Barron v. Burnside, 121 U. S. 186 (1886).

There is no contention here that such an express stipulation is required to be filed in this State by a foreign insurance company, but the counsel for the petitioner relies upon the language of the act of June 20, 1883 (P. L. 134), which reads as follows:

> "No insurance company not of this State, nor its agents, shall do business in this State until he has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company, agreeing that any legal process affecting the company, and served on the Insurance Commissioner, or the party designated by him, or the agent specified by the company to receive service of process for said company, shall have the same effect as if served personally upon the company within this State, and if such company should cease to maintain such agent in this State, so designated, such process may thereafter be served on the Insurance Commissioner. * * * The term process shall be construed to mean and include any and every writ, rule, order, notice, or decree, including any process of execution that may issue in or upon any action, suit, or legal proceeding to which said company may be a party by themselves or jointly with others."

You are asked to hold that a foreign insurance company, complying with this requirement, waives its constitutional right to remove into the United States Court any action brought against it by a citizen of this State.

I am unable to find any decisions of the courts which would justify you in such a construction. While the decisions are not wholly satisfactory on the authority of a State to provide by appropriate legislation that an express stipulation to this effect shall be signed by a foreign corporation before it is permitted to do business therein that it will not remove into the Circuit Court of the United States any action arising between citizens of this State and the company, it is very clear to my mind that such a stipulation must be specific and express, and that there is absolutely no authority for holding that such a restriction or requirement can be imposed by ambiguous language or by implication.

In the case of the Southern Pacific v. Denton, 146 U. S., 202 (1892), Mr. Justice Blatchford, delivering the opinion of the court, said:

> "The right of a corporation, sued in the Circuit Court of the United States, to contest its jurisdiction for want of a requisite citizenship of the party, is not affected by a statute of the State in which the court is held, requiring a foreign corporation, before doing business in the State, to file with the Secretary of State a copy of its charter, with a resolution authorizing service of process to be made on any officer or agent engaged in its business within the State, and agreeing to be subject to all provisions of the statute, one of which is that the corporation shall not remove any suit from a court of the State into the Circuit Court of the United States, nor by doing business and appointing an agent within the State under that statute."

So also in the case of Martin v. B. & O. R. R. Co., 151 U. S. 673 (1893), Mr. Justice Gray, in delivering the opinion of the court, states the principle as follows:

> "The Baltimore and Ohio Railroad Company not being a corporation of West Virginia, but only a corporation of Maryland licensed by West Virginia to act as such within its territory, and liable to be sued in its courts had the right under the Constitution and laws of the United States, when so sued by a citizen of this State, to remove the suit into the Circuit Court of the United States, and could not have been deprived of that right by any provision of the statutes of the State."

This opinion cited Insurance Company v. Morse, 30 Wallace, 445; Barron v. Burnside, 121 U. S., 186; Southern Pacific Co. v. Denton, 146 U. S. 202.

If the laws of this State required a foreign insurance company to file an express stipulation waiving its right to remove causes into the United States Circuit Court, it would undoubtedly be your duty to enforce such a law, unless it should be declared invalid by the courts, but no such action having been taken, I am of the opinion and advise you that, under the facts in this case, and the laws of the Commonwealth applicable thereto, the prayer of the petitioner should not be granted, and that the license or certificate of the Travellers' Insurance Company to transact business in this State should not be revoked.

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

VACANCY IN OFFICE OF SHERIFF OF ALLEGHENY COUNTY—CONSTRUCTION OF ACT OF MAY 15, 1874.

The term of the Sheriff of Allegheny county was to have expired the first Monday of January, 1903. James Fahnestock elected at the November election 1902 to succeed him, died before having been qualified as Sheriff. *Held* that under the provisions of the Constitution and the rulings of the Court, no vacancy occurred in the office of Sheriff to which the Governor could appoint, and that the present incumbent of the office of Sheriff in Allegheny county shall continue in office until a successor is elected, as provided by law, and properly qualifies.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *December 30, 1902.*

HON. WILLIAM A. STONE, *Governor:*

Sir: In answer to your inquiry in reference to the question of whether or not a vacancy exists in the office of sheriff in the county of Allegheny, I have the honor to submit the following opinion:

At the November election in 1899 William C. McKinley was elected sheriff and was duly qualified for three years from the first Monday of January, 1900, and until his successor shall be duly qualified. It will thus be seen that, under ordinary and usual circumstances, his term of office would expire on the first Monday of January, 1903. The electors of Allegheny county took cognizance of this fact and a majority of them, at the last November election, voted for and elected James Fahnestock to said office. Mr. Fahnestock was taken sick soon after the November election, and, in the latter part of November, 1902, died before having been qualified as the incoming sheriff. You desire to know whether, under these circumstances, there is a vacancy in the office of sheriff to be filled by the appointment of the Governor under the provisions of the act of May 15, 1874.

Article XIV, section 2, of the Constitution ordains:

> "County officers shall be elected at the general elections, and shall hold their offices for the term of three years, beginning on the first Monday of January next after their election, and until their successors shall be duly qualified."

It will be observed that the Constitution fixes the term of all county officers at three years, if their successors are elected and duly qualified, but there is the additional provision that the term shall be for three years "and until their successors shall be duly qualified." The latter clause of the constitutional provision, under certain conditions, extends the term of office for a period longer than three years, and until the successor shall be duly qualified.

It is also true that article IV, section 8, of the Constitution, provides that when vacancies shall happen in any elective office, the Governor is given the power to fill such vacancy by appointment. In order to enforce this provision of the Constitution the act of May 15, 1874, above referred to, was passed by the Legislature. This act provides as follows:

> "That in case of a vacancy happening by death, resignation or otherwise, in any office created by the Constitution or laws of this Commonwealth, and where provision is not already made by said Constitution and laws to fill said vacancy, it shall be the duty of the Governor to appoint a suitable person to fill such office."

Under the Constitution and the law the Governor is given the right to fill by appointment a vacancy in any office caused by death, resignation or otherwise, where provision is not already made by the Constitution and laws for the filling of such a vacancy. It therefore necessarily follows that, if, under the facts above recited a vacancy exists in the office of sheriff of Allegheny county at this

time, it is the duty of the Governor to fill that vacancy by appointment. If, on the other hand, there is no vacancy in the office, under the peculiar circumstances of the case, then the Governor does not have the right to make the appointment. The controversy resolves itself into the question whether or not a vacancy, within the meaning of the Constitution and laws, exists in said office.

If this were an open question, and one on which the courts had not already expressed themselves, it might be very strongly urged that a vacancy exists in said office, and that the Governor should make the appointment. On this question, however, we are not left to grope our way in the dark, for the reason that the courts of our State and of others have settled the question beyond the possibility of a doubt.

In the case of Commonwealth ex. rel Broom vs. Hanley, 9 P. S., 513, it was held:

> "The death of the person elected to fill the office of clerk of the orphans' court before he has qualified himself according to law does not create a vacancy, but the incumbent, who was authorized to hold the office until his successor shall be qualified, holds over."

This case is on all fours with the one now under consideration, and, unless the force of the opinion is modified by the new Constitution and subsequent legislation, it rules the question now before us. There is no provision of the new Constitution or any subsequent act of Assembly that changes the rule above laid down. Similar questions have frequently been raised in our courts since the adoption of the new Constitution and the passage of the act of 1874, and the same rule has been uniformly applied.

In the case of the Commonwealth ex rel Folwell v. Barrett, 37 Legal Intelligencer, 17, the whole question was reviewed by the learned judge in the court below, who sustained the principle above stated. This case was taken to the Supreme Court and affirmed on the 25th day of June, 1879.

To the same effect is the case of Bechtel v. Farquhar, 21 County Court Reports, 580. Bechtel was district attorney of Schuylkill county and Cummings was elected at the November election for the regular succession. Cummings declined to take the oath of office and be qualified. The court, acting on the theory that there was a vacancy in the office, appointed Farquhar. The incumbent, Bechtel, whose three year term had expired, presented a petition to the court, setting forth that the refusal of Cummings to qualify did not create a vacancy, and that he, Bechtel, should hold over under the constitutional provision above set out. The learned president judge of the court filed an opinion on the 11th day of January, 1899,

sustaining the contention of Bechtel, and holding that there was no vacancy under the circumstances, and that the court did not have the right to fill the office by appointment.

The question was again raised in the courts of McKean county, in the case of the Commonwealth ex rel King v. King, 85 P. S., 103. The court below held that there was no vacancy that could be filled by appointment of the Governor. The case was appealed to the Supreme Court, where Chief Justice Agnew delivered the opinion of said court on the first day of October, 1877, wherein, among other things, the learned chief justice lays down the following rule:

> "As the term is fixed by the Constitution to begin on the first Monday of January following the election, it is the clear constitutional right of the people to elect the successor of the incumbent of an existing term at the general election next preceding the expiration of his term; and if the successor does not qualify no vacancy takes place, but the existing term is extended until the successor is duly qualified."

Under the authority of the above cases it is my opinion that in Pennsylvania it is settled law that, if a successor duly elected to a county office fails to qualify, no vacancy takes place in said office, but the existing term is extended until the successor is duly qualified.

In support of this position we might cite the courts of several other States.

In the case of People v. Tilton, 37 California, 614, the principle is stated as follows:

> "When the term of an officer expires and the law or the Constitution authorizes him to hold over until his successor is elected and qualified, the old incumbent is authorized to discharge the duties of the office until a qualified successor presents himelf, who has been elected by the body upon which the power of election is devolved, and the Governor has no power to appoint a successor."

To the same effect are the following cases:

People ex rel Meloney v. Whitman, 10 Cal., 38.
Elam v. State, 75 Ind., 518.
State v. Harrison, 113 Ind., 434.
State v. Lusk, 18 Mo., 333.
Sappington v. Scott, 14 Md., 40.
Smoot v. Summerville, 59 Md., 84.
Johnson v. Mann et al., 77 Va., 265.
State v. Hadley, 64 N. H., 473.

There are many other cases holding the same principle. The overwhelming weight of authority is that, under circumstances such as exist in reference to the office of sheriff of Allegheny county at this time, no vacancy exists within the contemplation of law such as the Governor has the right to fill by appointment.

It is my opinion, therefore, that the present incumbent of the office of sheriff in said county will continue in possession of the same until a successor is elected, as provided by law, and properly qualifies. This means that a successor will be elected at the November election of 1903, and that the present incumbent will hold his office until the first Monday of January, 1904, if a successor elected by the people properly qualifies at that time.

Very respectfully,

JOHN P. ELKIN,
Attorney General.

COMMONWEALTH vs. BARNETT, STATE TREASURER.

OPINION OF COMMON PLEAS OF CENTRE COUNTY.

This is an application for a peremptory writ of mandamus upon James E. Barnett, State Treasurer, to compel him to pay to the said school district of Patton township, its proportionate share of the money appropriated by the act of May 13, 1899, for the support of the public schools of the Commonwealth for two years, commencing June 1st, 1899, upon the basis of the whole appropriation named in the bill, namely, $11,000,000; an alternative writ having been granted and issued and service waived.

The petition of the plaintiff sets forth that, on the thirteenth day of May, A. D. 1899, the Governor approved the general appropriation act for that session, with such exceptions as are therein designated. The section 8 of said act contains the appropriation for the support of the public schools and is as follows: "For the support of the public schools of this Commonwealth for the two years commencing on the first day of June, one thousand eight hundred and ninety-nine, the sum of eleven million dollars to be paid on warrants of the Superintendent of Public Instruction in favor of the several school districts of the Commonwealth: Provided, That the city of Philadelphia shall be entitled to a proper portion of this appropriation, and out of the amount received by the city of Philadelphia there shall be paid the sum of three thousand dollars to the teachers' institute of said city; the sum of three thousand dollars to the Philadelphia School of Design for Women, for their corporate purposes, and the sum of ten thousand dollars to the Teachers' Annuity and Aid Association of said city: Provided further, That warrants for the above and all other unpaid appropriations for common school purposes shall be issued in amounts designated by the State Treasurer, and whenever he shall notify the Superintendent of Public Instruction, in writing, that there are sufficient funds in the State Treasury to pay the same."

The said act was passed by both branches of the Legislature—making an appropriation in a total sum of eleven millions of dollars for the said two years. The Governor, when the same was presented to him for his approval or disapproval, because of the depleted condition of the treasury, approved the appropriation to

the extent of ten millions of dollars and disapproved of one million dollars thereof. The said school district of Patton township, believing that it is entitled to its proportionate share of the one million of dollars disapproved by the Governor, applied to the State Treasurer to have him notify the Superintendent of Public Instruction that there were sufficient funds in the treasury to pay the amount claimed by them under said appropriation. The State Treasurer declined to do so on the ground that, the Governor having disapproved one million of the total appropriation, there was no warrant in law authorizing the payment of the same. The said school district had complied with the provisions of the school laws, so that it was entitled to receive the appropriation. The plaintiff school district presented its petition to the Attorney General of the Commonwealth, asking leave to use the name of the Commonwealth in this proceeding for mandamus and that it might be instituted in the court of common pleas of Centre county. It was granted and the State Treasurer notified of the presentation of the application and he consented that the proceedings should be had before the said court of Centre county. The answer filed admits the material facts set forth in the petition: That said appropriation bill was passed as above set forth and approved for ten millions of dollars and approval of one million dollars thereof withheld by the Governor; that there is sufficient money in the treasury to pay the proportionate share of said appropriation, as claimed by the plaintiff, and that plaintiff school district has complied with the laws governing public schools, so as to be entitled to receive the same, if entitled to it under the eighth section of the act of May 13, 1899; and that the sum due said school district is about ninety-five dollars.

An agreement was filed in the case that the cause should be heard on bill and answer and that all questions as to jurisdiction or other technical defences be waived.

The only question, therefore, raised by this proceeding and record is as to the power and authority of the Governor to disapprove of one million dollars of said appropriation of eleven millions and approve it to the extent of ten millions. If the Governor, under the Constitution of the State, had the power to veto the one million of dollars of said appropriation, then the plaintiff is not entitled to the money claimed and the writ cannot be awarded. If he did not have the power, then the plaintiff would be entitled to the money claimed and the writ should be awarded. The question raised is one of grave public importance, and, so far as we have been able to ascertain from extensive research, has not been judicially determined. It, therefore, involves the construction of the State Con-

stitution of the veto power conferred upon the Governor. In this construction it becomes necessary to consider the several sections of the Constitution that bear upon the question, so as to determine the purpose and intent of the framers therof and give them the proper effect, so that the purpose and intent thereof may be effected without doing violence to any of its provisions.

Article 3, section 3, of the Constitution of Pennsylvania, provides that "No bill, except general appropriation bills, shall be passed, containing more than one subject, which shall be clearly expressed in its title." Section 15 of same article provides that "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, interest on the public debt and for public schools; all other appropriations shall be made by separate bills, each embracing but one subject."

Section 15, of article IV, of the Constitution, directs that every bill shall be presented to the Governor for his approval or disapproval, and confers the power of veto.

Section 16, of article IV, provides that "The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the executive veto."

Article 10 and section 1 of the Constitution provides that "The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all 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."

Article 9, section 4 of the Constitution provides that "No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed, in the aggregate, at any one time one million of dollars." The foregoing sections of the Constitution indicate very clearly the intent and purpose of the framers thereof, to carefully guard and protect the treasury of the State as well as its credit.

Article 9, section 4, which prohibits the creation of any indebtedness, beyond one million dollars, because of deficiency of revenues, is certainly binding upon the debt creating body of the State. It certainly means that for the ordinary current expenses of the State government the State must provide the means to pay as it goes. This constitutional limit being binding upon the debt making power of the State and its public officers, might it not well be said that, when the legislative department makes appropriations for the oridnary expenses of the State government largely in excess of said constitutional limit, that such excess is void; and when it is manifest that the deficiency of revenues will create an indebtedness far in excess of the one million dollar limit; that it would be the duty, under the Constitution, of the disbursing officers of the State, to so regard it, and to not recognize such excess as creating any legal liability upon the part of the State to pay the same. But the primary obligation of this section of the Constitution rests upon the legislative department of the State and renders it incumbent thereon to provide sufficient revenues to meet the obligations created by the appropriations made thereby. To aid in the accomplishment of this purpose we have the veto power conferred by the Constitution upon the Governor. The veto power conferred upon the Executive constitutes him a part of the Legislature.

Bryce in his work, "The American Commonwealth," Vol. 1, page 223, says: "Although the Convention may not have realized how helpless such a so-called Executive must be, they felt the danger of encroachments by an ambitious Legislature, and resolved to strengthen him against it. This was done by giving the President a veto which it requires a two-thirds vote of Congress to over-ride. In doing this they partly reversed their previous action. They had separated the President and his ministers from Congress. They now bestowed on him legislative functions. He became a distinct branch of the Legislature, but for negative purposes only. He could not propose, but he could refuse." Judge Cooley, in his work, "Principles of Constitutional Law," page 50, says: "The power to veto legislation, which is conferred upon the President, makes him in effect a third branch of the Legislature. The power is legislative, not executive, and the questions presented to his mind are precisely the same as those the two houses of Congress must determine in passing a bill: Whether the proposed law is necessary or expedient, whether it is constitutional, whether it is so framed as to accomplish its intent, and so on, are questions transferred from the two houses to the President with the bill itself." "The President may exercise his negative when, in his opinion, the proposed law is unconstitu-

tional, notwithstanding the point which is presented has in other cases been judicially examined and sustained, the President by this act over-rules no decision; he merely acts upon his judgment, as a legislator." A. & Eng. Ency. of Law, Vol. 28, page 447. Other authorities might be cited, but it seems to be clearly settled that the exercise of the veto power by the Executive is a legislative act and that by virtue of said power he is constituted a branch of the Legislature.

In our form of government the fundamental purpose of the veto power was to enable the Executive, by the exercise thereof, to prevent the legislative department from encroaching upon the constitutional rights and power of the executive department of the government. Second, To enable the Executive as a member of the legislative department, to prevent unwise legislation or the improvident and extravagant legislation in the appropriation of public moneys. The said section of article four of the Constitution was inserted more expressly to enable the Governor to intervene and prevent an extravagant appropriation of public moneys and to aid in keeping the appropriations practically within the revenues of the State and preserve the solvency of the treasury. That this was the intent and purpose of the framers of the Constitution seems to us clear. The Constitution practically prohibits the State from going into debt, except in cases of casual deficiency of revenues, or in case of war, insurrection, etc. And the indebtedness to supply deficiencies of revenue shall never exceed one million dollars in the aggregate, which means, if anything, that when the indebtedness reaches one million of dollars because of deficiency of revenue, that without further increase of such indebtedness, sufficient revenue must be provided to liquidate such existing indebtedness; so that, except temporarily, and because of deficiency of revenue, for ordinary purposes, no debt can be created by the State. Therefore, it is clear that the purpose and intent of the Constitution is, that for the ordinary running of the State government and its support given to educational and charitable purposes, it ought not to exceed its revenues. In order, then, to effect this purpose, and also to impose upon the Governor a joint constitutional duty or obligation with that of the legislative department, to never allow the current indebtedness in the aggregate to exceed one million dollars, the sixteenth section of article 4 above quoted was inserted. In view of the above stated purpose and the limitation upon the State to make any debt, what is the power given the Governor under said section? Is it simply the power to disapprove of a single item or items? The language is, "The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing

distinct items. And the part or parts of the bill approved shall be the law and the item or items disapproved shall be void, etc." In what sense is the word "item" used? We are without judicial precedent to aid in this construction. The plaintiff cited, as a precedent in point, the case of State v. Holder, 76 Miss., 158. The language of the section of the Constitution of Mississippi, under consideration in that case, is as follows: Section 73. "The Governor may veto parts of any appropriation bill and approve parts of the same, and the portions approved shall be law." In that case, the Governor did not veto any portion of the appropriation but vetoed the conditions tacked onto the bill. The court, in its opinion on page 180, says: "Section 73 of the Constitution relates to general appropriation bills, or those containing several items of distinct appropriation bills; that is to say, special appropriation bills, with distinct items of appropriation." "It was not designed to enable the Governor to veto objectionable legislation in appropriation bills, for that is provided for in section 69. Section 73 was framed with a view of guarding against the evils of omnibus appropriation bills, securing unrighteous support from diverse interests, and to enable the Governor to approve and make law some appropriations, and to put others to the test of securing a two-thirds vote of the Legislature as a condition of becoming law." The main ground of the decision was based upon the fact that section 73 did not apply to the character of the bill vetoed in that case. It is not, therefore, in our opinion, an authority to determine the question of the power of the Governor, under section 16, of article 4, of the Constitution of this State.

The word "item" is of varied meaning. It, according to the standard lexicographers, may mean "An article," "A separate particular," "A paragraph" in a newspaper, or a will, a "new article," a "single entry," "anything which might form a part of a detail," or a single item of an account; or it may be an item in the aggregate composed of several single items. The Standard Dictionary gives the words, "Circumstance," "driblet," "part," as synonymous with item. We think it is used synonymously with the word part in this section. Part is a piece or portion taken from the whole. The part or parts of the bill approved shall be the law, and the part or parts disapproved shall be void. To hold that the power given is only that of disapproving a single item or paragraph or section of the bill in its entirety would defeat the very purpose for which the power was given. It is the purpose of the Constitution to further the cause of education and to aid charitable and benevolent institutions, so far as the revenues of the State will reasonably warrant.

And all appropriation bills, except the general appropriation bill, shall embrace but one subject—and the general bill is limited to appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, interest on public debt, and for public schools.

Now, if the power of disapproval in the said section is to be limited to a single item in its entirety, then if the Legislature make extravagant appropriations to State hospitals, to educational institutions, in a lump sum and not itemized, and which may not be necessary for their efficiently accomplishing their work or purpose, and that the appropriations in the aggregate far exceed the revenue of the State, and would cause a current indebtedness largely in excess of one million dollars, the Executive is helpless, unless he strike down the whole appropriation made to some of the institutions and thus cripple or practically destroy their purpose and usefulness, while others no more deserving may receive more than is necessary for their efficient purpose. The Executive is placed in the dilemma of either crippling institutions of charity, hospitals and institutions of learning, or violating the Constitution by creating a current indebtedness of the State in excess of one million dollars.

Take the case in question—the appropriation of five and one-half millions to the public schools. The Constitution makes it mandatory that the Legislature shall appropriate for their support at least one million a year. Suppose the Legislature had appropriated ten millions a year instead of $5,500,000 a year and that the appropriation would have involved a current State indebtedness of four or five millions or more; what could the Executive do to avoid violating the provisions of the Constitution? If he were to veto or disapprove of the whole item, then he would violate the Constitution, as it provides that one million shall be appropriated for each year. If he does not disapprove, he violates the Constitution in conjunction with the Legislature, in creating a current State indebtedness in excess of one million dollars. Is it to be contended that the framers of the Constitution on the one hand sought to impose upon the Governor grave constitutional obligations of the utmost public importance and, on the other hand, to strip him of the very power the exercise of which is essentially necessary to enable him to perform and discharge said obligations? Can it be argued or held that the framers of the Constitution contemplated, or intended, any such result? Surely not.

If any other construction be made of said section of article 4, then every bill making appropriation of money should be specifically itemized. If not, then the power intended to be conferred

upon the Governor is barren and must utterly fail of the purpose intended. If the Legislature fails to set forth the distinct items for which an appropriation is made to a charitable, educational or benevolent institution, and if the aggregate item appropriated be made up of a number of items, why has not the Governor the power, as a legislator, to investigate as to the sundry items composing the aggregate item appropriated, although not distinctly set forth in the bill, and disapprove of any, or some of them, and only approve the aggregate item to the extent it may be reduced by any such item or items being disapproved?

It is manifest that the construction above given to the sixteenth section of article four of the Constitution is the only one that is consistent with the purpose and intent of the Constitution, in view of its other provisions relative to this question. It is in harmony with its other provisions. It gives proper effect to all involving this subject and does violence to none. It then enables the Governor to perform his constitutional obligations relative thereto. It enables the successful execution of the policy and purpose of the Constitution and State, to foster and aid the educational, charitable, benevolent and State institutions, intelligently, and in accord with the purpose and intent of the Constitution, without injuring or destroying the efficiency or work and purpose of any; and also to preserve the solvency of the treasury and the credit of the State, so that the State may be able to meet its legitimate current obligations. We are, therefore, of the opinion that the Governor, under said section, has the power to approve a part or parts of an appropriation to any object or subject, and to the extent it is approved it shall be the law, and that any item or items or part disapproved are void, unless passed over his veto in the manner provided by law.

In vetoing in part the general appropriation to the public schools, the Governor, in his reasons for vetoing the same, among other reasons, sets forth: "In 1893, however, a bill was introduced into the Legislature which authorized and required directors to furnish free text books to the pupils in our common schools. At that time a very large number of the districts throughout the State did not provide free text books for the pupils. The introduction of free text books necessarily involved the expenditure of large sums of money, and the friends of this measure succeeded in securing an additional $500,000 for this purpose." If this be so, and the Governor, as legislator, upon investigation, found that said item was continued in the subsequent appropriations for said purpose, deemed it unwise, owing to the practically insolvent condition of the treas-

ury, to veto said item, why did he not have ample authority, under said sixteenth section of article 4, to do so, although the item for that purpose was not distinctly set forth in the bill making general appropriation.

Nor was the Governor in this instance without precedent for the exercise of the power in this manner. His distinguished predecessors in office, for twenty years past, exercised the power of veto upon appropriation bills in practically the same way. It was so exercised in a number of instances by Governors Pattison, Beaver and Hastings. The fact of its having been thus exercised for so long a period by the said Chief Executives of the State is entitled to due and respectful consideration in determining a proper and wise interpretation of the said power conferred upon the Governor under said section 16 of article 4.

For the foregoing reasons, we are of the opinion that the said school district of Patton township, under the law, is not entitled to the money claimed and, therefore, not entitled to the writ prayed for. The writ of peremptory mandamus prayed for is refused and the petition dismissed at the costs of the plaintiff.

JOHN G. LOVE,
P. J.

OPINION OF SUPREME COURT.

Mitchell, J.:

The Governor is an integral part of the law making power of the State. Section 15 of Article IV of the Constitution provides that "Every bill which shall have passed both Houses shall be presented to the Governor; if he approve he shall sign it, but if he shall not approve he shall return it with his objection to the House in which it shall have originated," etc., and no bill therefore can become a law without first being submitted to the Governor for his approval or disapproval. His disapproval, commonly known as a veto, is essential by a legislative act. The fact that the Governor is limited to negation or concurrence and cannot affirmatively initiate or amend legislation, does not take away the legislative character of his act, any more than the want of power in the Senate of the United States to originate revenue bills changes its standing as a co-ordinate branch of Congress.

In this view all the authorities concur. The veto power of the President "is not executive in its nature, but essentially legislative. It makes him in effect a branch of Congress though only to a limited and qualified extent." Black, Handbook of Am. Constitutional Law, Sect. 67.

The President "thus became a third branch of the Legislature whose approval was ordinarily requisite to the success of any measure proposed by the other two." Hare, Lectures on Const. Law, p. 212.

"It appears as a matter of historical development as well as of theory, that the veto is a legislative power." Edward Campbell Mason. "The Veto Power," section 100.

"The power to veto legislation which is conferred upon the President, makes him in effect a third branch of the Legislature. The power is legislative, executive, and the questions presented to his mind are precisely the same as those the two houses of Congress must determine in passing a bill. Whether the proposed law is necessary or expedient, whether it is constitutional, whether it is so framed as to accomplish its intent and so on, are questions transferred from the two houses to the President with the bill itself." Cooley General Principles of Constitutional Law, Ch. 3, p. 49 (2 ed. 1891).

Being thus settled to be legislative in character, the presumption is that within its limited sphere of negation the power applies to every branch and subject of the bill to which the legislative powers of the two houses apply. And the history of the power as at present existing in the Constitution of this State confirms the presumption.

The veto power is a survival of the law-making authority vested in the king as a constituent if not a controlling third body of the parliament, in which he might and not unfrequently did sit in person. With the growth of free ideas and institutions and the aggressive spirit of the popular branch of the parliament in the affairs of government, it lost its vitality as a real power in England, though it still exists in theory. But in the colonies it not only existed but was an active power, absolute in character, and so constantly exercised that, as Prof. Mason has aptly called attention to, the Declaration of Independence set forth first among the grievances of the colonies, "He has refused his assent to laws most wholesome and necessary for the public good." The Veto Power, section 7. The most important chapter in the legislative history of the Province of Pennsylvania will be found in the long and obstinate contest between the General Assembly, and the Proprietaries and the Crown (acting through the Privy Council and the Board of Trade), over the refusal of the assent to the acts of the Assembly.

From the colonies the power passed with various limitations into nearly all the American constitutions, state and national. Originally intended mainly as a means of self-protection by the executive against the encroachments of the legislative branch, it has steadily grown in favor with the increasing multitude and complexity of modern laws, as a check upon hasty and inconsiderate as well as unconstitutional legislation. The executive is usually better informed on the exact condition of the public affairs than the individual members of the Legislature, and he acts under the concentrated responsibility of a single officer. That vetoes are usually wise and convincing is shown by the small proportion which has been overridden by the second passage of the disapproved act. Of four hundred and thirty-three acts disapproved by the Presidents of the United States down to 1889, only twenty-nine were repassed over the veto. Mason, The Veto Power, section 116.

As inherited from the colonies and adopted in the early constitutions, the veto power was confined to approval or disapproval of the entire bill as presented, and in this experience was found to be inadequate to the accomplishment of its full purpose. The Legislature in framing and passing a bill had full control over every subject and every provision that it contained, and the Governor as a co-ordinate branch of the law-making power, was entitled to at least a negative of the same extent. But by joining a number of different subjects in one bill, the Governor was put under compulsion to accept some enactments that he could not approve, or to defeat the whole, including others that he though desirable or even necessary. Such bills, popularly called "omnibus" bills, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interest to force the passage of bills with provisions which could never succeed if they stood on their separate merits. So common was this practice that it got a popular name, universally understood, as log-rolling. A still more objectionable practice grew up of putting what is known as a "rider," that is a new and unrelated enactment or provision on the appropriation bills, and thus coercing the executive power to approve obnoxious legislation or bring the wheels of the government to a stop for want of funds.

These were some of the evils which the later changes in the Constitution were intended to remedy. Omnibus bills were done away with by the amendment of 1864 that no bill shall contain more than one subject which shall be clearly expressed in the title. But this amendment excepted appropriation bills, and as to them the evil still remained. The convenience if not the necessity of permitting

a general appropriation bill containing items so diverse as to be fairly within the description of different subjects was patent. The present Constitution meets this difficulty first, by including all bills in the prohibition of containing more than one subject except "general appropriation bills," Art. III, Sect. 3; secondly by the provision that "the general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, interest on the public debt, and for public schools; all other appropriations shall be made by separate bills, each embracing but one subject." Art. III, Sect. 15; and thirdly, by the grant to the Governor of "power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the executive veto." Art. IV, Sect. 16.

The purpose of these provisions is clear beyond question. They are a distinct recognition of the legislative character of the Governor's part in the passage of the bills, and an equally distinct effort to increase the power and scope of his veto. By section 15 of the same article a bill can only be passed over a veto by a vote of two-thirds of all the members elected to each house, instead of two-thirds of a quorum voting as under the Constitution of 1838. "The power," says Mr. Buckalew, "has been tried and not found wanting; it has won popular confidence in a high degree, and is now justly regarded as an indispensable feature of American constitutions. In the Convention of 1873 no voice was raised in opposition to it, or for imposing any new and material limitations upon its exercise in future." Notes on the Constitution, p. 117. Section 16 of article four above quoted, with which we are immediately concerned, is a clear expression of intent to give the Governor to the extent or refusing approval the same control over the particulars of a general appropriation bill that each house of the Legislature had.

The argument on both sides has included much discussion of the exact condition of the word item. But we have no occasion to consider minutely the language of the dictionaries in this connection. The general idea conveyed by the word is well understood and with that in our minds the precise meaning in the Constitution is shown by the context to be the particulars, the details, the distinct and severable parts of the appropriation. The language is "the Governor shall have power to disapprove of any item or items * * * and the part or parts of the bill approved shall be the law, and the item or items of the appropriation disapproved shall be

void," etc. It is clear that "item" and "part" are here used interchangeably in the same sense. If any special or different meaning was attached to the word "item" the natural mode of expression would have been to use that word throughout the section, but for the sake of euphony and to avoid the repetition of the same words three times in the same sentence the draughtsman used the word "parts" as an evident synonym. This is also apparent from the plain purpose of the section. In ordinary bills the single subject is a unit which admits of approval or disapproval as a whole, without serious inconvenience, even though some of the details may not be accepta ble. But every appropriation, though it be for a single purpose, necessarily presents two considerations almost equally material, namely, the subject and amount. The subject may be approved on its merits, and yet the amount disapproved as out of proportion to the requirements of the case, or as beyond the prudent use of the State's income. The Legislature had full control of the appropriation in both its aspects and the plain intent of this section was to give the Governor the same control as to disapproval, over each subject and each amount. A contrary construction would destroy the usefulness of the constitutional provision. If the Legislature by putting purpose, subject and amount inseparably together and calling them an item, can coerce the Governor to approve the whole or none, then the old evil is revived which this section was intended to destroy. No better illustration is needed than is afforded by the case in hand. Section 8 of the act of May 13, 1899, appropriated for the public schools eleven million dollars for the two years 1899 and 1900, provided that "out of the amount received by the city of Philadelphia there shall be paid the sum of three thousand dollars to the Teachers' Institute of said city; the sum of three thousand dollars to the Philadelphia School of Design for Women for their corporate purposes, and the sum of ten thousand dollars to the Teachers' Annuity and Aid Association of said city," etc. In this portion of the section alone there are included four distinct and severable parts, each of which is an "item" within the purpose, intent and meaning of the constitutional provision under consideration, namely the public schools, the Teachers' Institute, the School of Design for Women and the Teachers' Annuity and Aid Association. The public schools being objects of appropriation by the express mandate of the Constitution, the only question before the Governor as to them was the amount, but the other three items presented the double consideration of the beneficiary and the amount. On each of these matters, quoting again the language of Judge Cooley, supra, "the questions presented to the mind of the executive, are precisely the same as those the two houses (of Congress) must determine in passing a bill; whether the proposed law is necessary or expedient, whether

it is constitutional, whether it is so framed as to accomplish its intent, and so on, are questions transferred from the two houses to the President (executive) with the bill itself." On each of these questions, therefore, the Governor was entitled to exercise his legislative judgment separately, and to approve or disapprove accordingly. Suppose, for illustration, that instead of the beneficiaries being worthy public institutions the city of Philadelphia had been directed to pay part of its appropriation to a sectarian school in violation of the express prohibition in section 18 of article III. It would have been the Governor's imperative duty to veto such appropriation, and the Legislature could not coerce him by putting him to the alternative of approving it or disapproving the entire section with its constitutional grant to the public schools. Or, suppose, on the other hand, the appropriation had been to one of the institutions named of a million or more dollars. The Governor might in his legislative judgment have approved the beneficiary as a proper object of State aid but have found the amount excessive. He was entitled to approve as to the object, and to disapprove as to a portion of the amount. That is what he has done in the present case, and his action was within his constitutional powers.

Both sides have sought to derive confirmation of their views from the express mandate of the Constitution in section 1 of Art. X, that the Legislature "shall appropriate at least one million dollars each year" for the support of public schools. This, the appellants claim, prevents the Governor from exercising his veto power at all against appropriations for the public schools. But this argument entirely ignores the constitutional requirement that "every bill" shall be submitted for the Governor's approval. The Constitution makes no exception of school bills or any other, and such exception would permit easy and clear violation of the prohibition in section 4 of Art. IX, against the creation of a State debt exceeding one million dollars in the aggregate at any one time, to supply deficiencies in revenue. Suppose the Legislature should appropriate a sum for school purposes exceeding by more than a million dollars the entire revenue of the State. It would be the Governor's duty to veto it to prevent the creation of a prohibited debt. And even if the appropiration for schools was only the constitutional million dollars, yet if that would increase an already existing debt from deficiency of revenue beyond the prohibited limit, there would at once be an inevitable conflict between two express provisions of the Constitution and it would become the Governor's duty to exercise his legislative judgment which was of the lesser importance and should give way. The clear result, therefore, is that appropriations for school purposes are not excepted in any case from the requirements of submission to the Governor for his approval.

Moreover, the appellants have entirely overlooked or misconceived the effect of a partial veto such as was given in the present case. If the disapproval of part and the approval of the rest were not valid acts, then there was no appropriation at all, and the money already received by the schools was illegally paid. For there was no executive approval of an appropriation of eleven million dollars. There are but three ways in which a bill can become law in this State—passage by the Legislature and approval by the Governor; passage by the Legislature, disapproval by the Governor, and passage again in the mode prescribed by the Constitution; or passage by the Legislature and failure of the Governor to return it with his objections within the required time. The appropriation of eleven million dollars claimed in the present case, never became law in any of these three ways and there is no other.

The question in this case is presented for the first time in this State, and is very bare of authorities elsewhere. The diligence of counsel has found only two cases, and neither of them is at all close. Porter v. Hughes, 32 Pacific Reporter 165, arose in Arizona, where the Governor has no power to veto single items of a bill, and the question, therefore, was the same as it would have been here under the old Constitution. In Mississippi, the Governor has power to veto parts of appropriations. Under this power the Governor approved the whole appropriation, but vetoed certain conditions appended to it. In State v. Holder, 76 Miss. 178, it was held by a divided court that such veto was not within his authority. Neither of these cases affords us any assistance.

But though the question has not been presented before for judicial determination, the practice in this State is not new. The respondent has set out in his answer a number of examples of vetoes since the present Constitution went into force, by Governor Pattison in both his terms, Governor Beaver and Governor Hastings, of parts of appropriation bills. Appellant has argued at some length that none of these instances was exactly like the present, and as to the details that much may be conceded. But they all rest on the same principle, the right of the Governor in the exercise of his independent legislative judgment to approve an appropriation in part, by reducing the amount fixed by the Legislature. As to that principle, the executive practice must be considered as settled. While the executive interpretation of his own powers is not binding on the judiciary, it has always been considered as persuasive and entitled to great respect. And where, as in this instance, the practice has been frequent and acquiesced in without objection for a number of years it should be very clearly shown to be unconstitutional to justify the courts in declaring against it.

The parties to this case with a commendable desire to obtain a speedy decision, have set forth all the necessary facts in the petition and answer, and agreed that all technical matters shall be waived. On account, however, of the importance of the public interest involved, we have allowed counsel for other school districts to intervene and present additional argument against the decision of the court below. One of such intervening parties has challenged the jurisdiction of the common pleas of Centre county to entertain the case, and thereby that of this court to hear it on appeal. The right of a party admitted by an act of grace to be heard as amicus curiae, thus to attempt to set aside the formal agreement of the legal parties is not conceded, but as the question of jurisdiction is always open, it is proper that it should receive consideration even when brought forward in the regular way.

The objection made is that a court of common pleas has no power to issue a writ of mandamus to a State officer.

Objections to the jurisdiction are of two classes, between which there is a clear and well settled distinction; first, those relating to the authority of the court over the subject matter, and secondly those relating to its authority over parties. Objections of the first class cannot be waived nor jurisdiction obtained by acquiescence. Thus, if the writ of mandamus had issued from the quarter sessions or the orphans' court, the proceeding would be void ab initio for defect of authority in the court to issue such process and determine such controversies. It is of this class that it is commonly said that consent cannot give jurisdiction. But in the second class the rule is different. The party exempt from jurisdiction may waive his personal privilege and if he does so the jurisdiction of the court is complete. Thus, if the defendant is not duly served with process, or is a non-resident beyond the reach of process, or if served while temporarily exempt as a juror or party or witness, or member of the Legislature, the proceeding as to him will be void or voidable on showing the facts. But if he waive his exemption and appears voluntarily, the jurisdiction of the court over him is thereafter beyond question.

By the act of May 22, 1722, Sect. 11 and 13, 1 Smith's Laws 139, the Supreme Court was authorized to issue "all remedial and other writs and process * * * as fully and amply as the justices of the court of King's Bench, common pleas and exchequer at Westminster, or any of them, may or can do." Under this statute the Supreme Court issued writs of mandamus as a common law writ, and preserved the common law practice in all proceedings thereon.

By the act of June 14, 1836, Sect. 18, P. L. 626, the courts of common pleas within their respective counties were invested with "like power with the Supreme Court to issue writs of mandamus to all officers and magistrates elected or appointed in or for the respective

county, or in or for any township, district or place within such county, and to all corporations being or having their chief place of business within such county. The jurisdiction thus granted to the common pleas was a common law jurisdiction to be exercised according to common law practice. But State officers not being among the subjects specifically enumerated in the grant, it is argued that no such writ can be issued to them. So far as it is compulsory process, this must be admitted; but it does not follow that it may not issue or become effective by consent. A writ against a non-resident as a compulsory writ is inoperative, not because the court has no authority to issue it, but because the person against whom it is issued is exempt from its operation. And the objection to the writ against a State officer belongs to the same class. The writ of mandamus itself is one which the court has full power to issue, but a State officer is exempt from its operation. This is a personal or official exemption, the manifest purpose of which was to protect a State officer from being taken away or interfered with in his official duties at the seat of government, to answer the local courts throughout the State. He is exempt for the convenience of the public business. But if the convenience of getting a decision on a question of public importance outweighs the inconvenience of going to a local court for it, there is nothing in the statute or in the public policy on which it is founded, to prevent the officer from so doing, and of such convenience the officer himself must be the judge. We are of the opinion that the objection now made relates not to the authority of the court over the subject matter, but only to the privilege personal or official, of the defendant. It was therefore an objection that could be waived, and having been expressly waived in the court below, the case is properly here for final adjudication.

In Com. v. Wickersham, 90 Pa. 311, supra., the State officer insisted on his exemption, and all that the case decided was that he could not be compelled to submit to the jurisdiction. There is nothing in any of the other cases that bears materially on the present question.

Judgment affirmed.

Filed April 22, 1901.

COMMONWEALTH vs. MOIR, RECORDER OF THE CITY OF SCRANTON.

OPINION OF COURT OF COMMON PLEAS OF LACKAWANNA COUNTY.

Archbald, P. J., March 16, 1900:

The respondent has been called upon by the Commonwealth, by the writ which has been issued at the suggestion of the Attorney General, to show cause by what authority he undertakes to act as recorder of the city of Scranton. He justifies his assumption of that office by virtue of an appointment received from the Governor of the State by which he has been commissioned to act until the first Monday of April, 1903, under the provisions of the act of March 7, 1901, relating to cities of the second class, of which the city of Scranton is now one. The Commonwealth demurs to the sufficiency of the answer on the ground that the act referred to is in many respects unconstitutional and void and in an amended set of suggestions the particular objections relied upon are summarized, which for the sake of convenience we will observe in the discussion which follows. The principal one, or at least the one on which in various ramifications especial stress seems to be laid, is that the act is local and special, and therefore offends against the well known prohibition of the fundamental law against municipal legislation of that character. In an extended argument before the full bench, conducted by learned and able counsel of our own bar, assisted by others from abroad, representing another of the cities affected, the specific reasons why it is claimed the statute bears this objectionable character has been pointed out to us in detail. These reasons are many, but after a careful consideration of them, one and all, we are not able to see that they are in any respect well taken.

First—As to the act being local and special, it is said that relating as it does to a part only of the cities of the State, to wit: those denominated cities of the second class, it bears on its face its own condemnation as a local law unless it can in some way be justified. This argument loses sight, however, of the authorities both in this and other states—and notably the case of Wheeler vs. Philadelphia, 77 Pa. 338,— which decide that classification by population of the cities of the Commonwealth for the purposes of municipal legislation is entirely allowable. Indefinite classification, it is true, has been frowned upon: Ayars Appeal, 122 Pa. 266; but

the right of the Legislature to establish three classes has been sustained. In pursuance of this the act of June 25, 1895, P. L. 275, was passed making those cities which have a population of a million the first class, those having 100,000 and less than a million, the second class, and those having under 100,000 the third class. The act before us undertakes to legislate for one of the classes so established, to wit: for those of the second or intermediate class, and cannot in so doing be charged with being special legislation prohibited by the Constitution provided it concerns itself with affairs legitimately municipal. Unless we are convinced that it goes beyond this limit we are bound to pronounce it valid and constitutional legislation, free from the charges to the contrary which are made. To content ourselves, however, with a general answer upon this proposition, while it might effectively dispose of the case, would not do justice to the argument which has been pressed upon us, and we shall, therefore take up and consider the different points which have been specially urged, and which may be regarded as details of the general contention that it is a local and special law.

One of these is that it introduces unusual and unnecessary provisions for the government of cities of the second class not justified by any difference in condition between these and other cities; particularly in that it abolishes the time-honored office of mayor and substitutes a new and unknown chief executive called a recorder, who is vested with extraordinary if not dictatorial powers. But this argument loses sight of the very purpose of classification which is to give place for different legislation for each class; if all must be provided for alike there would be no need for any classes whatever, Population, moreover, is recognized as the basis, and in fact the only basis for a division in case of cities, the larger of these by the very circumstance of their having a greater number of people being presumed to require a government of a different character from those which have less. A great commercial metropolis like Philadelphia, with over 1,200,000 inhabitants, cannot be governed and does not want to be, like Pittsburg, Allegheny or Scranton, which have a population ranging from a half to a twelfth as much. Nor, on the other hand, is a scheme of government adapted to these populous and thriving centers likely to prove acceptable or suitable to the remaining cities of the state which have materially less. The law recognizes this, and the Legislature, acting upon it in the exercise of their discretion have established three classes of cities, with the limits which we have named. This is not open to question, whatever might once have been said of it and is to be borne constantly in mind in the present discussion. But classification being authorized and differences in condition thereby intentionally provided for, it follows as a matter of course that there shall be

different legislation for different classes covering different schemes of city government. Cities of the first class may have one system, cities of the second class another and cities of the third class still a third. There would be no need for classification if they did not. In pursuance of this there may, therefore, be one set of officers for one and another for another, and the powers and functions of each may vary. They are not all obliged to have a mayor any more than they are to have a treasurer or controller or collector of delinquent taxes, however much it may be necessary to lodge somewhere the duties usually performed by these well-known city officials. No doubt there must be a chief executive of some sort, and some one to handle and be responsible for the city funds or to supervise and control the city accounts. But names amount to but little and we may have these several municipal functions separated and distributed among a number of newly created officers or consolidated and conferred upon one or more without occasioning comment or calling the arrangement in question. All these are municipal matters, and so long as an act is passed to apply to any one of the three established classes of cities confines itself to dealing with affairs of that character, it no more offends against the Constitution than if it had to do with all the cities of the State without distinction. This is the settled law of the land laid down in all the cases to which we have been referred even in those relied upon by counsel for the Commonwealth to sustain their assault upon the statute before us. In Phila. v. Haddington Church, 115 Pa. 291; Weinman v. Railway Co., 118 Pa. 192; Ruan St., 132 Pa. 257, and Safe Deposit Co. v. Fricke, 152 Pa. 231, it was solely because the legislation which was under review in each of these was not so confined, but undertook to deal with things which were not municipal; that it was in each case declared to be unconstitutional and swept from the statute books. In Ruan street, at page 276, it is said: "We come now to inquire what legislation remains forbidden to cities notwithstanding classification. I reply that all legislation not relating to the exercise of corporate powers or to corporate officers or their duties is unauthorized by classification. And in Safe Deposit Co. v. Fricke, at page 241, speaking of the act there discussed, it is said: "In view of the foregoing authorities and the principles clearly established by them, how can it be successfully claimed that section 12 of the act of 1877 is within the recognized scope of valid legislation for cities of the second class? It certainly does not relate to the exercise of any corporate powers of said cities nor to the number, character, powers or duties of any municipal officers thereof, nor to any subject under the control of city government."

But how can any such criticism be made of the act which we have here, or how upon any such ground is it possible to condemn it as a local and special law? We do not assume in this opinion to pass upon all its provisions, but that they are in the main concerned and concerned alone with matters of city government the most cursory examination of them will clearly disclose. Thus in the first article a chief executive called a recorder is created, and his powers and duties defined and regulated; in the second, different executive departments are established; and in the third to the eleventh inclusive, the special prerogatives and functions of each are elaborated and prescribed; the twelfth article provides for the election and appointment of departmental officers, clerks and employes; the thirteenth relates to the impeachment of officers of the municipality; article fourteen vests the legislative power of the city in select and common councils; article fifteen deals with city contracts; article sixteen with police magistrates; articles seventeen and eighteen with official salaries and bonds; article nineteen defines at large the corporate powers of the city; article twenty undertakes to preserve in force certain legislation with regard to cities of the third class on becoming cities of the second class; and all this is followed at the close by a schedule regulating the transition from the system of city government now in force with regard to cities of the second class to that inaugurated by the act itself. Taking the act in this way as a whole, how can it be said that the affairs with which it has to deal are not municipal and how is it possible then to argue that because it establishes a system of government differing from that which prevails in the other classes of cities, it is special and local, and therefore condemned by the Constitution? Whether this system is appropriate or necessary for the class affected is not a question which we have anything to do with, and we are not to allow ourselves in this connection to be misled by what is said in some of the cases on the subject of necessity. No doubt classification must be based on necessity, but by this no more is intended than it must not be forced or unnatural. You can legislate for farmers, or inn-keepers, or merchants, or doctors, or bankers, because these are classes in the community which arise from natural conditions and relations; and in the same way you can pass special laws for cities, for boroughs and for townships. But all this is disposed of with regard to the important subject of cities by the consideration which all the cases recognize that difference in population of itself affords a necessity for classification as to matters purely municipal.

It is idle then in the face of this to argue that there are no differences in condition in Pittsburg and Allegheny City or Scranton, which call for a different system of city officers and government

from those to be found in Wilkes-Barre, Reading or Harrisburg. The Legislature have thought otherwise, and we cannot review their judgment. That differences to a certain extent in fact exist is manifest and they must be met and provided for; there can be no hard and fast rule for all; against this the case of Wheeler vs. Philadelphia, 77 Pa. 338, long ago raised an effectual protest. To what extent and in what direction such provision shall be made is a question not for the courts but for the lawmakers. It may be conceded that the necessity for a classification which has been adopted in any given case is a judicial question, but, as already stated, with regard to cities in matters municipal it has once and for all been passed upon, and the only question now open to us with regard to any city class legislation is whether the subjects embraced in it are municipal. If they are, it cannot be disturbed, however peculiar or distinctive. The power of the Legislature within this limit is absolute. They may give one system of government as they have here to one class and another to another, and it is not for the courts to inquire whether either is adapted to the peculiarities of condition to which it is made to apply.

But it is said that article 20 of the present bill retains in force as to cities of the third class advancing into the second class, all third class legislation not supplied by its provisions or in conflict with them with the result that as to Pittsburg and Allegheny, which are already in the second class, we have one set of laws, and as to Scranton, which now comes into it, another and mixed set, made up partly of second and partly of third class legislation, and that this, if nothing else, makes the act local and special. Whether this criticism of the article referred to is justified we do not feel called upon to determine. While it is no doubt worthy of serious consideration whether the apparent want of uniformity produced by it can be ultimately sustained, yet even conceding for the sake of argument that it cannot, the effect claimed for it upon the whole act by no means follows. This article is distinct in its provisions, and may well stand or fall by itself according to what may be hereafter decided with regard to it. It clearly does not enter into the substantive legislation contained in the other articles and can drop out of the act without affecting them. It is a familiar doctrine that one part of a statute may be invalid and yet the rest of it be good; it is only where you cannot lop off the offending members without affecting the whole body that the rule is otherwise, and that position cannot be maintained here. The system established by this statute is harmonious and complete without reference to this this alleged obnoxious article and the latter may be stricken

out without a perceptible disturbance of those which remain. As it stands it is merely an attempt to engraft on to that system such parts of third class city legislation not supplied by the act itself, as it seemed desirable to retain with respect to cities advancing from the third to the second class. But the graft may fall and yet the stock be sound, and that is the effect in any event in our judgment here. The whole act is not to be stricken down by what may be found incongruous in this one supplemental and somewhat indefinite article. Whatever was sought to be covered or accomplished by it as we have said is not essential to the general scheme of the act, and this effectually disposes of the argument which is attempted to be built up upon it. The same may be said of other minor criticisms of the bill; for instance, that with reference to the thirteenth article, which provides for the impeachment of municipal officers in cities of the class under consideration. This is indeed no new or unusual provision, being taken bodily from the act of June 1, 1885, P. L. 37, relating to cities of the first class and serves, we may say, in passing to this extent to bring the two classes into uniformity. The charge made against it, however, is that it undertakes to deal specially with the powers and procedure of the courts and so offends against that provision of the Constitution which prohibits any special law regulating their jurisdiction or practice. But we are not called upon to discuss that question here. All this may be true of it without its following that the act as a whole is invalid. As has been just said with reference to the twentieth article, it deals with a single and special subject, to wit: the method of impeaching municipal officers in cities of this class; but this is by no means essential to the general scheme established by the act as a whole. Cities of the third class have existed without any such charter provision and have been and will continue to be satisfactorily governed—in a legal sense at least—as well without it as with. In other words, it is not indispensable to a complete system, and however it may now appear as a part of that which is here set up, it may drop out of it if necessary without perceptible effect on that which remains.

Even less need we dwell on the somewhat trifling suggestion with regard to the provisions found in the bill concerning policemen and firemen. That they shall not without their consent be dismissed from their positions except as they are removed upon due charges made and a hearing had makes for their permanence and independence, and is not only to be sustained, but highly to be commended. These subordinate city officials, as is well known, are often able to exercise widespread political influence, and are sometimes employed to do so by unscrupulous superiors holding the power of removal over them. Anything, therefore, which tends

to lessen the pressure that can be brought to bear in this way upon them, by adding to the stability of their positions, is in the interest of good government, and to be upheld. But what is more to our present purpose it is a strictly municipal subject, and therefore legitimately dealt with in the act, and that is all we need to say of it.

Coming under the same argument also that this is special and local legislation is the attack made on the powers conferred on the recorder appointed by the Governor under the provisions of the schedule. These, it is claimed, are extraordinary and differ essentially from those to be possessed by subsequent incumbents of the office. By them the appointee of the Governor may remove at will all heads of departments and appoint others of his own selection in their stead, while recorders chosen by the people can only appoint and remove with the consent and approval of councils. This provision, it is further urged, is not made to apply to any city which by advance of population may sebsequently come under the act, but it a mere temporary expedient applying only to existing cities of the class. This makes the act, as it is said, a piece of special legislation under the guise of a general law and violates the Constitution in consequence. We regard this, however, as an attack rather upon the expediency of the provision than an argument against its constitutionality. The legitimate purpose of a schedule is to regulate the application of a constitution or a statute to provide for the transition from the old law to the new. We have a well known example of it in the existing Constitution of the State, and others would not be difficult to find. It is true that it is not always necessary to provide in this way for a transition from one act of Assembly to another, and it may not, indeed, be usual; but it cannot be held to be irregular or invalid, and whatever may be said in the present instance with regard to its expediency, it is entirely within the power of the Legislature to do as they have, and that is all that we need to know. Being within their power the only question open to us is whether that power has been exceeded and as to this there can be but one answer.

Municipal government, except that it shall be regulated by general and not local or special laws—and classified legislation is not open to this objection—is wholly within the control of the Legislature. That body is made up of the representatives of the people and except as the people in the fundamental law have undertaken to put checks upon its action the whole power of the people is lodged with it. Municipalities are mere agencies of government established locally, and their character and extent and the laws by which they shall be controlled, must of necessity be determined by legislative action. Bearing this in mind, in what respect then

can it be urged that the Legislature have exceeded the powers committed to them, in the framing of this bill? It is said that they have made the chief executive an appointive office for two years and thereafter elective. But what of that? They might have made the office wholly appointive had it seemed best to them, and the greater power includes the less. Nor is any question really made, or indeed can be, as to the right to make the first encumbent of the recordership appointive. The only thing claimed is that there is an undue extension of the appointment for the term of two years, passing over an intervening municipal election. In other words, had the election of the recorder been provided for in February, 1902, the appointment by the Governor meanwhile would not be gainsaid. It is only because the election is deferred for another year and the term of the appointee correspondingly enlarged, that objection is made to it. This concession, however, effectually disposes of the objection that the office cannot be part appointive and part elective, as it is here. That it may appropriately be so, until the people have had opportunity to make a choice is undoubted, and it follows that for how long the office shall be under the power of appointment before it is made elective is a matter with which the Legislature alone can deal. In determining that question in the present instance we may assume that our law-makers decided that a single year's experience of the working of the new system before a choice by the people of their chief executive was not sufficient, and that they therefore deemed it proper to continue it for two. The changes inaugurated by the act it must be confessed are somewhat radical; we are to pass from a government by councils, which to say the least of it in this and other cities has not been wholly satisfactory, to a highly centralized government under a chief executive and sundry executory departments with large powers and corresponding responsibility. Two years' time in which to test such a system is certainly none too long; we shall be better able to judge of it in ten; and until it has been somewhat tried and tested how can the people properly determine just the man to whom they are prepared to commit the conduct of the office? These are considerations which may or may not have been in the minds of the Legislature in introducing this provision; they certainly exist, and it cannot be said in the face of them that there was any abuse or excess of power in extending the term of the Governor's appointee as has been done.

Nor is there anything in the point that the act is special, because the schedule only provides for present conditions, and does not apply to cities which may subsequently come under the bill. Of necessity this is the case, for the whole purpose of a schedule, as we have already pointed out, is to cover the period of transition and make the changes inaugurated by the new law less abrupt than

they otherwise would be. But in the case of a city advancing in population by slow degrees to the point where it passes from one class to the other, there is no need for anything of that kind, and its omission therefore introduces nothing special or unusual to affect the general character of the measure.

Of even less moment is the circumstance that the powers entrusted to the appointee of the Governor are somewhat different from those given to the recorders who shall come after him. Not only in the nature of the case has the first incumbent, in organizing the new government, somewhat different duties to perform, but even if there were no such reason justifying the difference, no argument against the constitutionality of the act can be consistently made on account of the distinction, because the provision applies to all the cities of the class affecting all alike, and when that is the case and the matter falls legitimately within the subjects which may be legislated upon—as it certainly does here, because it relates to a municipal function—the provisions, however peculiar, are general and not special within the meaning of the Constitution, and cannot be disturbed.

Second—The second suggestion is that the act is unconstitutional because it has more than one subject. The sequence is not very logical, but we will follow it. The repealing clause at the end of the schedule seems to afford the ground for this argument. That clause reads as follows: "The act entitled 'An act in relation to the government of cities of the second class,' approved the 14th day of June, Anno Domini one thousand eight hundred and eighty-seven, is hereby repealed, except the first and second sections thereof. And all other laws for the government of cities of the second class, unless preserved by the terms of this act as well as all laws inconsistent with or supplied by this act are hereby repealed." The special repeal of independent acts, it is contended, cannot be joined together in one bill because each constitutes a different subject and if joined as they are here the bill is made to cover more than one subject and is therefore double and invalid. If we do not do justice to the argument, in this statement of it, it is because we fail to fully comprehend it, and in order to make no mistake we will quote it as it stands in the brief of counsel. "The usual repealing clause at the end of an act," it is there said, "that all acts or parts of acts inconsistent herewith are hereby repealed, does little more than state the legal effect of the act itself. But it is quite different when the repealing clause attempts to repeal other and independent acts which in no way conflict with the act being passed. Acts so repealed are separate and independent legislation and the passage of one act and the repeal of another are two different subjects and cannot be joined in one bill. This question was passed upon in Common-

wealth v. Mercer, 9, County Court Reps. 461, where it was held that an act purporting to repeal a section of one act and a supplement to another contained two subjects and was void." We cannot assent to the doctrine so advanced, and we shall not take very much time to dispose of it. The usual general clause at the end of a bill, that all acts or parts of acts inconsistent therewith are thereby repealed, may be legally sufficient, but no draftsman is tied down to it. On the contrary, in a general statute of comprehensive scope, supplying and doing away with numerous previous statutes, it is of the very best legislative form to recite the acts intended to be superseded and repealed, so that no one may be in any uncertainty as to the intention of the Legislature with regard to them, and we have yet to hear from any authoritative source that to do so offends against the fundamental law of the land. The repealing clause under discussion does not go as far in this direction as it might, and any criticism we might have to pass upon it would be because it did not. It cites one act by its name and date of approval and as to the rest its phraseology is in the usual general terms. By no conceit of construction can this in our judgment be wrested into a violation of the Constitution prohibiting two subjects from being embraced in the same act.

Third—The third suggestion is that the bill had no right to provide that the Governor should appoint for the term of two years, as he has. It is not exactly couched in these terms, but that is its purport. Stated in another form, it is that the office, being made elective, must be filled by the choice of the people at the next municipal election, and cannot be deferred until a later one. An argument is sought to be made in behalf of this contention by reference to the provisions found in article 4, section 8, of the Constitution, to the effect that where a vacancy occurs in any elective office to which the Governor is entitled by law to appoint, it shall be filled by the people at the next succeeding general election occurring more than three calendar months thereafter. But this is effectively met by the decision of the Supreme Court in Commonwealth v. Callen, 101 Pa. 375, where it was held that this does not apply to municipal officers, but only such officers as are to be chosen at a general election, that is to say at the election held in November of any year. As to those who are appointed by law to be chosen at the municipal elections held in February, that is to say, as to all officers of cities, boroughs and townships, it has no controlling force or effect. There is nothing, therefore, in the Constitution to require an election for the office of recorder in cities of the second class at the municipal election in February, 1902, and the deferring of it until the year following is valid. Even if this were not so we fail to see why the present appointment would not hold good until the

people had had an opportunity to elect, which would sustain the respondent in office for at least a year; it might be void for the excess beyond that, and yet be good for the lesser and lawful period. By the act of May 15, 1874, P. L. 205, the Governor has the general power of appointment as to all vacancies in office not otherwise provided for, and a vacancy may occur by the new creation of an office as well as after its preceding occupancy. Walsh v. Com. 89 Pa. 419. But we place our decision on no such narrow ground. We hold that there is nothing in the Constitution to prohibit the Legislature from providing as they have that the first encumbent should continue in office until after the municipal election of 1903, and that the appointment of the respondent for that term was valid.

Fourth—The fourth objection is practically disposed of by what has just been said. It asserts that the Governor had no power to appoint without a confirmation by the Senate. Counsel frankly admit that the Supreme Court have decided otherwise in the case of Commonwealth v. Callen, 101 Pa. 375, already referred to, and they do not expect us, of course, to overrule it. The point is simply made to protect them in their position and enable them to urge a reconsideration of that decision in the higher court. So far as we are concerned we have nothing to do but to follow the law as so laid down for us, which, we may add, by the way, we have no idea will be disturbed.

Fifth—In the fifth objection it is suggested that the Legislature had no power to abolish the office of mayor when the only object was to create another office to perform the same duties. But that is not the law as announced by all the cases. In Com. v. McCombs, 56 Pa. 436, it was declared that, "As to officers which are legislative only and not constitutional, the power which created them may abolish or change them at pleasure without impinging upon any constitutional right of the possessor of the office and without violating any duty of the legislative body." This was repeated in Com. v. Weir, 165 Pa. 284, where by the general act of May 23, 1893, P. L. 113, providing for the election of a chief burgess in the several boroughs of the Commonwealth, the burgess of Indiana, chosen under a special act relating to that borough, was legislated out of a whole year of his term, and yet the act was sustained. That case is especially pertinent and goes further than we need to in the present instance, because the two offices there were identical in name as well as in duties, while in both respects there is an essential difference here. Lloyd v. Smith, 176 Pa. 213, is equally decisive. It was there held that the act of June 27, 1895, P. L. 403, creating the office of county controller in counties containing 150,000 inhabitants and abolishing the office of county auditor, was not unconstitutional. This ruling is the more remarkable in that the office disposed of was one recognized by the Constitution and not one

merely created by the Legislature, but the court held that even so it was not mandatory to continue it. The doctrine found in these cases might be enlarged upon and exemplified by many others. It is of universal application, an obscure decision of the courts of North Carolina to the contrary notwithstanding. Crenshay v. U. S., 134 U. S. 99; Kenny v. Hudspeth, 59 N. J. Law, 320; People v. Hurlbut, 24 Mich., 44. The very Constitution to which counsel appeals blotted out numerous offices throughout the Commonwealth of which we had an example in our own midst in the abolishment of the late mayor's court of Scranton, and the turning out of office of the learned and respected recorder who presided over it; and what the people in their sovereign capacity by the adoption of the Constitution could do, their representatives in General Assembly met can do also, in all matters in which they have not been specially restrained.

Sixth—It is finally urged that: "The act is unrepublic in form and substance, a fraud on the people, and not within the proper scope and power of legislation, being passed for the benefit and advantage of a partisan faction and not for the good of the people." These comments sound more like the echoes of party strife than they do like legal argument. They may have a place in popular discussion but they can be of little account here. As we have taken pains to point out, the question of expediency is not before us. This bill may be good or bad—time alone will demonstrate—and none of us can anticipate its judgment. The observations which we have been called to make have been addressed to its legal validity only. Does it offend against the Constitution in the manner claimed by its assailants? That is all we have to pass upon. It will not do to charge in vague and general terms that it violates the spirit of that instrument or that it infringes on the prevailing principles of popular government. The Constitution, as it is written, is the only guide by which it can be tested, and the exact particulars in which it impinges upon it must be pointed out. If it stands this test it is valid, and if it does not, it is not. Aided by a full and extended oral argument by the most able counsel and enlightened by exhaustive briefs, we have examined the bill before us by this standard. That we may give evidence of having carefully considered the questions which have been raised, we have set forth at length in this opinion the conclusions which we have reached and the reasons for them. They may not be accepted by all but they will at least serve to demonstrate that we have given more than a perfunctory examination of them all. We have but to add that it is our unanimous judgment, as the result of it, that the law is constitutional and that the respondent is entitled to continue undisturbed in the office which he holds.

Now, March 16, 1901, judgment is entered on the demurrer in favor of the respondent, that he go without day, with costs.

OPINION OF THE SUPREME COURT.

Opinion by Mr. Justice Mitchell, May 27, 1901:

Municipal corporations are agents of the State, invested with certain subordinate governmental functions for reasons of convenience and public policy. They are created, governed, and the extent of their powers determined by the Legislature, and subject to change, repeal, or total abolition at its will. They have no vested rights in their offices, their charters, their corporate powers, or even their corporate existence. This is the universal rule of constitutional law, and in no State has it been more clearly expressed and more uniformly applied than in Pennsylvania. In Philadelphia v. Fox, 64 Pa. 169, 180-81, this court, speaking through Sharswood, J., said: "The city of Philadelphia is a municipal corporation, that is a public corporation created by the government for political purposes, and having subordinate and local powers of legislation. * * * It is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government, essentially a revocable agency, having no vested right to any of its powers or franchises, the charter or act of erection (creation?) being in no sense a contract with the State, and, therefore, fully subject to the control of the Legislature who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangements or destroy its very existence with the mere breath of arbitrary discretion. * * * The sovereign may continue its corporate existence and yet assume or resume the appointments of all its officers and agents into its own hands; for the power which can create and destroy can modify and change."

The fact that the action of the State towards its municipal agents may be unwise, unjust, oppressive, or violative of the natural or political rights of their citizens, is not one which can be made the basis of action by the judiciary. "The rule of law upon this subject appears to be that, except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case. The courts are not the guardians of the rights of the people of the State, except as those rights are secured by some constitutional provision which comes within the

judicial cognizance. The protection against unwise and oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil; but courts cannot assume their rights. The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinions upon points of right, reason and expediency with the lawmaking power. * * * If the courts are not at liberty to declare statutes void because of their apparent injustice or impolicy, neither can they do so because they appear to the mind of the judges to violate fundamental principles of republican government, unless it should be found that these principles are placed beyond legislative encroachment by the Constitution: "Cooley on Constitutional Limitations, ch. 7, sec. 4 (6 ed. 1890, p. 201).

"If the Legislature should pass a law in plain, unequivocal and explict terms within the general scope of their constitutional powers, I know of no authority in this government to pronounce such an act void, merely because, in the opinion of the judicial tribunals, it was contrary to principles of natural justice, for this would be vesting in the court a latitudinarian authority, which might be abused, and would necessarily lead to collisions between the legislative and judicial departments, dangerous to the well being of society, or at least not in harmony with the structure of our ideas of natural government:" Rogers, J., Commonwealth v. McCloskey, 2 Rawle, 374.

"It is no part of our business to discuss the wisdom of this legislation. However vicious in principle we might regard it, our plain duty is to enforce it provided it is not in conflict with the fundamental law:" Scowden's Appeal, 96 Pa. 422. This subject will be further discussed with reference to our own cases, in considering the argument that the statute violates the spirit of the Constitution.

Nor are the motives of the legislators, real or supposed, in passing the act, open to judiciary inquiry or consideration. The Legislature is the lawmaking department of the government, and its acts in that capacity are entitled to respect and obedience until clearly shown to be in violation of the only superior power, the Constitution. "It is urged that the act before us was not passed for this purpose" (as a police regulation) "but as its title expresses, 'to provide for cases where farmers may be harmed by such railroad companies' and it is contended that this shows conclusively that it was the design of the Legislature to impose this new burden upon the railroad company for the benefit of the landholders and not for the

security of the traveling public. * * * We cannot try the constitutionality of a legislative act by the motives and designs of the lawmakers, however plainly expressed. If the act itself is within the scope of their authority it must stand, and we are bound to make it stand if it will upon any intendment. It is its effect not its purpose which must determine its validity. Nothing but a clear violation of the Constitution, a clear usurpation of power prohibited, will justify the judicial department in pronouncing an act of the legislative department unconstitutional and void:" Sharswood, J., in Penna. R. R. Co. v. Riblet, 66 Pa. 164, cited with approval by the present chief justice in Com. v. Keary, 198 Pa. 500.

"The merits of the act of March 22, 1877, in relation to cities of the second class * * * are not a subject for our opinion. The only question before us in these cases is upon the power of the Legislature to pass this law:" Kilgore v. Magee, 85 Pa. 401.

It ought not to be necessary to restate principles so fundamental, nor to cite authorities so familiar and so long established. But the range of the argument, and the energy with which it was pressed have seemed to make it proper to set forth clearly the only question before the court, the constitutionality of the statute in question. Much of the argument and nearly all of the specific objections advanced, are to the wisdom and propriety and the justice of the act, and the motives supposed to have inspired its passage. With these we have nothing to do, they are beyond our province and are considerations to be addressed solely to the Legislature. This court is not authorized to sit as a council of revision to set aside or refuse assent to ill-considered, unwise or dangerous legislation. Our only duty and our only power is to scrutinize the act with reference to its constitutionality, to discover what if any provision of the Constitution it violates. We proceed therefore to the consideration of the specific objections made.

First, it is said that the act is void because it is impossible of execution, and some very serious difficulties are pointed out in regard to the passage of ordinances, etc., by the lack of a complete system in the act itself, the failure to repeal the requirements in that respect of the general act of May 23, 1874, and yet the inconsistency of those requirements with such partial action as can be regularly taken under the provisions of this act. The imperfection of the act in this respect is manifest, but that does not make it unconstitutional. The effect may be to leave the affairs of the cities in a state of very regretable confusion, but it has not been shown that the municipal government cannot be administered notwithstanding. Every city in passing from one class to another, and a fortiori in passing from one charter to another in the same class retains and carries with it all its ordinances and makes no change

in its government except such as the law renders necessary to adjust it to the class into which it goes: Com. ex rel. v. Wyman, 137 Pa. 508. It may require consideration by the courts to determine how much of the general system of municipal government under the act of 1874 is compatible with the provisions of the present act, and how far the new system is self-sustaining, and not improbably legislative assistance will be required for a smooth and harmonious working under one or both. But these matters must be determined as they arise. For the present nothing has been shown against the practical operation of the act beyond great inconvenience.

Secondly, it is objected that the act attempts a classification in the method of filling municipal offices and of exercising municipal powers resting on no proper discrimination or foundation, in that it provides for methods of government and administration of cities of the second class different from those required in cities of the first and third class, in particulars where there is no real difference. It is sufficient to say of this that it is a legislative, not a judicial question. The very object of classification is to provide different systems of government for cities differently situated in regard to their municipal needs. It was recognized that cities varying greatly in population will probably vary so greatly in the amount, importance and complexity of their municipal business, as to require different officers and different systems of administration. Classification therefore is based on difference of municipal affairs, and so long as it relates to and deals with such affairs, the questions of where the lines shall be drawn, and what differences of system shall be prescribed for differences of situation, are wholly legislative. What is a distinction without a difference is largely matter of opinion. No argument, for example, could be more plausible than that there is no real difference in municipal needs, between a city of 99,000 and one of 100,000 population. It is a sufficient answer that the line must be drawn somewhere, and the Legislature must determine where. So long as it is drawn with reference to municipal and not to irrelevant or wholly local matters, the courts have no authority to interfere.

Stress was laid, in the argument of this objection, on the provision making the chief executive in cities of the second class, called a recorder, appointive, while in cities of the first and third classes he is elected and called a mayor. It would not follow that the Legislature had exceeded its powers, if this feature had been made one of the permanent provisions of the act, but we are not called upon to consider that question now, for the appointment directed is only part of the temporary adjustments provided in the schedule for the change.

The substitution of a new system for one under which government has been previously carried on is always accompanied with some shifting of offices and duties, and some inconvenience. To reduce this to a minimum by temporary adjustment of the changes is the province of a schedule. In well considered legislation which involves such changes a schedule of temporary expedients is usually and properly added, and the expedients provided would need to be very clearly unconstitutional to justify a court in overturning them. In Lloyd v. Smith, 176 Pa. 213, it is said: "In an exchange of offices there may naturally be some overlapping of terms and duties, and if in the legislative view the need for a controller was immediate but the existing terms of the auditors prevented his present assumption of all the duties that would finally pertain to his office, it would not have been otherwise, certainly not unconstitutional to meet the case by a temporary expedient." The provision in the schedule of the present act, that the Governor shall within thirty days appoint a recorder in each of the existing cities of the second class, is a temporary expedient, to put the machinery of the new system of government in immediate operation. We could not say that it is an unreasonable expedient for that purpose, even if the question of its reasonableness was not one for the Legislature alone.

In this connection two other objections based on the same provision may be conveniently considered, first that the act is local because the power of appointment of a recorder is confined to existing cities; and secondly, that the recorder appointed is to hold office until 1903, thus passing over an election and depriving the citizens of an opportunity to elect their executive. These provisions are not part of the substantial and permanent features of the act, but of the temporary adjustment of the change. The reference to "existing" cities was in view of the existing but temporary situation. There are no other cities about to enter the second class, and if by any unforeseen possibility there should be another before 1903, it is by no means clear that the proper construction of the word "existing" should not refer to that date. However that may be, a temporary and transitory provision that applies to all the present members of the class, meets all the requirements of the temporary situation and ends with the end of that situation, does not make the whole act local or special. In this connection the language of this court in Pittsburg's Petition, 138 Pa. 401, 427 is very pertinent. It was urged that certain sections of the act then in question made the act local "by fixing dates at which acts necessary to put the government in operation are to be done, which were possible only to one city, the city of Pittsburg, and which are impossible to the city of Allegheny which has come into the class since the act was passed. The reply to this objection is, that, at the date when the

act became a law, there was but one city in the second class. The provisions of the act were general in their character. They related to all cities of the second class. If there had been several such cities, the terms employed would have applied to all alike. It was necessary, in order to give effect to the change in the system of municipal government, that a definite time should be fixed upon at which the change should take place and the new system be put in operation. The trouble with the act is not that it made such a provision for cities then entitled to a place in the second class, but that it did not also make similar provisions for cities that should thereafter be entitled to come into the class. We cannot hold, however, that the failure to provide a date for the organization of cities afterwards to come into the class, deprives such cities of the benefit of the law, or renders it local, and so, inoperative, in the cities to which it would otherwise be applicable."

Of the objection that the citizens are deprived of an opportunity of electing the chief executive, it is sufficient to say that there is no constitutional right of election in reference to that office. The Legislature might make it permanently appointive, and what they could do permanently they may do temporarily: Philadelphia v. Fox, 64 Pa. 169. It is conceded that if the act bore date of approval so near the day of election that the electors would have no proper opportunity to prepare for the election, the postponement would be free from objection. But what is a reasonable or proper opportunity is a question for the Legislature. That the prolongation of a temporary appointment to a vacancy beyond an election not unduly close at hand, is unusual and contrary to what citizens are accustomed to regard as their moral and political rights, may be conceded, but that does not make it unconstitutional. Being an exercise of a legal and constitutional right by the Legislature, they are answerable for their action only to their constituents.

The objections we have been considering, and in fact nearly all that have been raised in the case, are based on the provisions of the schedule, rather than on the permanent provisions of the act. Much legislative latitude must be allowed to temporary measures incident to the adjustment of changes of municipal system, and this consideration deprives the objections of some of the weight they might otherwise have.

It is further said that the act is unconstitutional because it vests in the Governor the discretion of determining when it shall become operative by the appointment of recorders. This again is an objection founded on the temporary expedients of the schedule, and would be sufficiently answered by the considerations already discussed under that head. That statutes making important changes in the law should provide definitely when they shall go into effect

is desirable but not essential. The Legislature may make them operative from a future date, or within certain limitations make them retroactive. The present act in its first section abolishes the office of mayor and substitutes that of recorder. This without more would operate, as the rest of the act does, from the date of its approval. But to prevent a gap in the government and the resulting confusion of the city business, the schedule in section 2 continues the office of mayor temporarily until the new office of recorder is filled by the Governor's appointment under section 1. There is nothing in this that is not entirely within the reasonable province of a schedule for the initial operation of necessary changes.

A further objection made is that the act removes an elected officer, the mayor, from office during the term for which he was elected, by a mere change in the name of the office. The right to grant a new charter to the city, imposing a new form of government, is conceded, even though the effect is to abolish the office and to deprive the officer of his place. But it is argued that the merely nominal abolishing of the office by the substitution of one with the same powers and duties only under a different name is beyond the legislative power. It does not appear how this conclusion follows. There is no right to a public office unless it is under the express protection of the Constitution (Lloyd v. Smith, 176 Pa. 213), and such protection is nowhere given to municipal officers. On the contrary the universal rule is that, unless otherwise directed by the new act, the officers go out with the charter under which they held, and the officers under the new charter take their places whether under the same or a different name. Merely official positions, unprotected by any special constitutional provisions are subject to the exercise of the power of revision and repeal by the Legislature: Kilgore v. Magee, 85 Pa. 401. "The argument is that the act is unconstitutional because it transfers the duties and emoluments of the office of district attorney to another. * * * The office of district attorney is not one of those which are usually denominated constitutional. * * * Not having been mentioned by the Constitution the Legislature was left with unrestricted power to prescribe what the duties of the office should be, what the length of its tenure, what its emoluments and how it should be filled. Having the power to create, they have also the power to regulate and even destroy. Undoubtedly the Legislature may at any moment repeal the act of 1850 and abolish the office. They may provide a substitute for it:" Strong, J., Com. v. McCombs, 56 Pa. 436. "As this decision will deprive the respondent of a portion of the term of his office, some question arises as to the power of the Legislature to enact a law having such an effect. But this is fully met by the decision of this court in the case of Commonwealth v. McComb, 56 Pa. 436. We there held as to offices which

are legislative only and not constitutional, the power which created them may abolish or change them at pleasure without impinging upon any constitutional right of the possessor of the office, and without violating any duty of the legislative body:" Com. ex rel. v. Weir, 165 Pa. 284.

It being conceded that the Legislature may abolish municipal offices by a change of the charter, the question how great or how small the changes by the new charter shall be, and to what particulars they shall apply, is one wholly for legislative consideration. In the act under discussion the changes in the general scheme of government are many and important. With respect to the offices of mayor and recorder, each being the chief executive of a city, a similarity in their powers and duties is natural if not essential, but the offices are not identical either in substance or in name. The recorder has far greater executive powers than his predecessor the mayor, and yet lacks some of the other powers that the latter had. The very argument of the appellants first noticed, on the impossibility of execution of the act, was based on the recorder's want of the authority in the passage of ordinances which the mayor had, and which it was contended was essential to the operation of the new system.

A closely analogous objection is that the act gives the Governor the power to remove an elected officer without cause. But this is not a correct reading of the act. Section 1 of the act itself removes the mayor by abolishing the office, but section 2 of the schedule continues the mayor in office pro tempore until his successor has been duly appointed under section 1. This is not a removal by the Governor whether that would be valid or not; but a legislative adjustment of the conditions of the change made necessary by the new charter. This has already been sufficiently discussed in considering the necessity and province of the schedule.

The objection that the act attempts to create an additional justice of the peace, permits his election at an improper time and allows the Governor to appoint to an office made elective by the Constitution need not be discussed at any length at this time. Clothing the chief executive of a city, virtute officii, with the powers and authority of a police magistrate, or even of a justice of the peace, technically so-called, is not necessarily void as providing for an additional justice of the peace, and if it should be so held on direct presentation of the question it would not invalidate the present act of which it is a subordinate and severable feature. The provision for appointment by the Governor is part of the schedule which has already been sufficiently discussed.

The objection that even if the appointment of a recorder were valid at all, the appointment of the respondent is void for want of

confirmation by the Senate is based on section 8 of article IV of the Constitution, and it is sufficient to say that that section has no application to municipal officers: Com. v. Callen, 101 Pa. 375.

It is further said that the act has more than one subject and one not expressed in the title. This is based on the last section of the schedule, which is a repealing clause. It is enough to say at present that the repeal of previous acts on the same general subject is always germane to the title. Usually the repealing clause is only declaratory of what would be the legal effect without it, but it is useful as preventing doubt upon the legislative intent. And a clause saving from repeal an act that is not within the intent but might have appeared to come within the language of the repealing clause merely operates as a proviso, and is in no sense a re-enactment or extension of the act so executed. It makes no new law. If the section in question repeals expressly any act not germane to the general subject in the title, which has not yet been shown, the repeal might be ineffective but would not vitiate the whole act.

Again it is said that the act is unconstitutional because it provides by article 20, different laws for cities of the same class. The article reads: "From and after the passage of this act, all laws relating to cities of the third class shall continue to apply to cities of that class which have passed or may pass into a city of the second class by reason of increase in population, except so far as such laws are supplied by, or in conflict with, laws relating to cities of the second class." It would be sufficient to say that even if this article cannot stand, it will not affect the rest of the act. It is an independent and easily severable provision. But the article is at least partly declaratory and it does not at present appear that it is anything more. Local and special laws are not repealed by subsequent general ones, unless such is the legislative intent, either expressed or unavoidably implied by the irreconcilability of the continued operation of both. How far this principle may be applicable to a city passing from one class to another is yet an open question. Thus for example when the city of Allegheny passed from the third to the second class it carried with it certainly all its local and special laws, enacted prior to 1874, which it had retained in the third class and which were not irreconcilable conflict with the laws governing the second class. Whether it carried also the powers and privileges which it had acquired as a city of the third class, subject of course to the same limitation that they are not in conflict with the system prescribed for the second class, has not yet been expressly considered. There is strong reason why that should be the rule. The sweeping away in one breath of a whole system, the growth of years and experience, and the substitution of an entirely new one, is fraught with

great inconvenience if not with more serious consequences. This court has said in Com. v. Wyman, 137 Pa. 508, and Com. v. Macferron, 152 Pa. 244, that the changes in the transition are to be confined to those absolutely necessary for adjustment to the new class. Some of the language used in Com. v. Macferron would appear to indicate a presumption that each class is so distinct that in a city leaves everything that it acquired while in it. But the principle of minimizing the changes was again stated by our Brother Fell in Shroder v. Lancaster, 170 Pa. 136, without any such qualification. It is to be remembered that there is no constitutional requirements of uniformity. The mandate of the constitution is negative, that laws on certain subjects shall not be local or special. That means that they must be general, and the uniformity which is discussed in the decisions is not a necessary requirement, but only a test of the generality which is what the constitution commands. Article 20 of the present act settled the legislative intent in favor of the view that cities passing from the third to the second class shall carry with them all the laws not in conflict with the system provided for the second class. Whether such intent violates the required generality of the act may become the subject of consideration hereafter. But even if the article must fall on this account, it will not carry down the rest of the act, and that is all we need decide now.

It is further argued that this act is local and special and therefore contrary to Section 7 of Article 3 of the Constitution, because although it relates in terms to cities of the second class, it is intended to apply only to the three existing cities of Pittsburg, Allegheny and Scranton. This objection is based mainly on the schedule and has been sufficiently discussed already, except with reference to the intimation of the dissenting opinion, that it is an abuse of the power of classification, and perhaps that the principle of classification itself may be a departure from correct constitutional construction. It is far too late to discuss this question. Classification was sanctioned deliberately and unanimously by our predecessors, more than a quarter of a century ago and has never been shaken since. No judge now on this bench had any part in the original decision (Wheeler v. Philadelphia, 77 Pa. 338), and to start a question of its correctness would be a most flagrant and unjustifiable violation of the salutary maxim stare decisis. Nor is there any disposition to do so. On the contrary every year's experience and every new question presented, have vindicated the wisdom and correctness of the principle there enunciated, and the steady tendency has been to broaden instead of narrowing its applicability. As has been said by this court, the constitution of 1874 was a new departure in the history of American law. Instead of being confined as all previous constitutions had been, to the framework of the government, and to

general principles for the protection of individuals and minorities against the oppression of irresponsible majorities, the people voluntarily tied their own hands, in the persons of their legislative agents by a binding code of particulars and details that stand in the path of much just, desirable and necessary legislation. The most emphatic expression of this limitation upon the powers of the legislature is found in Article 3, Section 7, under which most of the cases have arisen. The real evils, however, at which that article was directed, are pointed out in Com. v. Gilligan, 195 Pa. 504, and Clark's Estate, 195 Pa. 520, and every decision in the last decade has shown the steady trend of the court, under the guidance of wider experience, not to extend that article to cases not really within the evil prohibited, though the form may have the appearance of coming within the words of the prohibition. As an illustration of the effect of a contrary view we may look at the case of the city of Philadelphia. The present charter, the act of 1885 commonly known as the Bullitt Bill, was undoubtedly framed and passed in the most honest and patriotic effort for reform in municipal administration, whatever its success may have been in that direction. But its intent was just as distinctly local as that of the act of 1901 is alleged to be, and the construction that would strike down the latter would as inevitably strike down the former, and send Philadelphia back irremediably to its former discredited system. The sound result, after all views have been considered, is that the control of the general subject of municipal administration is a necessary governmental power that has been left by the constitution where it has always been, in the legislature, and that for any misuse of it the remedy must be applied by the constituencies in their dealing with their representatives.

The public interest of the questions involved, though not always their difficulty, has led us to discuss thus in detail the specific objections to the act that the learning and ingenuity of eminent counsel have been able to suggest. There remains one which is based upon broader and more far-reaching considerations than the others, though like most of them it is directed against the schedule. Indeed, the objections to this act may be summed up in the classic phrase in cauda venenum est. It is urged that it violates the spirit of the constitution in those provisions and that general intent which preserves to the people the right of local self-government.

The objection is serious, and there can be no denial that some of the provisions of the schedule infringe upon what the citizens generally are accustomed to regard as their political rights. But our view must be confined closely and exclusively to the constitution.

It may be admitted that even an act of the legislature can so far violate the spirt of the constitution as to be void, though not transgressing the letter of any specifi provision. But such violation is,

exceptional and must be made to appear beyond all doubt. Such, for example, is the illustration given by Chief Justice Thompson in Page v. Allen, 58 Pa. 338, 346: "To illustrate this idea, the executive power of the State under the Constitution is lodged in a Governor. It would be manifestly repugnant to these provisions of the Constitution if an act of Assembly should provide for the election of two executives at the same election, yet it would be unconstitutional only by implication, there being no express prohibition on the subject." Prima facie, the legislative authority is absolute except where expressly limited. This is the uniform principle of all political and legal views, and of all constructions recognized by constitutional law.

"To me it is as plain that the General Assembly may exercise all powers which are properly legislative and which are not taken away by our own or by the Federal Constitution, as it is that the people have all the rights which are expressly reserved. We are urged, however, to go further than this, and to hold that a law, though not prohibited, is void if it violates the spirit of our institutions or impairs any of those rights which it is the object of a free government to protect, and to declare it unconstitutional if it be wrong and unjust. But we cannot do this. It would be assuming a right to change the Constitution, to supply what we might conceive to be its defects, to fill up every casus omissus, to interpolate into it whatever, in our opinion, ought to have been put there by its framers:" Black, C. J., Sharpless v. Mayor of Phila., 21 Pa. 147, 161.

"However easy it may be to demonstrate that public debts (subscriptions to railroad and other enterprises) ought not to be created for the benefit of private corporations, and that such a system of making impovements is impolitic, dangerous, and contrary to the principles of a sound public morality, we can find nothing in the Constitution on which we can rest our consciences in saying that it is forbidden by that instrument:" Black, C. J., Moers v. City of Reading, 21 Pa. 188, 200.

"To justify a court in pronouncing an act of the Legislature unconstitutional and void, either in whole or in part, it must be able to vouch some exception or prohibition clearly expressed or necessarily implied. To doubt is to be resolved in favor of the constitutionality of the act:" Sharswood, C. J., in Com. ex rel. v. Butler, 99 Pa. 535.

"In creating a legislative department, and conferring upon it the legislative power, the people must be understood to have conferred the full and complete authority as it rests in and may be exercised by the sovereign power of any State, subject only to such restrictions as they have seen fit to impose and to the limitations which are contained in the Constitution of the United States. The legislative department is not made a special agency for the exercise of specially

defined legislative powers, but it entrusted with the general authority to make laws at discretion:" Sterrett, J., in Powell v. Com., 114 Pa. 265, 293.

"Whatever the people have not, by their Constitution, restrained themselves from doing, they, through their representatives in the Legislature may do. This latter body represents their will just as completely as a constitutional convention in all matters left open by the written Constitution. Certain grants of power, very specifically set forth, were made by the States to the United States, and these cannot be revoked or disregarded by State Legislatures. Then come the specific restraints imposed by our own Constitution upon our own Legislature. These must be respected. But, in that wide domain not included in either of these boundaries, the right of the people, through the Legislature, to enact such laws as they choose, is absolute. Of the use the people may make of this unrestrained power, it is not the business of the court to inquire:" Dean, J., Com. ex rel. v. Reeder, 171 Pa. 505, 513.

"Nor are the courts at liberty to declare an act void because, in their opinion, it is opposed to a spirit supposed to pervade the Constitution, but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the Legislature, we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument:" Cooley, Constitutional Limitations, ch. VII, sec. VI.

"It is also a maxim of Republican government that local concerns shall be managed in the local districts, which shall choose their own administrative and police officers, and establish for themselves police regulations, but this maxim is subject to such exceptions as the legislative power of the State shall see fit to make, and when made, it must be presumed that the public interest, convenience and protection are subserved thereby. The State may interfere to establish new regulations against the will of the local constituency, and if it shall think proper in any case to assume to itself whose powers of local police which should be executed by the people immediately concerned, we must suppose it has been done because the local administration has proved imperfect and inefficient, and a regard to the general well-being has demanded a change:" Cooley, Constitutional Limitations, ch. VII, sec. V.

These citations might easily be multiplied, but I have not thought it necessary to lengthen this opinion by going outside of the text books of recognized authority, and our own decisions. These establish beyond question the general rules of constitutional law, and show that nowhere have they been more uniformly and strongly enforced than in Pennsylvania. Some of the cases arose before the

adoption of the present Constitution, but this does not affect the principles of the decisions even though some of the actual questions might now be decided differently under the provisions of the present Constitution, for when the Constitution has once expressly spoken, all further debate is at an end. The present Constitution, as has been said more than once by this court, displays a strong intent to limit the power of the Legislature with reference to interference in local affairs. As said by our Brother Dean in Perkins v. Philadelphia, 156 Pa. 554 (565): "Assuming what was the settled law, that the General Assembly had all legislative power not expressly withheld from it in the organic law, they (the convention) set about embodying in that law prohibitions which should in the future effectually prevent the evils the people complained of. Article 3 is almost wholly prohibitory; it enjoins very few duties, but the 'thou shalt nots' number more than sixty." This incontrovertable evidence that the Constitution is the result of a full, detailed, exhaustive consideration of the subject of legislative control over merely local affairs, is of itself a conclusive argument against any further additions by the courts to its sixty and more expressed prohibitions. There is no sounder or better settled maxim in the law than expressio unius exclusio est alterius, and when the authorities which have the right to control any subject, be they only parties to a private contract, or the sovereign people in the adoption of their Constitution, have fully considered and determined what shall be the rights, the powers, the duties or the limitations under the instrument, there is no longer any room for courts to introduce either new powers or new limitations. To do so would, in the language of Chief Justice Black already quoted, "be assuming a right to change the Constitution, to supply what we might conceive to be its defects, to fill up every casus omissus, to interpolate into it whatever in our opinion ought to have been put there by its framers."

The most earnest consideration of the objections to the act of 1901 has convinced us that they are not such as authorize the courts to declare the act void for conflict with the constitution, but must be addressed only to the legislators and their constituencies.

Judgment affirmed.

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 General'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 answers 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 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 of 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 objection to said settlement, is filed in the office of the prothonotary at 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 on 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 1901 AND 1902.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Northwestern Street Railway Company,	Penalty,	$5,000 00	Defunct.
Newtown and Delaware River Traction Company,	Penalty,	5,000 00	Defunct.
Carnegie and Rosslyn Park Street Railway Company,	Penalty,	5,000 00	Judgment for Commonwealth.
Monterey and Streets Run Connecting Railroad Company.	Penalty,	5,000 00	Withdrawn by Secretary of Internal Affairs.
Chestnut Ridge Railroad Company of Pennsylvania,	Penalty,	5,000 00	Defunct.
Franklin Electric Street Railway Company,	Loan tax, 1896,	160 35	Paid.
Franklin Electric Street Railway Company,	Loan tax, 1897,	171 20	Paid.
Franklin Electric Street Railway Company,	Capital stock, 1896,	30 00	Paid.
Franklin Electric Street Railway Company,	Capital stock, 1897,	183 00	Paid.
Vulcan Works Company,	Loan tax, 1899,	167 20	Paid.
Vulcan Works Company,	Loan tax, 1900,	167 20	Paid.
Hanover and McSherrystown Street Railway Company,	Loan tax, 1895 to 1899, inclusive,	135 28	Paid.
Hanover and McSherrystown Street Railway Company,	Loan tax, 1900,	3 17	Paid.
Hanover and McSherrystown Street Railway Company,	Capital stock, 1894,	75 00	Paid.
Hanover and McSherrystown Street Railway Company,	Capital stock, 1895 to 1901, inclusive.	450 00	Paid.
Hanover and McSherrystown Street Railway Company,	Gross receipts, 1898,	27 82	Paid.
Hanover and McSherrystown Street Railway Company,	Gross receipts, 1899,	54 20	Paid.
Roxford Knitting Company,	Loan tax, 1898,	260 30	Paid.
Roxford Knitting Company,	Loan tax, 1900,	38 00	Paid.
Standard Telephone and Telegraph Company,	Bonus,	133 34	Paid.
Philadelphia and Bristol Street Railway Company,	Penalty,	5,000 00	Withdrawn by Internal Affairs Department.
Sewickley Electric Company,	Capital stock, 1893,	171 95	Paid.
Sewickley Electric Company,	Gross receipts, 1901 (6 months),	65 11	Paid.
Sewickley Electric Company,	Gross receipts, 1900 (6 months),	62 58	Paid.
Sewickley Electric Company,	Capital stock, 1898,	100 00	Paid.
Sewickley Electric Company,	Capital stock, 1899,	100 00	Paid.
Sewickley Electric Company,	Capital stock, 1900.	100 00	Paid.

Chester Lumber and Coal Company, ...	Capital stock, 1893-1896, inclusive.	1,500 00	Paid.
Chester Lumber and Coal Company, ...	Capital stock, 1897-1900, inclusive.	1,500 00	Paid.
Harrisburg Car Manufacturing Company, ...	Capital stock, 1889, ...	184 64	Paid.
Philadelphia Standard Telephone and Telegraph Company.	Bonus, ...	2,500 00	Paid.
Quaker City Electric Company, ...	Bonus, ...	49 21	Paid.

SCHEDULE B.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1901.		
Jan. 1,	From Pittsburg Tapering Tube Company:	
	Bonus, ... $12 50	
	Interest, ... 2 48	
		$14 98
22,	From Pittsburg and Birmingham Traction Company, gross receipts to June 30, 1900, ...	2,070 60
22,	From Brownsville Avenue Street Railway Company:	
	Capital stock, 1898, ... $1,895 00	
	Capital stock, 1899, ... 1,990 00	
		3,885 00
Feb. 8,	From Philadelphia Standard Telegraph and Telephone Company, bonus, ...	625 00
26,	From New York, Lake Erie and Western Coal and Railroad Company, capital stock, 1899, ...	2,250 00
26,	From Nypano Railroad Company, capital stock, 1899, ...	6,500 00
26,	From Tioga Railroad Company, capital stock, 1899, ...	3,000 00
26,	From Buffalo, Bradford and Pittsburg Railroad Company, capital stock, 1899, ...	1,000 00
26,	From Erie Railroad Company, capital stock, 1899, ...	3,570 00
26,	From Jefferson Railroad Company, capital stock, 1899,..	3,350 00
28,	From New York, Susquehanna and Western Railroad Company, capital stock, 1899, ...	937 50
28,	From Susquehanna Connecting Railroad Company, capital stock, 1899, ...	625 00
28,	From Wilkes-Barre and Eastern Railroad Company, capital stock, 1899, ...	6,250 00
28,	From Blossburg Coal Company, capital stock, 1899,.....	1,125 00
28,	From Northwestern Mining and Exchange Company, capital stock, 1899, ...	1,000 00
28,	From New York, Susquehanna and Western Coal Company.	
	Capital stock, 1896, ... $185 90	
	Capital stock, 1897, ... 185 90	
	Capital stock, 1898, ... 185 90	
	Capital stock, 1899, ... 250 00	
		807 70
28,	From Hillside Coal and Iron Company:	
	Capital stock, 1897, ... $50 00	
	Capital stock, 1898, ... 50 00	
	Capital stock, 1899, ... 250 00	
		350 00
Mar. 12,	From Northwestern Mining and Exchange Company:	
	Capital stock, 1897, ... $1,250 00	
	Capital stock, 1898, ... 1,000 00	
		2,250 00
12,	From New York, Susquehanna and Western Railroad Company:	
	Loans tax, 1897, ... $514 82	
	Capital stock, 1897, ... 1,250 00	
	Capital stock, 1898, ... 1,250 00	
		3,014 82
12,	From Jefferson Railroad Company:	
	Loans tax, 1897, ... $920 84	
	Loans tax, 1898, ... 920 84	
	Capital stock, 1897, ... 3,750 00	
	Capital stock, 1898, ... 3,750 00	
		9,341 68
12,	From Nypano Railroad Company:	
	Capital stock, 1897, ... $7,500 00	
	Capital stock, 1898, ... 7,500 00	
		15,000 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1901.		
Mar. 12,	From New York, Lake Erie and Western Coal and Railroad Company:	
	Capital stock, 1896, ... $2,500 00	
	Capital stock, 1897, ... 2,500 00	
	Capital stock, 1898, ... 2,500 00	
		7,500 00
12,	From Tioga Railroad Company:	
	Loans tax, 1894 (balance), ... $29 83	
	Loans tax, 1897, ... 190 00	
	Loans tax, 1898, ... 190 00	
		409 83
12,	From New Castle and Shenango Valley Railroad Company, loans tax, 1892-99, inclusive, ...	228 00
25,	From Erie Railroad Company:	
	Capital stock, 1897, ... $4,250 00	
	Capital stock, 1898, ... 4,250 00	
		8,500 00
26,	From Yale and Towne Manufacturing Company:	
	Capital stock, 1896, ... $30 00	
	Capital stock, 1897, ... 30 00	
	Capital stock, 1898, ... 30 00	
		90 00
Apr. 12,	From Millwood Coal and Coke Company, capital stock, 1899, ...	350 00
12,	From Lackawanna Iron and Coal Company, capital stock, 1899, ...	300 00
12,	From Pocono Mountain Ice Company, capital stock, 1899,	2 50
12,	From Black Creek Improvement Company, capital stock, 1899, ...	175 00
12,	From Pennsylvania Coal Company:	
	Capital stock, 1899, ... $1,186 48	
	Capital stock, 1900, ... 2,386 06	
		3,572 54
12,	From Pennsylvania and Northwestern Railroad Company, capital stock, 1899, ...	2,000 00
12,	From Huntingdon and Broad Top Mountain Railroad and Coal Company, capital stock, 1899, ...	1,250 00
12,	From East Broad Top Railroad and Coal Company:	
	Loans tax, 1899, ... $1 85	
	Capital stock, 1899, ... 150 00	
		151 85
12,	From Rock Hill Iron and Coal Company, capital stock, 1899, ...	150 00
12,	From Finance Company of Pennsylvania, capital stock, 1899, ...	1,500 00
12,	From International Navigation Company, capital stock, 1899, ...	100 00
15,	From Hempfield Coal Company, capital stock, 1899, ...	700 00
15,	From Greensburg Coal Company, capital stock, 1899,....	125 00
15,	From Arona Gas Coal Company, capital stock, 1899,.....	275 00
15,	From Carbon Coal Company, capital stock, 1899, ...	250 00
15,	From Schuylkill Anthracite Coal Royalty Company, capital stock, 1899, ...	37 50
15,	From Burrell Coal Company, capital stock, 1899, ...	15 00
15,	From Erie and Western Transportation Company, capital stock, 1899, ...	275 00
16,	From Silver Brook Coal Company, capital stock, 1899,..	625 00
16,	From Diamond Coal Land Company, capital stock, 1899,	190 00
16,	From Truman M. Dodson Coal Company, capital stock, 1899, ...	375 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
1901.			
Apr. 16,	From New York, Lackawanna and Western Railway Company of Pennsylvania:		
	Capital stock, 1896,	$325 00	
	Capital stock, 1897,	375 00	
	Capital stock, 1898,	425 00	
			1,125 00
17,	From Alden Coal Company, capital stock, 1899,		13 90
17,	From Dunbar Furnace Company:		
	Capital stock, 1897,	$100 00	
	Capital stock, 1898,	100 00	
	Capital stock, 1899,	125 00	
			325 00
17,	From Stevens Coal Company:		
	Capital stock, 1898,	$150 00	
	Capital stock, 1899,	150 00	
			300 00
19,	From Claridge Gas Coal Company, capital stock, 1899,		325 00
19,	From Sayre Land Company, capital stock, 1899,		137 50
19,	From Mortgage Trust Company of Pennsylvania, capital stock, 1899,		500 00
22,	From Tarentum Water Company, capital stock, 1899,		100 00
22,	From Upper Lehigh Coal Company, capital stock, 1899,		1,137 50
22,	From Nescopec Coal Company, capital stock, 1899,		200 00
22,	From Hollenback Coal Company, capital stock, 1899,		500 00
22,	From Johnson Coal Company, capital stock, 1899,		50 00
22,	From Lytle Coal Company, capital stock, 1899,		350 00
22,	From Philadelphia Mortgage and Trust Company, capital stock, 1899,		875 00
22,	From Parrish Coal Company, capital stock, 1899,		175 00
22,	From Cranberry Improvement Company, capital stock, 1899,		350 00
22,	From Highland Coal Company, capital stock, 1899,		550 00
22,	From Midland Mining Company, capital stock, 1899,		5 00
22,	From Economy Light, Heat and Power Company:		
	Capital stock, 1899,	$500 00	
	Loans tax, 1899,	98 80	
			598 80
23,	From McKinley Lanning Loan and Trust Company:		
	Capital stock, 1898,	$201 34	
	Capital stock, 1899,	350 00	
	Loans tax, 1899,	93 48	
			644 82
23,	From Central District Printing and Telegraph Company, capital stock, 1899,		2,234 82
23,	From Buffalo and Susquehanna Railroad Company:		
	Loans tax, 1899,	$233 70	
	Capital stock, 1899,	3,000 00	
			3,233 70
24,	From East End Electric Light Company, loans tax, 1899,		323 00
24,	From Allegheny County Light Company, loans tax, 1899,		400 90
24,	From Equitable Gas Company, loans tax, 1894,		142 50
24,	From Kingston Coal Company, capital stock, 1899,		1,000 00
25,	From Thouron Coal Land Company, capital stock, 1899,		200 00
25,	From Wyoming Valley Electric Light, Heat and Power Company, capital stock, 1899,		950 00
25,	From Wilkes-Barre Electric Light Company, capital stock, 1899,		50 00
25,	From Investment Company of Philadelphia, capital stock, 1899,		207 75

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1901.		
Apr. 26,	From Provident Life and Trust Company of Philadelphia, capital stock, 1899,	6,321 51
26,	From International Navigation Company, capital stock, 1900,	100 00
26,	From Midland Mining Company, capital stock, 1900,	5 00
26,	From Delaware and Hudson Canal Company:	
	Capital stock, 1898, $12,299 18	
	Capital stock, 1899, 10,437 02	
		22,736 20
29,	From Everhart Coal Company, capital stock, 1899,	100 00
29,	From Coudersport and Port Allegheny Railroad Company:	
	Capital stock, 1899, $250 00	
	Capital stock, 1900, 250 00	
		500 00
29,	From The United Gas Improvement Company, capital stock, 1899,	9,272 58
29,	From Delaware, Lackawanna and Western Railroad Company:	
	Capital stock, 1899, $2,737 79	
	Loans tax, 1899, 577 78	
		3,315 57
29,	From Lehigh Coal and Navigation Company, capital stock, 1899,	15,000 00
29,	From Lehigh and Lackawanna Railroad Company, capital stock, 1899,	225 00
29,	From Wilkes-Barre and Scranton Railway Company, capital stock, 1899,	100 00
29,	From Tresckow Railroad Company, capital stock, 1899,	50 00
29,	From Delaware Division Canal Company of Pennsylvania, capital stock, 1899,	125 00
30,	From Erie and Western Transportation Company, capital stock, 1900,	100 00
30,	From Clearfield and Mahoning Railroad Company, capital stock, 1899,	750 00
30,	From Mahoning Valley Railroad Company, capital stock, 1899,	25 00
30,	From Allentown Terminal Railroad Company, capital stock, 1899,	175 00
30,	From Electric Traction Company, capital stock, 1900,	100 00
30,	From Lehigh and Wilkes-Barre Coal Company:	
	Capital stock, 1898, $10,625 00	
	Capital stock, 1899, 10,000 00	
	Capital stock, 1900, 10,000 00	
		30,625 00
30,	From Lehigh Luzerne Coal Company:	
	Capital stock, 1895, $125 00	
	Capital stock, 1896, 125 00	
	Capital stock, 1897, 125 00	
	Capital stock, 1898, 125 00	
		500 00
30,	From People's Traction Company:	
	Loans tax, 1896, $273 60	
	Loans tax, 1897, 273 60	
	Loans tax, 1898, 273 60	
	Loans tax, 1899, 273 60	
	Capital stock, 1900, 100 00	
		1,194 40
30,	From Union Traction Company, capital stock, 1900,	100 00
30,	From New York, Pennsylvania and Ohio Railroad Company, capital stock, 1895,	7,500 00
30,	From Nypano Railroad Company, capital stock, 1896,	7,500 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1901.		
May 1,	From Philadelphia Traction Company, capital stock, 1900,	100 00
1,	From Tamaqua and Lansford Street Railway Company, capital stock, 1899,	125 00
1,	From West Branch Coal Company:	
	Loans tax, 1899, $25 90	
	Loans tax, 1900, 38 36	64 26
1,	From Clearfield Bituminous Coal Corporation:	
	Loans tax, 1900, $31 72	
	Loans tax, 1899, 223 84	255 56
2,	From J. Langdon & Co., Incorporated, capital stock, 1899,	450 00
6,	From Atlantic and Ohio Telegraph Company:	
	Capital stock, 1897, $375 00	
	Capital stock, 1898, 375 00	
	Capital stock, 1899, 375 00	1,125 00
6,	From Western Union Telegraph Company, capital stock, 1898,	4,473 44
6,	From Dunkirk, Allegheny Valley and Pittsburg Railroad Company, capital stock, 1899,	1,900 00
6,	From Fall Brook Coal Company, capital stock, 1901,	1,245 00
6,	From Scranton Gas and Water Company, capital stock, 1899,	1,875 00
6,	From Pittsburg and Eastern Railroad Company, capital stock, 1899,	250 00
6,	From Beach Creek Railroad Company:	
	Capital stock, 1899, $5,000 00	
	Loans tax, 1899, 112 00	5,112 00
6,	From Fall Brook Railway Company, capital stock, 1899,	2,750 00
6,	From Pine Creek Railway Company, capital stock, 1899,	5,000 00
8,	From Schuylkill Anthracite Coal Royalty Company, loans tax, 1900,	30 55
8,	From Lehigh Valley Coal Company:	
	Capital stock, 1893, $1,250 00	
	Capital stock, 1899, 3,750 00	5,000 00
8,	From Delano Land Company, capital stock, 1899,	750 00
9,	From Brush Electric Light Company, capital stock, 1899,	575 00
9,	From People's Electric Light, Heat and Power Company, of Nanticoke:	
	Capital stock, 1898, $300 00	
	Capital stock, 1899, 90 00	120 00
9,	From Long Valley Coal Company, capital stock, 1899,	48 50
9,	From Barclay Railroad Company, capital stock, 1899,	275 00
9,	From State Line and Sullivan Railroad Company, capital stock, 1899,	425 00
9,	From Western New York and Pennsylvania Railway Company, capital stock, 1898,	1,230 86
9,	From Bradford Railway Company, capital stock, 1898,	1 25
9,	From Kendall and Eldred Railroad Company, capital stock, 1898,	1 88
9,	From Kinzua Railway Company, capital stock, 1898,	1 25
9,	From Kinzua Valley Railroad Company, capital stock, 1898,	1 31

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1901.		
May 9,	From McKean and Buffalo Railroad Company, capital stock, 1898,	9 70
9,	From Olean, Bradford and Warren Railroad Company, capital stock, 1898,	1 88
9,	From Buffalo Coal Company, capital stock, 1898,	125 00
9,	From Fairmount Coal and Coke Company, capital stock, 1898,	375 00
9,	From Northwestern Coal and Iron Company, capital stock, 1898,	1 25
9,	From Wilkes-Barre and Eastern Railroad Company:	
	Capital stock, 1897, $6,000 00	
	Capital stock, 1898, 6,250 00	
		12,250 00
10,	From Pennsylvania and New York Canal and Railroad Company, capital stock, 1898,	5,000 00
10,	From Schuylkill and Lehigh Valley Railroad Company, capital stock, 1899,	1,750 00
10,	From Lehigh Valley Railroad Company, capital stock, 1899,	5,000 00
10,	From Montrose Railway Company, capital stock, 1899,	125 00
10,	From Locust Mountain Water Company, capital stock, 1899,	150 00
10,	From Hazleton Coal Company, capital stock, 1899,	375 00
10,	From Anthracite Coal and Improvement Company, capital stock, 1897,	50 00
10,	From New York, Chicago and St. Louis Railroad Company, capital stock, 1899,	1,550 00
10,	From Philadelphia Warehousing and Cold Storage Company, capital stock, 1900,	100 00
13,	From New York and Middle Coal Field Railroad and Coal Company, capital stock, 1899,	837 50
14,	From Stevens Coal Company, capital stock, 1900,	175 00
14,	From Philadelphia and West Chester Traction Company, loans tax, 1899,	146 00
14,	From Buffalo, Rochester and Pittsburg Railway Company, capital stock, 1899,	5,000 00
14,	From Allegheny and Western Railway Company, capital stock, 1899,	1,364 00
15,	From Northern Electric Light and Power Company, capital stock, 1899,	300 00
17,	From Rochester and Pittsburg Coal and Iron Company, capital stock, 1898,	3,500 00
17,	From Rochester and Pittsburg Coal and Iron Company, capital stock, 1899,	3,500 00
17,	From Jefferson and Clearfield Coal and Iron Company, capital stock, 1899,	6,000 00
17,	From Reynoldsville and Falls Creek Railroad Company, capital stock, 1899,	375 00
17,	From Philadelphia and Darby Railway Company, capital stock, 1898,	150 00
20,	From Scranton Gas and Water Company, capital stock, 1900,	1,375 00
20,	From Lackawanna Iron and Coal Company, capital stock, 1900,	100 00
20,	From Edison Electric Light Company, Philadelphia, capital stock, 1899,	1,200 00
22,	From South Side Gas Company:	
	Loans tax, 1899, $95 00	
	Loans tax, 1900, 95 00	
		190 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1901.		
May 27,	From General Trading Company, Limited:	
	Capital stock, 1897, ... $125 00	
	Capital stock, 1898, ... 125 00	
	Capital stock, 1899, ... 125 00	
		375 00
27,	From Erie and Wyoming Valley Railroad Company, capital stock, 1899, ...	1,500 00
27,	From Jamestown and Franklin Railroad Company, capital stock, 1899, ...	300 00
27,	From Mahoning Valley Railroad Company, capital stock, 1900, ...	50 00
27,	From Buffalo, Rochester and Pittsburg Railway Company, capital stock, 1900, ...	5,176 06
27,	From Clearfield and Mahoning Railway Company, capital stock, 1900, ...	750 00
June 3,	From Thouron Coal Land Company, loans tax, 1899, ...	11 40
7,	From Quaker City Electric Company:	
	Bonus, ... $31 25	
	Interest, ... 17 96	
		49 21
7,	From Jefferson and Clearfield Coal and Iron Company, capital stock, 1900, ...	3,250 00
7,	From Rochester and Pittsburg Coal and Iron Company, capital stock, 1900, ...	3,475 00
July 15,	From Central Homestead Loan and Trust Company, capital stock, 1895-6-7-8, and loans tax, 1895-6,7-8, ...	21 00
17,	From Wilkes-Barre Gas Company, capital stock, 1899,..	25 00
17,	From Gas Company of Luzerne County, capital stock, 1899, ...	250 00
17,	From Consumers' Gas Company, of Wilkes-Barre, capital stock, 1899, ...	20 00
17,	From Wilson Distillery Company, Limited, capital stock, 1899, ...	200 00
24,	From E. P. Wilbur Trust Company, capital stock, 1899,..	750 00
Aug. 2,	From People's Street Railway Company of Luzerne County, capital stock, 1896, ...	1,050 00
2,	From Scranton Railway Company, capital stock, 1898, ..	1,500 00
2,	From Scranton Passenger Railway Company, capital stock, 1895, ...	75 00
2,	From Scranton Passenger Railway Company, capital stock, 1896, ...	125 00
2,	From Scranton Traction Company:	
	Capital stock, 1895, ... $1,400 00	
	Capital stock, 1896, ... 1,400 00	
		2,800 00
2,	From Valley Passenger Railway Company:	
	Capital stock, 1895, ... $200 00	
	Capital stock, 1896, ... 200 00	
		400 00
2,	From Scranton and Carbondale Traction Company:	
	Capital stock, 1896, ... $300 00	
	Capital stock, 1897, ... 300 00	
	Capital stock, 1898, ... 300 00	
		900 00
28,	From Suburban Electric Light Company, capital stock, 1899, ...	500 00
Sept. 2,	From Estate of Harriet Benson, ...	5,000 00
17,	From Susquehanna and New York Railroad Company, capital stock, 1899, ...	575 00
17,	From Galeton and Eastern Railroad Company, capital stock, 1899, ...	14 58

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1901.		
Sept. 30,	From Erie and Wyoming Valley Railroad Company, capital stock, 1900,	625 00
Oct. 16,	From Altoona and Logan Valley Electric Railway Company, capital stock, 1899,	100 00
30,	From Harrisburg Car Manufacturing Company, on account capital stock, 1889,	16 59
30,	From Philadelphia Company, loans tax, 1900,	132 30
30,	From Allegheny County Light Company, loans tax, 1900,	50 10
30,	From East End Electric Light Company, loans tax, 1900,	50 80
Nov. 12,	From Pennsylvania and Northwestern Railroad Company, capital stock, 1900,	1,250 00
12,	From Parrish Coal Company, capital stock, 1900,	200 00
12,	From E. P. Wilbur Trust Company, capital stock, 1901,	600 00
14,	From Claridge Gas Coal Company, capital stock, 1900,	350 00
14,	From Gilpin Coal Company, capital stock, 1900,	275 00
14,	From Buffalo, Bradford and Pittsburg Railroad Company, capital stock, 1900,	25 00
14,	From Northwestern Mining and Exchange Company, capital stock, 1900,	25 00
14,	From New York, Susquehanna and Western Coal Company, capital stock, 1900,	25 00
14,	From Blossburg Coal Company,	25 00
14,	From Erie Railroad Company, capital stock, 1900,	25 00
14,	From Jefferson Railroad Company, capital stock, 1900,	25 00
14,	From Hillside Coal and Iron Company, capital stock, 1900,	25 00
14,	From Wilkes-Barre and Eastern Railroad Company, capital stock, 1900,	25 00
14,	From Tioga Railroad Company, capital stock, 1900,	25 00
14,	From Susquehanna Connecting Railroad Company, capital stock, 1900,	25 00
14,	From Nypano Railroad Company, capital stock, 1900,	25 00
14,	From New York, Lake Erie and Western Coal and Railroad Company, capital stock, 1900,	25 00
14,	From New York, Susquehanna and Western Railroad Company, capital stock, 1900,	25 00
15,	From Kingston Coal Company, capital stock, 1900,	1,000 00
18,	From Bethlehem Iron Company:	
	Loans tax, 1900, $254 42	
	Capital stock, 550 00	
	Capital stock, 520 00	
		1,324 42
18,	From McKinley-Lanning Loan and Trust Company:	
	Loans tax, 1900, $249 38	
	Capital stock, 1900, 250 00	
		499 38
18,	From Long Valley Coal Company, capital stock,	48 75
18,	From Laurel Run Coal Company, capital stock, 1900,	200 00
22,	From Robesonia Iron Company, Limited, capital stock, 1900,	680 00
26,	From Geiser Manufacturing Company, bonus on increase of capital stock,	493 25
Dec. 2,	From Hazard Manufacturing Company:	
	Capital stock, 1880, $60 00	
	Capital stock, 1879, 60 00	
		120 00
2,	From Lewisburg, Milton and Watsontown Passenger Railway Company, capital stock, 1900,	260 00
2,	From Cambria Steel Company, loans tax, 1900,	21 62

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
1901.			
Dec. 2,	From Rockhill Iron and Coal Company:		
	Loans tax, 1900,	$11 40	
	Capital stock, 1900,	150 00	
			161 40
2,	From East Broad Top Railroad and Coal Company:		
	Loans tax, 1900,	$1 85	
	Capital stock, 1900,	150 00	
			151 85
3,	From Huntingdon and Board Top Mountain Railroad and Coal Company, capital stock, 1900,		1,000 00
4,	From West End Coal Company, capital stock, 1900,		125 00
5,	From Tionesta Valley Railroad Company, capital stock, 1901,		500 00
23,	From Pennsylvania Salt Manufacturing Company:		
	Capital stock, 1898,	$100 00	
	Capital stock, 1899,	100 00	
	Capital stock, 1897,	100 00	
			300 00
23,	From Wilson Distillery Company, Limited, capital stock, 1900,		50 00
23,	From Wyoming Valley Coal Company, capital stock, 1900,		687 50
24,	From Altoona and Logan Valley Electric Railway Company, capital stock, 1900,		1,500 00
30,	From Hollenback Coal Company, capital stock, 1900,		450 00
30,	From Cranberry Improvement Company, capital stock, 1900,		40 00
30,	From Midvalley Coal Company, capital stock, 1900,		75 00
30,	From Empire Coal Mining Company, capital stock, 1900,		250 00
30,	From Allentown Terminal Railroad Company, capital stock, 1900,		125 00
30,	From Millwood Coal and Coke Company, capital stock, 1900,		325 00
30,	From Guarantee Trust and Safe Deposit Company, capital stock, 1900,		251 06
30,	From Lehigh and Lackawanna Railroad Company, capital stock, 1900,		225 00
30,	From Wilkes-Barre and Scranton Railway Company, capital stock, 1900,		100 00
30,	From Delaware Division Canal Company of Pennsylvania, capital stock, 1900,		125 00
30,	From Black Creek Improvement Company, capital stock, 1900,		100 00
30,	From Upper Lehigh Coal Company, capital stock, 1900,		662 50
30,	From Allentown Gas Company:		
	Loans tax, 1899,	$228 00	
	Loans tax, 1900,	228 00	
			456 00
30,	From Lower Merion Gas Company:		
	Loans tax, 1899,	$45 60	
	Loans tax, 1900,	45 60	
			91 20
30,	From Pennsylvania Globe Gas Light Company, capital stock, 1899,		11 02
30,	From Tamaqua and Lansford Street Railway Company, capital stock, 1900,		57 50
30,	From New York and Middle Coal Field Railroad and Coal Company, capital stock, 1900,		200 00
1902.			
Jan. 2,	From Pine Creek Railway Company, capital stock, 1900,		25 00
6,	From Chester Lumber and Coal Company, capital stock, 1893 to 1900, inclusive,		1,000 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
1902.			
Jan. 6,	From West Branch Coal Company, capital stock, 1900,..		125 00
6,	From Jamestown and Franklin Railroad Company, capital stock, 1900, ...		300 00
6,	From Commercial Trust Company, capital stock, 1900, ..		40 65
6,	From New York, Chicago and St. Louis Railroad Company, capital stock, 1900, ...		525 00
6,	From Hazleton Coal Company, capital stock, 1896, ...		200 00
6,	From Schuylkill and Lehigh Valley Railroad Company, capital stock, 1900, ...		225 00
6,	From Lehigh Valley Railroad Company:		
	Loans tax, 1900, ...	$1,247 00	
	Capital stock, 1900, ...	4,925 00	
			6,172 00
6,	From Pennsylvania and New York Canal and Railroad Company:		
	Loans tax, 1900, ...	$581 40	
	Capital stock, 1900, ...	25 00	
			606 40
6,	From Nescopec Coal Company, capital stock, 1900, ...		125 00
6,	From Lehigh Valley Coal Company, capital stock, 1900,.		250 00
6,	From Lehigh Coal and Navigation Company:		
	Capital stock, 1900, ...	$9,183 00	
	Loans tax, 1900, ...	740 00	
			9,923 00
6,	From Hazleton Coal Company, capital stock, 1900, ...		20 00
7,	From Blubaker Coal Company, capital stock, 1897, ...		75 00
10,	From Northern Electric Light and Power Company, capital stock, 1900, ...		800 00
22,	From General Trading Company, Limited, capital stock, 1900, ...		50 00
27,	From Delaware, Lackawanna and Western Railroad Company, capital stock, 1900, ...		8,000 00
27,	From Sewickley Electric Company:		
	Capital stock, 1898, ...	$100 00	
	Capital stock, 1899, ...	100 00	
	Capital stock, 1900, ...	100 00	
	Gross receipts, 1900 (6 months), ...	62 58	
	Gross receipts, 1901 (6 months), ...	65 11	
			427 69
Feb. 5,	From Scranton and Carbondale Traction Company, loans tax, 1899, ...		307 80
5,	From Scranton and Pittston Traction Company, loans tax, 1899, ...		406 60
5,	From Lackawanna Valley Traction Company, capital stock, 1899, ...		100 00
7,	From Twenty-second Street and Allegheny Avenue Passenger Railway Company, capital stock, 1898, ...		300 00
10,	From Western Union Telegraph Company, capital stock, 1899, ...		2,447 30
12,	From Investment Company of Philadelphia, capital stock, 1900, ...		3,750 00
19,	From Standard Telephone and Telegraph Company, bonus on increase of capital stock, ...		133 34
19,	From Roxford Knitting Company:		
	Loans tax, 1900, ...	$38 00	
	Capital stock, 1898, ...	260 30	
			298 30
19,	From Hanover and McSherrystown Street Railway Company:		
	Gross receipts, 1898, ...	$27 82	
	Gross receipts, 1899, ...	54 20	
	Capital stock, 1894 to 1901, inclusive,....	210 00	
			292 04

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1902.		
Feb. 20,	From Webster Coal and Coke Company, capital stock, 1900,	770 97
21,	From the Vulcan Works:	
	Loans tax, 1899, $167 20	
	Loans tax, 1900, 167 20	
		334 40
27,	From Sewickley Electric Company, capital stock, 1893,	171 95
Mar. 7,	From Galeton and Eastern Railroad Company, capital stock, 1900,	52 25
7,	From Susquehanna and New York Railroad Company, capital stock, 1900,	375 00
7,	From Buffalo and Susquehanna Railroad Company, capital stock, 1900,	3,000 00
26,	From Versailles Traction Company, capital stock, 1899,	100 00
26,	From McKeesport and Youghiogheny Street Railway Company, loans tax, 1900,	380 00
Apr. 9,	From Youghiogheny Valley Passenger Railway Company, capital stock, 1899,	50 00
9,	From Bethlehem Iron Company:	
	Capital stock, 1900, $729 66	
	Interest, 36 72	
	Capital stock, 1899, 1,023 21	
	Interest, 54 57	
		1,844 16
11,	From Wyoming Valley Electric Light, Heat and Power Company:	
	Loans tax, 1899, $874 00	
	Loans tax, 1900, 1,029 20	
	Capital stock, 1900, 550 00	
		2,453 20
21,	From Puritan Coke Company, capital stock, 1900,	468 80
22,	From American Coke Company:	
	Capital stock, 1899, $100 00	
	Capital stock, 1900, 3,428 29	
		3,528 29
May 1,	From Beech Creek Railroad Company, loans tax, 1901,	112 00
2,	From California and Texas Railway Construction Company, bonus,	16,197 12
2,	From The United Gas Improvement Company:	
	Capital stock, 1900, $959 82	
	Loans tax, 1899, 1,940 00	
	Loans tax, 1900, 1,940 00	
		4,839 82
2,	From Equitable Illuminating Gas Light Company of Philadelphia:	
	Loans tax, 1900, $1,274 72	
	Loans tax, 1899, 1,021 28	
		2,296 00
5,	From Allison Manufacturing Company, capital stock, 1900,	150 00
5,	From Provident Life and Trust Company, capital stock, 1900,	5,890 00
5,	From Union Improvement Company:	
	Capital stock, 1899, $875 00	
	Capital stock, 1900, 875 00	
		1,750 00
5,	From Westinghouse Air Brake Company:	
	Capital stock, 1899, $2,500 00	
	Capital stock, 1900, 1,250 00	
		3,750 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.		Name.		Amount.
May	8,	From Bangor and Portland Railway Company, capital stock, 1900,		600 00
	8,	From Barclay Railroad Company, capital stock, 1900,		200 00
	8,	From State Line and Sullivan Railroad Company, capital stock, 1900,		850 00
	8,	From Weston Mill Company:		
		Capital stock, 1896,	$128 25	
		Capital stock, 1897,	126 83	
		Capital stock, 1898,	129 22	
		Capital stock, 1899,	125 13	
		Capital stock, 1900,	111 24	
				620 67
	9,	From Westinghouse Electric and Manufacturing Company:		
		Capital stock, 1899,	$3,250 00	
		Capital stock, 1900,	3,750 00	
				7,000 00
	12,	From Edison Electric Light Company of Philadelphia, capital stock, 1900,		1,375 00
	20,	From Vulcan Iron Works, bonus,		1,667 67
	20,	From New Castle Electric Company, gross receipts, 1900, 6 months,		44 48
	22,	From People's Electric Light, Heat and Power Company, capital stock, 1900,		45 00
June	18,	From Keystone Laundry Company, capital stock, 1899,		229 17
	25,	From Homestead Loan and Trust Company of New Castle:		
		Capital stock, 1896,	$16 56	
		Capital stock, 1897,	16 56	
		Capital stock, 1898,	16 56	
		Penalties,	4 95	
		Loans tax, 1894,	6 84	
		Loans tax, 1895,	6 84	
		Loans tax, 1896,	6 84	
		Loans tax, 1897,	6 84	
		Loans tax, 1898,	6 84	
		Penalties,	3 40	
				92 23
July	11,	From Danville Bessemer Company, capital stock, 1900,		87 50
	18,	From Wilkes-Barre and Eastern Railroad Company, capital stock, 1901,		25 00
	18,	From Susquehanna Connecting Railroad Company, capital stock, 1901,		25 00
	18,	From North Western Mining and Exchange Company, capital stock, 1901,		25 00
	18,	From New York, Lake Erie and Western Coal and Railroad Company, capital stock, 1901,		25 00
	18,	From Tioga Railroad Company, capital stock, 1901,		25 00
	18,	From Buffalo, Bradford and Pittsburg Railroad Company, capital stock, 1901,		25 00
	18,	From Nypano Railroad Company, capital stock, 1901,		25 00
	18,	From Jefferson Railroad Company, capital stock, 1901,		25 00
	18,	From Erie Railroad Company, capital stock, 1901,		25 00
	18,	From Sharon Railway Company, capital stock, 1901,		25 00
	18,	From New York, Susquehanna and Western Coal Company, capital stock, 1901,		25 00
	18,	From New York, Susquehanna and Western Railroad Company, capital stock, 1901,		25 00
	18,	From Hillside Coal and Iron Company, capital stock, 1901,		25 00
	18,	From Blossburg Coal Company, capital stock, 1901,		25 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Aug. 5,	From Dunbar Furnace Company:		
	Loan tax, 1897,	$391 40	
	Loans tax, 1898,	391 40	
			782 80
Sept. 25,	From Barnes Brothers Company:		
	Capital stock, 1899,	$300 00	
	Interest,	60 00	
	Capital stock, 1901,	375 00	
	Interest,	38 75	
			773 75
Nov. 13,	From People's Electric Light, Heat and Power Company, of Nanticoke, loans tax, 1901,		142 50
13,	From Electric Traction Company, capital stock, 1901,		100 00
13,	From Philadelphia Traction Company, capital stock, 1901,		100 00
13,	From People's Traction Company, capital stock, 1901,		100 00
13,	From Union Traction Company, capital stock, 1901,		100 00
14,	From The United Gas Improvement Company, capital stock, 1901,		1,046 50
18,	From Jarecki Manufacturing Company, capital stock, 1899,		703 00
28,	From Robesonia Iron Company, Limited, capital stock, 1901,		180 00
Dec. 15,	From American Coke Company, capital stock, 1901,		2,500 00
16,	From Slate Belt Electric Street Railway Company, capital stock, 1900,		40 00
17,	From Nescopec Coal Company, capital stock, 1901,		175 00
17,	From Morris and Whitehead, Bankers, capital stock, 1901,		12 50
17,	From Truman M. Dodson Coal Company, capital stock, 1901,		187 50
18,	From Lake Shore and Michigan Southern Railway Company, capital stock, 1899,		10,271 20
18,	From Geo. B. Newton & Co., capital stock, 1900,		625 00
18,	From Cranberry Improvement Company, capital stock, 1901,		175 00
18,	From Empire Coal Mining Company, capital stock, 1901,		100 00
18,	From Jefferson Coal Company, capital stock, 1901,		125 00
18,	From Black Creek Improvement Company, capital stock, 1901,		125 00
18,	From Silver Brook Supply Company, Limited, capital stock, 1901,		50 00
18,	From Midvalley Coal Company, capital stock, 1901,		250 00
18,	From Mortgage Trust Company of Pennsylvania, loans tax, 1901,		306 30
22,	From Franklin Electric Street Railway Company:		
	Loans tax, 1896,	$7 60	
	Loans tax, 1897,	7 60	
	Capital stock, 1896,	50 00	
	Capital stock, 1897,	50 00	
			115 20
22,	From Upper Lehigh Coal Company, capital stock, 1901,		412 50
22,	From Hollenback Coal Company, capital stock, 1901,		937 50
22,	From Highland Coal Company, capital stock, 1901,		300 00
22,	From State Line and Sullivan Railroad Company, capital stock, 1901,		675 00
22,	From Stevens Coal Company, capital stock, 1901,		175 00
22,	From Huntingdon and Broad Top Mountain Railroad and Coal Company, capital stock, 1901,		500 00
22,	From United Gas Improvement Company, capital stock, 1901,		655 50

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
Dec. 22,	From Union Improvement Company, capital stock, 1901,	875 00
22,	From Olyphant Water Company:	
	Loans tax, 1901, ... $155 80	
	Capital stock, 1901, ... 187 50	
		343 30
22,	From Kingston Coal Company, capital stock, 1901, ...	1,000 00
23,	From Conshohocken Electric and Power Company, loans tax, 1901, ...	38 00
23,	From Langcliffe Coal Company, Limited, capital stock, 1901, ...	125 00
23,	From Greenwood Coal Company, Limited, capital stock, 1901, ...	83 33
24,	From Geo. B. Newton & Co., Incorporated, capital stock, 1901, ...	1,500 00
24,	From Delaware and Hudson Company, capital stock, 1901, ...	1,250 00
29,	From Jamison Coal Company:	
	Capital stock, 1898, ... $250 00	
	Capital stock, 1899, ... 500 00	
		750 00
29,	From Jamison Coal and Coke Company, capital stock, 1900, ...	1,220 00
29,	From International Navigation Company:	
	Loans tax, 1901, ... $66 80	
	Capital stock, 1901, ... 62 32	
		129 12
29,	From McKinley, Lanning Loan and Trust Company, capital stock, 1901, ...	226 74
29,	From Buffalo and Susquehanna Railroad Company, capital stock, 1901, ...	4,437 50
29,	From Diamond Coal Land Company, capital stock, 1901, ...	5 87
29,	From Midvalley Supply Company, Limited, capital stock, 1901, ...	37 50
29,	From Bethlehem Iron Company:	
	Capital stock, 1890, ... $300 00	
	Capital stock, 1891, ... 450 00	
		750 00
29,	From Equitable Illuminating Gas Light Company of Philadelphia, loans tax, 1901, ...	1,306 40
29,	From Allison Manufacturing Company, capital stock, 1901, ...	25 00
29,	From Beech Creek Railroad Company, loans tax, 1901,	43 60
30,	From Everhart Coal Company, capital stock, 1901, ...	37 50
30,	From Westinghouse Airbrake Company, capital stock, 1901, ...	1,250 00
30,	From Beech Creek Extension Railroad Company, capital stock, 1901, ...	400 00
30,	From Buffalo, Bradford and Pittsburg Railway Company, capital stock, 1901, ...	6,750 00
30,	From Girard Trust Company, capital stock, 1902, ...	55,462 50
	Total, ...	$549,173 58

SCHEDULE C.

QUO WARRANTO PROCEEDINGS.

Name of Party.	Action Taken.
Potter Improvement Company, ...	Allowed. Judgment of ouster.
Continental Trust and Finance Company of Philadelphia.	Allowed. Judgment for defendant.
Greigsville Salt and Mining Company, .	Allowed. Judgment of ouster.
Spring Garden Electric Company, ...	Allowed. Judgment of ouster.
Port Allegany Water Company, ...	Allowed. By agreement matters in controversy submitted to referee.
Consumers' Gas Company of Scranton,	Allowed. Pending in Dauphin county court.
Old Forge Coal Mining Company, ...	Allowed. Judgment of ouster.
Hawley and Eastern Railroad Company.	Allowed. Judgment of ouster.
Delaware and Southern Railroad Company.	Allowed. Judgment of ouster.
Keystone Electric Railway Company, .	Allowed. Judgment of ouster.
Philadelphia and Neshaminy Railway Company.	Allowed. Judgment of ouster.
California and Texas Railway Construction Company.	Allowed. Judgment for defendant.
Northern Cambria Street Railway Company.	Allowed. Judgment of ouster.
Girard Coal Company, ...	Allowed. Judgment of ouster.
Coal Centre Railroad Company, ...	Allowed. Judgment of ouster.
Conewago Iron Company, ...	Allowed. Judgment of ouster.
Chickies Iron Company, ...	Allowed. Judgment of ouster.
United States Pine Line Company, ...	Proceedings discontinued.
Real Estate Investment Company of Philadelphia.	Allowed. Suggestion filed in Philadelphia county.
James Moir, Recorder of City of Scranton.	Allowed. Suggestion filed in Lackawanna county.
Keystone Telephone Company, ...	Refused.
Potter Water Company, ...	Allowed. Suggestion filed in Potter county.
Lumber City Water Company, ...	Allowed. Suggestion filed in Potter county.
Frank N. Worrell, School Director, Borough of Washington.	Proceedings stayed.
Philipsburg and Suburban Electric Railway, Houtzdale and Suburban Electric Railway and Philipsburg and Houtzdale Passenger Railway Companies.	Writs allowed and suggestions filed in Clearfield county.

SCHEDULE C—Continued.

QUO WARRANTO PROCEEDINGS.

Name of Party.	Action Taken.
Uwchlan Street Railway Company, ...	Allowed. Suggestion filed in Chester county.
Junior Order of United American Mechanics.	Allowed. Suggestion filed in Philadelphia county.
Valley Pasesnger Railway Company,...	Proceedings discontinued.
Pennsylvania Mutual Horse Thief Detecting and Insurance Company, of York.	Allowed. Suggestion filed in York county.
Consumers' Electric Light and Power Company.	Proceedings stayed.
Samuel G. Moloney, Select Councilman, Fifth ward, Philadelphia.	Allowed. Suggestion filed in Philadelphia county.
Susquehanna Water Company, ...	Proceedings stayed.
Christopher H. Stover and George F. Lutz, Justices of the Peace, Columbia.	Application refused.
The West Light Company, ...	Refused.
Consumers' Water Company, of Honesdale.	Allowed. Suggestion filed in Wayne county.
J. W. Rhodes, Justice of the Peace, Lewistown.	Proceedings discontinued.
Pittsburg and Castle Shannon Railroad Company.	Proceedings pending.
Shawnee Electric Light Company, ...	Proceedings stayed.
Philadelphia and Reading Railway Company, Reading Coal and Iron Company and Temple Iron Company.	Proceedings discontinued.
George H. Harris, et al., and Junior American Mechanics' Funeral Benefit Association of the United States.	Allowed. Suggestion filed in Philadelphia county.
Schuylkill Electric Railway Company,..	Proceedings pending awaiting additional testimony.
Ringing Rocks Traction Company, ...	Refused.
Fountain Hill Gas Company, Wyandotte Gas Company, and West Bethlehem Light Company.	Proceedings pending.
Pittsburg, Johnstown, Ebensburg and Eastern Railroad Company.	Proceedings pending.

SCHEDULE D.

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
Commonwealth of Pennsylvania, v. Buffalo and Susquehanna Railroad Company.	Bill dismissed and final decree entered.
Commonwealth of Pennsylvania, v. Potter County, Poor District, the County of Potter and R. H. Young, A. F. Smith, D. A. Sunderlin, County Commissioners of the County of Potter.	Bill dismissed.
Commonwealth of Pennsylvania, v. United Traction Company and Pittsburg Express Company.	Bill and answer filed. Pending.
Commonwealth of Pennsylvania, v. Consolidated Traction Company and Pittsburg Express Company.	Bill and answer filed. Pending.
Commonwealth of Pennsylvania, v. Huntingdon Gas Company and Huntingdon Electric Light Company.	Bill dismissed.
Commonwealth of Pennsylvania, v. Homer A. Rau, Herbert Rife, William Trimble, Walter A. McDonald and Walter T. Conwell, trading as the Uwchlan Street Railway Company.	Bill dismissed.
Commonwealth of Pennsylvania, v. Buffalo and Susquehanna Railroad Company.	Bill dismissed.
West Bethlehem Light Company, v. William A. Stone, Governor; William W. Griest, Secretary of the Commonwealth, and George F. Knerr, Recorder of Deeds of Lehigh County.	Bill filed. Preliminary injunction awarded. Pending.
Wyandotte Gas Company, v. William A. Stone, Governor; William W. Griest, Secretary of the Commonwealth, and Wilson H. Wert, Recorder of Deeds of Northampton County.	Bill filed. Preliminary injunction awarded. Pending.
Fountain Hill Gas Company, v. William A. Stone, Governor; William W. Griest, Secretary of the Commonwealth, and George F. Knerr, Recorder of Deeds of Lehigh County.	Bill filed. Preliminary injunction awarded. Pending.

SCHEDULE D—Continued.

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
Adam Miller, et al., v. Sarah Mackey.	Bill and answer filed in Butler county.
In re Philadelphia, Trenton and Lehigh Valley Railroad Company, et al.	Bill filed in Philadelphia county.
In re Ardmore Railroad Company, ...	Bill filed in Philadelphia county.
In re Rockhill Industrial Company and Henry Fasset, Superintendent.	Bill filed in Bucks county.
In re Veterinary Hospital established and maintained by University of Pennsylvania.	Application for use of name of Commonwealth refused.
In re Valley Forge Park, ...	Application for use of name of Commonwealth refused.
In re West Chester Street Railway Company and Tennis Construction Company.	Bill filed in Philadelphia county.
In re Catharine B. Fearl and Somerset and Cambria Railroad Company.	Use of name of Commonwealth refused.
In re Pest House and Small-Pox Hospital in City of Pittsburg.	Use of name of Commonwealth refused.

SCHEDULE E.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
School directors of Frederick township, Montgomery County, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Montgomery township, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of the borough of Narberth, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Limerick township, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of borough of Carlisle, Cumberland county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Penn township, Cumberland county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Hampden township, Cumberland county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of the borough of New Cumberland, Cumberland county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of the borough of Newville, Cumberland county. v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.

SCHEDULE E—Continued.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
School directors of New Hanover township, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Upper Gwynedd township, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Lynn township, Lehigh county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Upper Milford township, Lehigh county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Lower Milford township, Lehigh county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of the borough of Coplay, Lehigh county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Upper Saucon township, Lehigh county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Weissenburg township, Lehigh county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of North Whitehall township, Lehigh county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.

SCHEDULE E—Continued.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
School directors of Grims Independent district, Lehigh county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of the borough of Shiremanstown, Cumberland county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Alternative mandamus awarded.
School directors of Ambler Independent school district, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Green Lane borough, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Elizabethville borough, Dauphin county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Granville township, Bradford county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of the borough of Linesville, Crawford county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Monroe township, Bedford county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of the borough of Latrobe, Westmoreland county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.

SCHEDULE E—Continued.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
School directors of Lower Salford township, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Middle Smithfield township, Monroe county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Stroud township, Monroe county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of borough of Bellefonte, Centre county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of the borough of Royers Ford, Montgomery county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Eldred township, Monroe county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Independent School District of Monroe and Pike counties, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Ridgway township, Elk county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
School directors of Westfield township, Tioga county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.

SCHEDULE E—Continued.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
School directors of Spring Creek township, Elk county, v. N. C. Schaeffer, Superintendent of Public Instruction, and James E. Barnett, State Treasurer.	Judgment for respondent.
Scranton Railway Company, v. John P. Elkin, Attorney General of Pennsylvania.	Alternative mandamus awarded. Pending.
James J. Stapleton, v. W. W. Griest, Secretary of the Commonwealth.	Alternative mandamus refused.
West Chester Street Railway Company, v. W. W. Griest, Secretary of the Commonwealth.	Alternative mandamus awarded.
G. von Phul Jones, v. W. W. Griest, Secretary of the Commonwealth.	Peremptory mandamus awarded.
Joseph C. A. Dalton, v. W. W. Griest, Secretary of the Commonwealth.	Peremptory mandamus awarded.
G. von Phul Jones, v. W. W. Griest, Secretary of the Commonwealth.	Peremptory mandamus awarded.
Charles F. Byrne, et al., v. W. W. Griest, Secretary of the Commonwealth.	Peremptory mandamus awarded.
Henry L. Child, et al., v. W. W. Griest, Secretary of the Commonwealth.	Peremptory mandamus awarded.
Harry A. Mackey, v. W. W. Griest, Secretary of the Commonwealth.	Peremptory mandamus awarded.
Carroll R. Williams, v. E. B. Hardenbergh, Auditor General of Pennsylvania.	Alternative mandamus awarded.
School directors of Patton township, Centre county, v. Jas. E. Barnett, State Treasurer, and N. C. Schaeffer, Superintendent of Public Instruction.	Alternative mandamus awarded.

SCHEDULE F.

LIST OF CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA DURING THE YEARS 1901 AND 1902.

January Term, 1901.

Commonwealth, ex rel., John P. Elkin, Attorney General, appellant, v. James Moir, Recorder of City of Scranton, ... Affirmed.
Commonwealth, ex rel., John P. Elkin, Attorney General, appellant, v. James E. Barnett, State Treasurer, ... Affirmed.

May Term, 1901.

Commonwealth, ex rel., John P. Elkin, Attorney General, appellant, v. Sycamore Street Railway Company, ... Affirmed.
Commonwealth, ex rel., John P. Elkin, Attorney General, appellant, v. J. Paxton Lance, et al., directors and stockholders of an alleged corporation doing business under the name and title of Philadelphia, Morton and Swarthmore Street Passenger Railway Company, ... Non prosd.
Commonwealth ex rel., John P. Elkin, Attorney General, appellant, v Erie and Wyoming Valley Railroad Company,.. Non prosd.
Commonwealth v. County of McKean, appellant, ... Affirmed.
Commonwealth v. Delaware, Lackawanna and Western Railroad Company, appellant, ... Heard and re-argument ordered.
Commonwealth v. Pennsylvania Coal Company, appellant, .. Non prosd.
Commonwealth v. Pennsylvania Coal Company, appellant, .. Non prosd.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellant, v. Reading Traction Company, C. A. Pearson, C. Fred. Stevens, John A. Rigg, John P. Illsley, Richmond L. Jones, and Edward Clark, Sabine W. Colton, Jr., Edward W. Clark, Jr., Milton Colton, and E. Howard Clark, Jr., doing business under the firm name of E. W. Clark & Co., defendants, ... Affirmed.
Commonwealth, appellant, v. American Cement Company, .. Affirmed.
Commonwealth, appellant, v. Danville Bessemer Company, .. Affirmed.
Commonwealth, appellant, v. Carbon Steel Company, of West Virginia, ... Affirmed.
Commonwealth, appellant, v. Ashley and Bailey Company, .. Affirmed.
Commonwealth, appellant, v. American Car and Foundry Company, ... Affirmed.
Commonwealth, appellant, v. Niles-Bement Pond Company,.. Affirmed.
Commonwealth, appellant, v. Alcott, Ross and Scully Company, ... Affirmed.
Commonwealth, appellant, v. Lorain Steel Company, ... Affirmed.
Commonwealth, appellant, v. Lorain Steel Company, ... Affirmed.
Commonwealth, appellant, v. American Steel and Wire Company, ... Affirmed.
Commonwealth, appellant, v. Jarecki Manufacturing Company, ... Reversed.
Commonwealth v. Brush Electric Light Company, appellant, Affirmed.
Commonwealth v. Edison Electric Light Company, of Philadelphia, appellant, ... Affirmed.
Commonwealth v. Keystone Laundry Company, appellant,.. Affirmed.
Commonwealth, appellant, v. National Tube Works Company, ... Affirmed.

SCHEDULE G.

LIST OF CASES NOW PENDING IN THE SUPREME COURT OF PENNSYLVANIA.

Commonwealth, appellant, v. Delaware, Lackawanna and Western Railroad Company.

Commonwealth, appellant, v. Lehigh Coal and Navigation Company.

SCHEDULE H.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Chester Gas Company,	$614 22	C. S. 1895. Judgment for def't.
Chester Gas Company,	596 62	C. S. 1896. Judgment for def't.
Chester Gas Company,	633 48	C. S. 1897. Judgment for def't.
Chester Gas Company,	636 90	C. S. 1898. Judgment for def't.
Chester Gas Company,	522 87	C. S. 1899. Judgment for def't.
Altoona and Logan Valley Electric Railway Company.	2,065 43	C. S. 1899. Paid.
New York, Lackawanna and Western Railway Company, of Pennsylvania.	4,164 36	C. S. 1896. Paid.
New York, Lackawanna and Western Railway Company, of Pennsylvania.	4,164 36	C. S. 1897. Paid.
New York, Lackawanna and Western Railway Company, of Pennsylvania.	4,164 36	C. S. 1898. Paid.
Claridge Gas Coal Company,	1,000 00	C. S. 1899. Paid.
Shade Gap Railroad Company,	558 00	C. S. 1899. Verdict for the Commonwealth.
The United Gas Improvement Company.	218,067 19	C. S. 1899. Paid.
Atlantic and Ohio Telegraph Company.	3,250 00	C. S. 1897. Paid.
Atlantic and Ohio Telegraph Company.	3,250 00	C. S. 1898. Paid.
Atlantic and Ohio Telegraph Company.	3,250 00	C. S. 1899. Paid.
Chester Gas Company,	527 75	C. S. 1900. Judgment for def't.
Manor Gas Coal Company,	786 60	L. T. 1900. Judgment for def't.
Pennsylvania Coal Company,	133,906 93	C. S. 1900. Paid.
Clearfield Bituminous Coal Corporation.	997 92	L. T. 1900. Paid.
Schuylkill Anthracite Coal Royalty Company.	511 10	L. T. 1900. Paid.
West Branch Coal Company,	604 20	L. T. 1900. Paid.
Delaware, Lackawanna and Western Railroad Company.	5,076 53	L. T. 1900. Verdict for def't.
International Navigation Company,	2,445 46	L. T. 1900. Verdict for def't.
McKinley-Lanning Loan and Trust Company.	504 17	L. T. 1900. Paid.
Wilkes-Barre and Scranton Railway Company.	1,437 08	L. T. 1900. Verdict for def't.
Lake Shore and Michigan Southern Railway Company.	2,887 24	L. T. 1900. Verdict for def't.
Buffalo and Susquehanna Railroad Company.	233 70	L. T. 1900. Verdict for def't.
Allentown Gas Company,	368 60	L. T. 1900. Paid.
The United Gas Improvement Company.	3,880 25	L. T. 1900. Paid.
Equitable Illuminating Gas Light Company, of Philadelphia.	29,135 34	L. T. 1900. Paid.
South Side Gas Company,	190 00	L. T. 1900. Paid.
Electric Traction Company,	33,841 20	C. S. 1900. Paid.
Philadelphia Traction Company,	81,587 96	C. S. 1900. Paid.
Union Traction Company,	42,831 40	C. S. 1900. Paid.
People's Traction Company,	24,467 25	C. S. 1900. Paid.
Brush Electric Light Company,	1,149 06	C. S. 1899. Paid.
Midland Mining Company,	570 00	C. S. 1900. Paid.
International Navigation Company,	2,762 32	C. S. 1900. Paid.
Coudersport and Port Allegany Railroad Company.	2,464 83	C. S. 1899. Paid.
Coudersport and Port Allegany Railroad Company.	2,464 83	C. S. 1900. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Erie and Western Transportation Company.	10,000 00	C. S. 1900. Paid.
Erie and Wyoming Valley Railroad Company.	18,665 84	C. S. 1900. Paid.
Silver Brook Coal Company, ...	1,500 00	C. S. 1900. Verdict for def't.
Lackawanna Iron and Coal Company.	2,808 33	C. S. 1900. Paid.
Lehigh and Wilkes-Barre Coal Company.	38,865 60	C. S. 1899. Paid.
Lackawanna Valley Traction Company.	300 20	L. T. 1898. Paid.
Sayre Land Company, ...	1,009 00	C. S. 1900. Verdict for def't.
Scranton Gas and Water Company,	13,370 00	C. S. 1900. Paid.
Cayuta Wheel and Foundry Company.		C. S. 1900. Verdict for def't.
Lackawanna Valley Traction Company.	317 03	C. S. 1899. Paid.
Mahoning Valley Railroad Company.	1,250 00	C. S. 1899. Paid.
Stevens Coal Company, ...	1,555 00	C. S. 1900. Paid.
Buffalo, Rochester and Pittsburg Railway Company.	28,536 71	C. S. 1900. Paid.
Clearfield and Mahoning Railway Company.	6,458 33	C. S. 1900. Paid.
Jefferson and Clearfield Coal and Iron Company.	13,250 00	C. S. 1900. Paid.
Rochester and Pittsburg Coal and Iron Company.	7,050 00	C. S. 1900. Paid.
Allison Manufacturing Company, ...	1,127 10	C. S. 1900. Paid.
Cambria Steel Company, ...	3,966 62	L. T. 1900. Paid.
Bethlehem Iron Company, ...	4,558 84	L. T. 1900. Paid.
Gas Company of Luzerne county, ...	1,856 84	L. T. 1900. Paid.
Wyndotte Gas Company, ...	1,940 00	L. T. 1900. Verdict for def't.
Westinghouse Electric and Manufacturing Company.	13,283 00	L. T. 1900. Verdict for def't.
Westinghouse Electric and Manufacturing Company.	13,880 00	L. T. 1899. Verdict for def't.
Lackawanna Valley Traction Company.	300 20	L. T. 1899. Verdict for def't.
Scranton Railway Company, ...	4,085 22	L. T. 1899. Verdict for def't.
South Side Gas Company, ...	190 00	L. T. 1899. Verdict for def't.
South Side Gas Company, ...	1,250 00	C. S. 1899. Verdict for def't.
Lehigh and Wilkes-Barre Coal Company.	38,865 60	C. S. 1900. Paid.
Equitable Illuminating Gas Light Company, of Philadelphia.	31,250 00	C. S. 1899. Verdict for def't.
East End Electric Light Company,..	929 10	L. T. 1899. Paid.
Allegheny County Light Company,..	1,084 64	L. T. 1899. Paid.
Equitable Gas Company, ...	285 00	L. T. 1894. Paid.
Philadelphia Company, ...	7,018 48	L. T. 1899. Verdict for def't.
Fall Brook Coal Company, ...	3,245 00	C. S. 1900. Paid.
Youghiogheny Valley Passenger Railway Company.	1,202 65	C. S. 1899. Paid.
Philadelphia Warehousing and Cold Storage Company.	875 00	C. S. 1900. Paid.
Philadelphia Company, ...	5,482 20	L. T. 1900. Paid.
Allegheny County Light Company, ..	150 10	L. T. 1900. Paid.
East End Electric Light Company,..	250 80	L. T. 1900. Paid.
Bethlehem Steel Company, ...	2,326 84	Store order tax, 1901. Judgment for def't.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Lehigh Coal and Navigation Company.	1,249 26	Store order tax, 1901. Judgment for def't. Pending in Supreme Court.
Rochester and Pittsburg Coal and Iron Company.	6,440 92	Store order tax, 1901. Judgment for def't.
Buffalo and Susquehanna Railroad Company.	272 00	Store order tax, 1901. Judgment for def't.
J. S. Moyer & Co., Incorporated, ...	932 39	Store order tax, 1901. Judgment for def't.
Empire Coal Mining Company, ...	203 70	Store order tax, 1901. Judgment for def't.
A. Pardee & Co., ...	4,820 39	Store order tax, 1901. Judgment for def't.
Harvey and Sullivan, ...	730 00	Store order tax, 1901. Judgment for def't.
Hyatt School Slate Company, ...	165 08	Store order tax, 1901. Judgment for def't.
Rockhill Iron and Coal Company, ...	1,666 76	L. T. 1900. Paid.
Rockhill Iron and Coal Company, ...	750 00	C. S. 1900. Paid.
East Broad Top Railroad and Coal Company.	1,559 40	L. T. 1900. Paid.
East Broad Top Railroad and Coal Company.	1,500 00	C. S. 1900. Paid.
Laurel Run Coal Company, ...	600 00	C. S. 1900. Paid.
Long Valley Coal Company, ...	190 00	C. S. 1900. Paid.
State Line and Sullivan Railroad Company.	2,400 00	C. S. 1900. Paid.
Barclay Railroad Company, ...	1,400 00	C. S. 1900. Paid.
Wyoming Valley Electric Light, Heat and Power Company.	1,468 76	L. T. 1900. Paid.
Wyoming Valley Electric Light, Heat and Power Company.	2,750 00	C. S. 1900. Paid.
Huntingdon and Broad Top Mountain Railroad and Coal Company.	14,653 21	C. S. 1900. Paid.
Tionesta Valley Railway Company,.	1,750 00	C. S. 1900. Paid.
Kingston Coal Company, ...	8,750 00	C. S. 1900. Paid.
Pennsylvania and Northwestern Railroad Company.	13,058 13	C. S. 1900. Paid.
Lehigh Coal and Navigation Company.	54,556 02	L. T. 1900. Paid.
Allentown Terminal Railroad Company.	2,610 66	C. S. 1900. Paid.
Division Canal Company of Pennsylvania.	3,014 33	C. S. 1900. Paid.
Lehigh and Lackawanna Railroad Company.	1,500 00	C. S. 1900. Paid.
Parrish Coal Company, ...	2,375 00	C. S. 1900. Paid.
Tamaqua and Lansford Street Railway Company.	1,208 82	C. S. 1900. Paid.
West End Coal Company, ...	2,050 00	C. S. 1900. Paid.
Wilkes-Barre and Scranton Railway Company.	3,510 55	C. S. 1900. Paid.
Lewisburg, Milton and Watsontown Passenger Railway Company.	715 00	C. S. 1900. Paid.
Galeton and Eastern Railroad Company.	212 15	C. S. 1900. Paid.
Susquehanna and New York Railroad Company.	1,291 50	C. S. 1900. Paid.
Buffalo and Susquehanna Railroad Company.	10,700 00	C. S. 1900. Paid.
E. P. Wilbur Trust Company, ...	3,325 87	C. S. 1900. Paid.
McKinley-Lanning Loan and Trust Company.	453 48	C. S. 1900. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Claridge Gas Coal Company, ...	1,200 00	C. S. 1900. Paid.
Gilpin Coal Company, ...	875 00	C. S. 1900. Paid.
Wilson Distillery Company, Limited,	1,000 00	C. S. 1900. Paid.
Freeport Water Works Company,...	114 00	L. T. 1900. Verdict for def't.
Lehigh Valley Railroad Company, ..	132,445 68	L. T. 1900. Paid.
Pennsylvania and New York Canal and Railroad Company.	27,304 54	L. T. 1900. Paid.
Hazard Manufacturing Company, ...	450 00	C. S. 1880. Paid.
Hazard Manufacturing Company, ...	450 00	C. S. 1879. Paid.
Paxton Flour Mills Company, ...	500 00	C. S. 1899. Judgment for def't.
Paxton Flour Mills Company, ...	500 00	C. S. 1898. Judgment for def't.
Paxton Flour Mills Company, ...	562 50	C. S. 1897. Judgment for def't.
Paxton Flour Mills Company, ...	562 50	C. S. 1896. Judgment for def't.
Equitable Illuminating Gas Light Company, of Philadelphia.	28,263 72	L. T. 1899. Paid.
Bethlehem Gas Company, ...	428 02	C. S. 1899. Verdict for Com'th.
Allentown Gas Company, ...	1,500 00	C. S. 1899. Verdict for def't.
Allentown Gas Company, ...	368 60	L. T. 1899. Paid.
Lower Merion Gas Company, ...	1,000 00	C. S. 1899. Verdict for def't.
Lower Merion Gas Company, ...	91 20	L. T. 1899. Paid.
The United Gas Improvement Company.	3,844 43	L. T. 1899. Paid.
Pennsylvania Globe Gas Light Company.	1,500 00	C. S. 1899. Paid.
Brush Electric Light Company, ...	4,148 90	Gross receipts (6 mo.), 1900. Judgment for Commonw'th. Pending in Supreme Court.
Brush Electric Light Company, ...	5,114 10	Gross receipts (6 mo.), 1900. Judgment for Commonw'th. Pending in Supreme Court.
Western Union Telegraph Company,	11,686 04	C. S. 1899. Paid.
Big Black Creek Improvement Company.	4,263 30	C. S. 1863-4-5-6-7. Judgment for def't.
Union Improvement Company, ...	15,150 32	C. S. 1863-4-5-6-7. Judgment for def't.
Barnes Brothers Company, ...	375 00	C. S. 1900. Paid.
Altoona and Logan Valley Electric Railway Company.	2,290 66	C. S. 1900. Paid.
American Coke Company, ...	1,564 25	C. S. 1899. Paid.
American Cement Company, ...	11,736 92	C. S. 1900. Judgment for def't.
American Coke Company, ...	6,376 12	C. S. 1900. Paid.
Puritan Coke Company, ...	2,350 00	C. S. 1900. Paid.
People's Electric Light, Heat and Power Company.	375 00	C. S. 1900. Paid.
People's Electric Light, Heat and Power Company.	285 00	L. T. 1900. Paid.
Danville Bessemer Company, ...	2,000 00	C. S. 1900. Paid.
Robesonia Iron Company, Limited, ..	680 00	C. S. 1900. Paid.
American Telegraph and Telephone Company.	13,081 26	C. S. 1900. Verdict for def't.
American Telegraph and Telephone Company.	13,081 26	C. S. 1899. Verdict for def't.
Bethlehem Iron Company, ...	1,116 19	C. S. 1898. Paid.
Wm. Wharton, Jr. & Co., Incorporated.	337 65	C. S. 1900. Verdict for def't.
Bethlehem Iron Company, ...	40,117 12	C. S. 1900. Paid.
Bethlehem Iron Company, ...	1,039 30	C. S. 1897. Paid.
Paxton Flour Mills Company, ...	450 00	C. S. 1900. Judgment for def't.
Bethlehem Iron Company, ...	11,840 80	C. S. 1900. Paid.
Cambria Iron Company, ...	35,502 37	C. S. 1900. Paid.
Buffalo, Bradford and Pittsburg Railroad Company.	1,000 00	C. S. 1900. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Northwestern Mining and Exchange Company.	750 00	C. S. 1900. Paid.
New York, Susquehanna and Western Coal Company.	250 00	C. S. 1900. Paid.
Blossburg Coal Company, ...	1,125 00	C. S. 1900. Paid.
Erie Railroad Company, ...	3,570 00	C. S. 1900. Paid.
Jefferson Railroad Company, ...	3,350 00	C. S. 1900. Paid.
Hillside Coal and Iron Company,.....	200 00	C. S. 1900. Paid.
Wilkes-Barre and Eastern Railroad Company.	6,250 00	C. S. 1900. Paid.
Tioga Railroad Company, ...	2,000 00	C. S. 1900. Paid.
Susquehanna Connecting Railroad Company.	625 00	C. S. 1900. Paid.
Nypano Railroad Company, ...	6,500 00	C. S. 1900. Paid.
New York, Lake Erie and Western Coal and Railroad Company.	2,250 00	C. S. 1900. Paid.
New York, Susquehanna and Western Railroad Company.	937 50	C. S. 1900. Paid.
Lower Merion Gas Company, ...	91 20	L. T. 1900. Paid.
People's Light Company of Pittston,	513 00	L. T. 1900. Verdict for the Commonwealth.
National Publishing Company, ...	1,041 67	C. S. 1900. Verdict for def't.
Carbon Steel Company, of West Virginia.	3,500 00	C. S. 1900. Judgment for def't.
Ashley and Bailey Company, ...	400 00	C. S. 1900. Judgment for def't.
American Car and Foundry Company.	7,561 43	C. S. 1900. Judgment for def't.
Kensington Ship Yard Company, ...	1,145 82	C. S. 1900. Verdict for def't.
I. P. Morris Company, ...	6,405 54	C. S. 1900. Verdict for def't.
Bangor and Portland Railway Company.	3,850 58	C. S. 1900. Paid.
Union Traction Company, ...	920 39	C. S. 1895. Verdict for def't.
Northern Electric Light and Power Company.	4,875 00	C. S. 1900. Paid.
Beech Creek Railroad Company, ...	37,358 33	C. S. 1900. Verdict for def't.
Cranberry Improvement Company,..	2,671 59	C. S. 1900. Paid.
Beech Creek Railroad Company, ...	2,405 66	L. T. 1900. Paid.
Millwood Coal and Coke Company,..	1,250 00	C. S. 1900. Paid.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	9,884 79	C. S. 1900. Verdict for def't.
Pine Creek Railway Company, ...	18,500 00	C. S. 1900. Paid.
Nescopec Coal Company, ...	1,250 00	C. S. 1900. Paid.
Empire Coal Mining Company, ...	375 00	C. S. 1900. Paid.
Commercial Trust Company, ...	11,466 25	C. S. 1900. Paid.
Guarantee Trust and Safe Deposit Company.	8,981 06	C. S. 1900. Paid.
Provident Life and Trust Company,	20,697 64	C. S. 1900. Paid.
Black Creek Improvement Company,	3,931 50	C. S. 1900. Paid.
Lackawanna Iron and Steel Company.	11,568 88	C. S. 1899. Paid.
Westinghouse Electric and Manufacturing Company.	7,411 01	C. S. 1899. Paid.
Westinghouse Electric and Manufacturing Company.	10,373 32	C. S. 1900. Paid.
General Trading Company, Limited,	285 00	C. S. 1900. Paid.
Fall Brook Railway Company, ...	29,500 00	C. S. 1900. Verdict for def't.
Weston Mill Company, ...	215 00	C. S. 1897. Paid.
Weston Mill Company, ...	215 00	C. S. 1898. Paid.
Weston Mill Company, ...	215 00	C. S. 1899. Paid.
Weston Mill Company, ...	215 00	C. S. 1900. Paid.
Weston Mill Company, ...	215 00	C. S. 1896. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Pennsylvania Salt Manufacturing Company.	220 00	C. S. 1898. Paid.
Pennsylvania Salt Manufacturing Company.	226 00	C. S. 1899. Paid.
Pennsylvania Salt Manufacturing Company.	200 00	C. S. 1897. Paid.
Niles-Bement Pond Company, ...	3,000 00	C. S. 1900. Judgment for def't.
Edison Electric Light Company, of Philadelphia.	14,500 00	C. S. 1900. Paid.
West Branch Coal Company, ...	370 00	C. S. 1900. Paid.
Investment Company of Philadelphia	5,977 24	C. S. 1900. Paid.
Hollenback Coal Company, ...	3,000 00	C. S. 1900. Paid.
Paxton Flour Mills Company, ...	300 00	C. S. 1888. Judgment for def't.
Paxton Flour Mills Company, ...	237 50	C. S. 1887. Judgment for def't.
Paragon Plaster and Supply Company.	251 36	C. S. 1900. Judgment for def't.
Upper Lehigh Coal Company, ...	3,750 00	C. S. 1900. Paid.
New York, Chicago and St. Louis Railroad Company.	7,000 00	C. S. 1900. Paid.
Jamestown and Franklin Railroad Company.	4,665 00	C. S. 1900. Paid.
Wyoming Valley Coal Company, ...	1,000 00	C. S. 1900. Paid.
Midvalley Coal Company, ...	2,125 00	C. S. 1900. Paid.
Lehigh Coal and Navigation Company.	7,999 08	C. S. 1900. Paid.
Union Improvement Company, ...	9,091 72	C. S. 1900. Paid.
Blubaker Coal Company, ...	750 00	C. S. 1897. Paid.
Westinghouse Aid Brake Company,.	18,360 70	C. S. 1899. Paid.
Westinghouse Air Brake Company,..	20,409 05	C. S. 1900. Paid.
Penn Gas Coal Company, ...	4,311 92	C. S. 1900. Verdict for def't.
Brush Electric Light Company, ...	4,574 42	G. R. (6 mo.), 1901. Judgment for Com'th.
Edison Electric Light Company, of Philadelphia.	4,091 54	G. R. (6 mo.), 1901. Judgment for Com'th.
Hazleton Coal Company, ...	750 00	C. S. 1900. Paid.
Hazleton Coal Company, ...	1,083 33	C. S. 1896. Paid.
Upper Lehigh Coal Company, ...	1,525 28	Store order tax, 1901. Judgment for def't.
Montrose Railway Company, ...	680 00	C. S. 1900. Verdict for def't.
Pennsylvania and New York Canal and Railroad Company.	5,308 50	C. S. 1900. Paid.
Schuylkill and Lehigh Valley Railroad Company.	2,250 00	C. S. 1900. Paid.
Lehigh Valley Coal Company, ...	5,500 00	C. S. 1900. Paid.
The United Gas Improvement Company.	178,459 82	C. S. 1900. Paid.
Susquehanna Coal Company, ...	6,552 00	Store order tax, 1901. Judgment for def't.
New York and Middle Coal Field Railroad and Coal Company.	4,500 00	C. S. 1900. Paid.
Avonmore Coal and Coke Company,	140 41	S. O. Tax. 1900. Pending.
Webster Coal and Coke Company,..	2,479 16	C. S. 1900. Paid.
Lehigh Valley Railroad Company, ..	102,735 09	C. S. 1900. Paid.
Alcott, Ross and Scully Company,..	551 36	C. S. 1900. Judg't for Com'th.
Delaware, Lackawanna and Western Railroad Company.	242,350 00	C. S. 1900. Paid.
McKeesport and Youghiogheny Street Railway Company.	760 00	L. T. 1900. Paid.
Lorain Steel Company, ...	15,000 00	C. S. 1900. Judgment for def't.
Lorain Steel Company, ...	15,000 00	C. S. 1899. Judgment for def't.
American Stel and Wire Company, of New Jersey.	36,592 37	C. S. 1900. Judgment for def't.
Gettysburg Transit Company, ...	458 34	C. S. 1898. Verdict for def't.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Scranton and Pittston Traction Company.	1,130 18	L. T. 1898. Verdict for Com'th.
Scranton and Pittston Traction Company.	1,126 22	L. T. 1896. Verdict for Com'th.
Scranton and Pittston Traction Company.	1,126 22	L. T. 1897. Verdict for Com'th.
Scranton and Pittston Traction Company.	860 70	L. T. 1895. Verdict for Com'th.
Scranton and Pittston Traction Company.	488 30	L. T. 1894. Verdict for Com'th.
Jamison Coal Company, ...r....	1,125 00	C. S. 1898. Paid.
Jamison Coal Company, ...	1,625 00	C. S. 1899. Paid.
Jamison Coal Company, ...	5,000 00	C. S. 1900. Paid.
Smith and Davis Company, ...	225 25	C. S. 1900. Verdict for def't.
Adams and Westlake Company, ...	150 00	C. S. 1900. Verdict for def't.
Western Union Telegraph Company,	10,590 48	C. S. 1900. Pending.
George B. Newton & Co., ...	1,562 50	C. S. 1900. Paid.
Allison Manufacturing Company, ..	1,129 10	C. S. 1899. Paid.
California and Texas Railway Construction Company.	16,197 12	Bonus. Paid.
Provident Life and Trust Company,	1,875 00	Bonus. Pending.
Buffalo and Susquehanna Railroad Company.	5,060 00	Bonus. Pending.
Scranton Gas and Water Company,..	625 00	Bonus. Paid.
Vulcan Iron Works, ...	16,666 67	Bonus. Paid.
Southwark Foundry and Machine Company.	250 00	Bonus. Pending.
Jefferson Coal Company, ...	1,225 00	C. S. 1900. Paid.
Everhart Coal Company, ...	500 00	C. S. 1901. Paid.
Stevens Coal Company, ...	1,469 50	C. S. 1901. Paid.
Electric Traction Company, ...	33,683 39	C. S. 1901. Paid.
Philadelphia Traction Company, ...	81,207 52	C. S. 1901. Paid.
People's Traction Company, ...	24,353 16	C. S. 1901. Paid.
Union Traction Company, ...	42,631 68	C. S. 1901. Paid.
Penn Incline Plane Company, ...	75 00	C. S. 1900. Paid.
Penn Incline Plane Company, ...	75 00	C. S. 1901. Paid.
Nanticoke Gas Company, ...	125 00	C. S. 1901. Verdict for def't.
Chambersburg Gas Company, ...	234 62	C. S. 1901. Verdict for def't.
Manor Gas Coal Company, ...	790 40	L. T. 1901. Verdict for def't.
Earn Line Steamship Company, ...	636 99	C. S. 1901. Pending.
Conshohocken Electric Light and Power Company.	76 00	L. T. 1901. Paid.
Carbon Metallic Company, ...	80 00	C. S. 1901. Verdict for def't.
Midvalley Supply Company, Limited,	300 00	C. S. 1901. Paid.
Midland Mining Company, ...	380 00	L. T. 1901. Paid.
Wyndotte Gas Company, ...	2,524 60	C. S. 1901. Verdict for def't.
George B. Newton & Co., Incorporated.	3,750 00	C. S. 1901. Paid.
John Bradley Company, ...	90 00	C. S. 1901. Verdict for def't.
Harrisburg Light, Heat and Power Company.	794 87	Gross receipts (6 mo.), 1901. Pending.
Bethlehem Iron Company, ...	1,066 69	C. S. 1890. Paid.
Bethlehem Iron Company, ...	1,731 91	C. S. 1891. Paid.
Wyoming Valley Electric Light, Heat and Power Company.	2,750 00	C. S. 1901. Paid.
S. Cudahy Packing Company, ...	126 76	C. S. 1901. Pending.
Pennsylvania Coal Company, ...	2,125 82	Bonus. Verdict for def't.
Wilkes-Barre and Eastern Railroad Company.	6,250 00	C. S. 1901. Paid.
Susquehanna Connecting Railroad Company.	625 00	C. S. 1901. Paid.
Northwestern Mining and Exchange Company.	750 00	C. S. 1901. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
New York, Lake Erie and Western Coal and Railroad Company.	2,000 00	C. S. 1901. Paid.
Tioga Railroad Company, ...	1,875 00	C. S. 1901. Paid.
The United Gas Improvement Company.	196,346 50	C. S. 1901. Paid.
Robesonia Iron Company, Limited,.	680 00	C. S. 1901. Paid.
Buffalo, Bradford and Pittsburg Railroad Company.	625 00	C. S. 1901. Paid.
Nypano Railroad Company, ...	6,500 00	C. S. 1900. Paid.
Jefferson Railroad Company, ...	2,500 00	C. S. 1901. Paid.
Erie Railroad Company, ...	4,250 00	C. S. 1901. Paid.
Sharon Railway Company, ...	3,287 75	C. S. 1901. Paid.
Sharon Railway Company, ...	1,000 00	Bonus. Verdict for def't.
New York, Susquehanna and Western Coal Company.	3,125 00	Bonus. Verdict for def't.
New York, Susquehanna and Western Coal Company.	500 00	C. S. 1901. Paid.
New York, Susquehanna and Western Railroad Company.	670 00	C. S. 1901. Paid.
Hillside Coal and Iron Company, ...	2,000 00	Bonus. Verdict for def't.
Hillside Coal and Iron Company, ...	500 00	C. S. 1901. Paid.
Blossburg Coal Company, ...	625 00	C. S. 1901. Paid.
Erie Traction Company, ...	1,567 66	L. T. 1901. Verdict for def't.
Lebanon Valley Street Railway Company.	1,900 40	L. T. 1901. Paid.
Oley Valley Railway Company, ...	855 00	L. T. 1901. Verdict for def't.
Clearfield Bituminous Coal Corporation.	997 52	L. T. 1901. Verdict for Com'th.
Lehigh Coal and Navigation Company.	53,810 53	L. T. 1901. Pending.
Lehigh Valley Railroad Company,...	137,463 67	L. T. 1901. Pending.
Lower Merion Gas Company, ...	91 20	L. T. 1901. Pending.
Equitable Illuminating Gas Light Company, of Philadelphia.	27,595 08	L. T. 1901. Pending.
Atlas Portland Cement Company, ...	707 87	L. T. 1900. Verdict for def't.
Atlas Portland Cement Company, ...	703 16	L. T. 1901. Verdict for def't.
Atlas Portland Cement Company, ..	717 31	L. T. 1899. Verdict for def't.
Allentown Gas Company, ...	368 60	L. T. 1901. Paid.
Gas Company of Luzerne County, ..	2,338 00	L. T. 1901. Pending.
McCormick Harvesting Machine Company.	375 00	C. S. 1898. Paid.
McCormick Harvesting Machine Company.·	375 00	C. S. 1899. Paid.
McCormick Harvesting Machine Company.	375 00	C. S. 1900. Paid.
McCormick Harvesting Machine Company.	106 00	C. S. 1901. Paid.
American Coke Company, ...	9,796 83	C. S. 1901. Paid.
Keystone Cold Storage Company,...	5,150 00	C. S. 1901. Verdict for def't.
Bellevernon Bridge Company, ...	7,500 00	C. S. 1900. Paid.
Bellevernon Bridge Company, ...	7,500 00	C. S. 1901. Paid.
H. W. Johns Manufacturing Company.	177 00	C. S. 1901. Paid.
Huntingdon Water Supply Company,	50 00	C. S. 1901. Verdict for def't.
Harbison Walker Company, ...	75 50	C. S. 1901. Appeal discontinued.
Allison Manufacturing Company, ...	1,195 95	C. S. 1901. Paid.
International Navigation Company,..	1,516 28	L. T. 1901. Paid.
International Navigation Company,.	2,762 32	C. S. 1901. Paid.
Jefferson and Clearfield Coal and Iron Company.	19,800 00	C. S. 1901. Paid.
Cranberry Improvement Company,..	2,745 00	C. S. 1901. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Buffalo, Rochester and Pittsburg Railway Company.	26,696 84	C. S. 1901. Paid.
Black Creek Improvement Company,	3,775 00	C. S. 1901. Paid.
Beech Creek Extension Railroad Company.	2,479 17	C. S. 1901. Paid.
Hazleton Electric Light and Power Company.	500 00	C. S. 1901. Paid.
Hollenback Coal Company, ...	3,000 00	C. S. 1901. Paid.
Huntingdon and Broad Top Mountain Railroad and Coal Company.	21,863 92	C. S. 1901. Paid.
Mortgage Trust Company of Pennsylvania.	11,230 37	L. T. 1901. Paid.
General Trading Company, Limited,	285 00	C. S. 1901. Verdict for Com'th.
Fall Brook Railway Company, ...	29,500 00	C. S. 1901. Paid.
Enterprise Transit Company, ...	2,525 00	C. S. 1901. Paid.
E. P. Wilbur Trust Company, ...	4,092 62	C. S. 1901. Paid.
Empire Coal Mining Company, ...	375 00	C. S. 1901. Paid.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	9,884 81	C. S. 1901. Paid.
Dunbar Furnace Company, ...	987 62	C. S. 1901. Verdict for Com'th
Delaware and Hudson Company, ...	43,804 20	C. S. 1901. Paid.
Delaware, Lackawanna and Western Railroad Company.	314,072 50	C. S. 1901. Verdict for Com'th.
Beech Creek Railroad Company, ...	2,405 66	L. T. 1901. Paid.
Beech Creek Railrad Company, ...	37,358 33	C. S. 1901. Verdict for def't.
Barclay Railroad Company, ...	861 50	C. S. 1901. Paid.
Olyphant Water Company, ...	311 66	L. T. 1901. Paid.
Olyphant Water Company, ...	470 00	C. S. 1901. Paid.
New York, Chicago and St. Louis Railroad Company.	10,527 83	C. S. 1901. Paid.
Nescopec Coal Company, ...	1,000 00	C. S. 1901. Paid.
McKinley-Lanning Loan and Trust Company.	613 89	L. T. 1901. Pending.
McKinley-Lanning Loan and Trust Company.	453 48	C. S. 1901. Paid.
Morris and Whitehead, Bankers,.....	750 00	C. S. 1901. Paid.
Lake Shore and Michigan Southern Railway Company.	32,596 92	C. S. 1900. Verdict for Com'th.
Lake Shore and Michigan Southern Railway Company.	46,060 87	C. S. 1901. Pending.
Lake Shore and Michigan Southern Railway Company.	40,037 46	L. T. 1901. Verdict for def't.
Kingston Coal Company, ...	8,750 00	C. S. 1901. Paid.
J. Langdon & Co., Incorporated, ...	1,162 50	C. S. 1901. Verdict for def't.
Danville Bessemer Company, ...	1,300 00	Bonus. Pending.
Carpenter Steel Company, ...	1,333 34	Bonus. Pending.
Electric Storage Battery Company,..	587 73	Bonus. Pending.
National Tube Company, ...	32,166 67	Bonus. Pending.
Buffalo and Susquehanna Railroad Company.	23,691 00	C. S. 1901. Paid.
Buffalo and Susquehanna Railroad Company.	11,258 18	L. T. 1901. Paid.
Westinghouse Air Brake Company,..	21,022 12	C. S. 1901. Paid.
Westinghouse Electric and Manufacturing Company.	13,050 75	C. S. 1901. Verdict for Com'th.
Midvalley Coal Company, ...	3,385 00	C. S. 1901. Paid.
Finance Company of Pennsylvania,	4,220 74	C. S. 1901. Paid.
Webster Coal and Coke Company,...	9,006 26	C. S. 1901. Paid.
Truman M. Dodson Coal Company,..	650 00	C. S. 1901. Paid.
State Line and Sullivan Railroad Company.	2,400 00	C. S. 1901. Paid.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
Bangor and Portland Railway Company.	3,740 00	C. S. 1901. Verdict for Com'th.
Rochester and Pittsburg Coal and Iron Company.	7,080 00	C. S. 1901. Paid.
Langcliffe Coal Company, Limited,.	375 00	C. S. 1901. Paid.
Greenwood Coal Company, Limited,	166 67	C. S. 1901. Paid.
Pennsylvania Coal Company, ...	54,580 00	C. S. 1901. Paid.
Webster Coal and Coke Company,..	2,576 80	L. T. 1901. Verdict for def't.
Union Improvement Company, ...	12,558 15	C. S. 1901. Paid.
Pennsylvania and New York Canal and Railroad Company.	26,202 08	L. T. 1901. Paid.
Silver Brook Supply Company, Limited.	200 00	C. S. 1901. Paid.
The United Gas Improvement Company.	3,905 03	L. T. 1901. Paid.
People's Electric Light, Heat and Power Company, of Nanticoke.	375 00	C. S. 1901. Verdict for Com'th.
People's Light Company of Pittston,	513 00	L. T. 1901. Verdict for def't.
Philadelphia and West Chester Traction Company.	1,437 08	L. T. 1901. Paid.
Doylestown and Willow Grove Railway Company.	1,940 00	L. T. 1901. Paid.
Doylestown and Willow Grove Railway Company.	610 00	C. S. 1901. Verdict for Com'th.
Schuylkill and Lehigh Valley Railroad Company.	2,250 00	C. S. 1901. Paid.
Pennsylvania and New York Canal and Railroad Company.	5,308 50	C. S. 1901. Paid.
New York and Middle Coal Field Railroad and Coal Company.	4,800 00	C. S. 1901. Paid.
Upper Lehigh Coal Company, ...	2,828 00	C. S. 1901. Paid.
Buffalo and Susquehanna Coal and Coke Company.	565 50	C. S. 1901. Paid.
Penn Gas Coal Company, ...	4,834 61	C. S. 1901. Verdict for def't.
Highland Coal Company, ...	2,999 81	C. S. 1901. Paid.
Locust Mountain Coal and Iron Company.	2,750 00	C. S. 1901. Paid.
Hazleton Coal Company, ...	750 00	C. S. 1901. Paid.
Diamond Coal Land Company, ...	305 87	C. S. 1901. Paid.
Lehigh Valley Coal Company, ...	8,605 00	C. S. 1901. Paid.
Atlas Portland Cement Company, ..	3,875 00	C. S. 1899. Verdict for Com'th.
Atlas Portland Cement Company, ..	5,600 00	C. S. 1900 and 1901. Verdict for Com'th.
American Dredging Company, ...	4,605 63	C. S. 1901. Paid.
Finance Company of Pennsylvania,	9,522 97	C. S. 1900. Paid.
Consumers' Brewing Company, ...	1,875 00	C. S. 1901. Paid.
Central District and Printing Telegraph Company.	26,345 34	C. S. 1901. Paid.
Philadelphia Warehousing and Cold Storage Company.	537 50	C. S. 1901. Paid.
Gas Company of Luzerne County,...	270 00	C. S. 1901. Verdict for def't.
Guarantee Trust and Safe Deposit Company.	9,606 10	C. S. 1901. Verdict for def't.
United Ice and Coal Company, ...	1,972 33	Bonus. Pending.
Union Natural Gas Corporation, ...	1,835 00	Bonus. Pending.
Tri-State Gas Company, ...	416 67	Bonus. Pending.
Technical Supply Company, ...	500 00	Bonus. Pending.
Philadelphia Graphite Company, ...	86 47	Bonus. Pending.
pany.		Bonus. Pending.
Park Steel Company of New Jersey,	18,333 33	
Pennypack Yarn Finishing Com-	200 00	Bonus. Pending.

SCHEDULE H—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1901.

Name.	Amount.	Remarks.
National Malleable Castings Company.	666 67	Bonus. Pending.
Hope Manufacturing Company, ...	33 33	Bonus. Pending.
Manufacturers' and Producers' Supply Company.	666 67	Bonus. Pending.
Hires Turner Glass Company, ...	666 67	Bonus. Pending.
Henry A. Dreer, Incorporated, ...	49 74	Bonus. Pending.
Crucible Steel Company of America,	69,390 17	Bonus. Pending.
William Swindell and Brothers Company.	85 65	C. S. 1901. Pending.
Buffalo, Rochester and Pittsburg Railway Company.	3,333 34	Bonus. Pending.
Horace B. Righter, Recorder Montgomery county.	406 15	Fees of office. Judgment for def't.
Atlas Cement Company, ...	1,282 57	Bonus. Verdict for def't.
Pneumatic Transit Company, ...	1,608 34	Bonus. Pending.
Slate Belt Electric Street Railway Company.	1,800 00	C. S. 1900. Paid.
D. B. Martin Company, ...	266 67	Bonus. Pending.
Philadelphia Securities Company, ...	553 37	L. T. 1898. Verdict for def't.
Philadelphia Securities Company,...	1,136 95	L. T. 1899. Verdict for def't.
Philadelphia Securities Company, ..	1,069 03	L. T. 1900. Verdict for def't.
Philadelphia Securities Company, ...	1,163 46	L. T. 1901. Verdict for def't.
American Steel and Wire Company of New Jersey.	19,209 58	Bonus. Pending.
Holmesburg Granite Company, ...	3,000 00	Bonus. Pending.
Lycoming Improvement Company,...	1,623 38	Bonus. Pending.
Hoopes and Townsend Company, ...	3,333 33	Bonus. Pending.
Lehigh Valley Railroad Company,...	547,740 83	C. S. 1901. Paid.
American Bridge Company of New Jersey.	24,188 13	Bonus. Pending.
Lackawanna Iron and Steel Company.	17,520 71	C. S. 1900. Paid.
Lackawanna Iron and Steel Company.	22,481 11	C. S. 1901. Paid.
Girard Trust Company, ...	77,421 59	C. S. 1902. Paid.
Shelby Steel Tube Company, ...	864 44	Bonus. Pending.
Scranton and Pittston Traction Company.	1,958 51	C. S. 1897. Verdict for Com'th.
Scranton and Pittston Traction Company.	1,612 80	C. S. 1898. Verdict for Com'th.
Scranton Railway Company, ...	9,247 32	C. S. 1899. Verdict for Com'th.
Scranton Railway Company, ...	8,813 02	C. S. 1900. Verdict for Com'th.
Scranton Railway Company, ...	8,505 11	C. S. 1901. Verdict for Com'th.
Scranton Railway Company, ...	5,303 10	L. T. 1901. Verdict for def't.
Lycoming Improvement Company,...	177 83	C. S. 1897. Verdict for def't.
Lycoming Improvement Company,...	177 83	C. S. 1898. Verdict for def't.
Lycoming Improvement Company,...	177 83	C. S. 1899. Verdict for def't.
Lycoming Improvement Company,...	195 61	C. S. 1900. Verdict for def't.
Lycoming Improvement Company,...	195 61	C. S. 1901. Verdict for def't.
Lycoming Improvement Company, ...	442 60	L. T. 1894. Verdict for def't.
Lycoming Improvement Company,...	674 12	L. T. 1895. Verdict for def't.
Lycoming Improvement Company,...	674 12	L. T. 1896. Verdict for def't.
Lycoming Improvement Company,...	651 32	L. T. 1897. Verdict for def't.
Lycoming Improvement Company,...	651 32	L. T. 1898. Verdict for def't.
Lycoming Improvement Company,...	1,170 14	L. T. 1899. Verdict for def't.
Lycoming Improvement Company,...	1,275 32	L. T. 1900. Verdict for def't.
Lycoming Improvement Company,...	1,274 49	L. T. 1901. Verdict for def't.

SCHEDULE I.

PROCEEDINGS HAVE BEEN INSTITUTED BY THIS DEPARTMENT AGAINST THE FOLLOWING INSURANCE COMPANIES AND BUILDING AND LOAN ASSOCIATIONS.

Name.	Result.
Lancaster Avenue Title and Trust Company.	Dissolved. Receiver.
Pelican Society of Pennsylvania, ...	Order to show couse, etc., granted. Defunct.
Beaver Falls Homestead Loan and Trust Company, No. 1.	Dissolved. Receiver.
Beaver Falls Homestead Loan and Trust Company, No. 2.	Dissolved. Receiver.

SCHEDULE J.

INSURANCE COMPANY CHARTERS APPROVED.

American Casualty Company, Reading, July 31, 1902.
Butler County Merchants' Mutual Fire Insurance Company, Butler, September 17, 1902.
Central Mutual Fire Insurance Company, Lebanon, April 3, 1902.
Domestic Mutual Fire Insurance Company, Shamokin, November 14, 1902.
Enterprise Mutual Fire Insurance Company, Shamokin, July 1, 1902.
Hardware Dealers' Mutual Fire Insurance Company, Huntingdon, October 3, 1902.
Indiana Mutual Fire Insurance Company, Indiana, September 17, 1902.
Mutual Fire Marine and Inland Insurance Company, Philadelphia, December 29, 1902.
National Mutual Fire Insurance Company, Philadelphia, January 4, 1902.
National Union Fire Insurance Company, Pittsburg, February 14, 1901.
United States Fire Insurance Company, Philadelphia, October 14, 1902.

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