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ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

TO THE

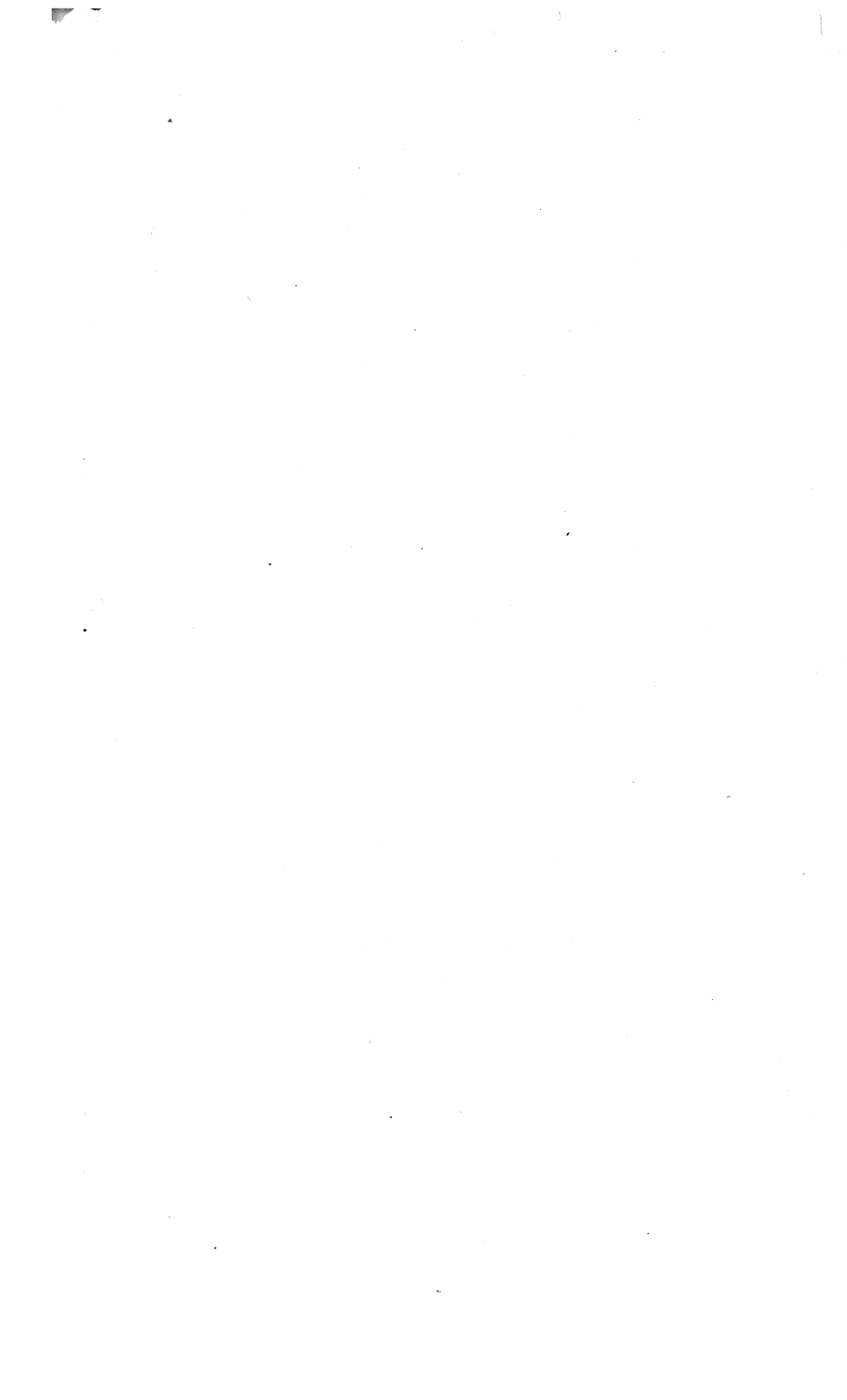
GENERAL ASSEMBLY OF VIRGINIA,

FOR THE

YEAR ENDING SEPTEMBER 30, 1889.

RICHMOND:

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REPORT.

COMMONWEALTH OF VIRGINIA,
ATTORNEY-GENERAL'S OFFICE,
RICHMOND, *November 1, 1889.*

Governor FITZHUGH LEE :

SIR,—I have the honor to submit the following report, required by law, of the state and condition of the causes in which the Commonwealth is interested :

CASES IN THE SUPREME COURT OF THE UNITED STATES.

There have been no cases decided by the Supreme Court of the United States since my last report, but the case of D. B. Baldwin vs. Morton Marye, Auditor, and A. W. Harman, Treasurer, has been dismissed by the plaintiffs in error.

CASES PENDING IN THE SUPREME COURT OF THE UNITED STATES.

George S. Vashon vs. S. C. Greenhow.

This is a writ of error to a judgment of the Supreme Court of Appeals of Virginia, deciding the act requiring the school tax to be assessed, collected, and kept separate from other taxes, and to be paid in lawful money of the United States only to be constitutional. This case was pending when I made my report for 1886, and it was then stated that a motion would be made to advance the case to a speedy hearing. Subsequently it was decided to let the case take the regular course on the docket, and no action had been taken when my last report was made.

This case has since been advanced, on motion of the complainant in error, and set down for argument.

C. W. Newton et ux. vs. The State of Virginia.
George Cornwall vs. The State of Virginia.
Nathaniel Burruss vs. The State of Virginia.

These cases are writs of error to judgments of the Supreme Court of Appeals of Virginia, deciding the case forbidding the introduction of expert testimony, and the act requiring the production of the bond from which the coupon was clipped, to be constitutional. The cases will probably not be reached on the docket for two years.

Since my last report the following coupon cases have been taken to the Supreme Court of the United States on writs of error and appeal :

Joseph Bryan vs. The State of Virginia.
 James P. Cooper vs. The State of Virginia.
 John McGahey vs. The State of Virginia.
 H. W. Ellett vs. The State of Virginia.
 Thomas S. Hucles vs. John K. Childrey, treasurer of the city of Richmond.
 Ex-Parte Lewis Brown.
 C. H. Cuthbert vs. The State of Virginia.

These cases have all been advanced and set down for argument with the case of Vashon vs. Greenhow as soon as there shall be a full bench. They involve almost every question which can arise under the different acts of the General Assembly which have been passed with reference to the public debt during the last five years. The cases will probably be heard during the month of January.

H. Fitzgerald, sergeant of the city of Manchester, vs. Charles Green.
 W. L. Thomas, police sergeant of the city of Richmond, vs. Wilson Loney.

In the first recited case Charles Green was indicted in the Hustings Court of the city of Manchester on the 5th day of February, 1889, for illegally voting at an election held for electors for President and Vice-President, and for a representative to the Congress of the United States from the Third congressional district of Virginia, on the 6th day of November, 1888, being disqualified by a previous conviction for petit larceny. At the January term of said Hustings court Green was tried, convicted, and sentenced to five months' imprisonment in jail and to pay a fine of \$5. The said Green being confined in jail pursuant to the said judgment, sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia.

Upon the hearing of the writ the court held that "the United States courts for this district have sole and conclusive jurisdiction to hear and determine the matters and things alleged in the bill of indictment found in said Hustings Court of Manchester, upon the ground that the acts of Congress in such case made and provided (sections 5511 and 5514, Revised Statutes of the United States) have defined the offence charged in said indictment, and prescribed the penalty therefor, and that the said Hustings Court of Manchester had no jurisdiction of the matters and things charged in said indictment against the said Charles Green," and discharged him from the custody of the appellant. From this judgment an appeal to the Supreme Court of the United States was prayed for and granted.

In the second recited case Wilson Loney was arrested by the appellant, police sergeant of the city of Richmond, upon a charge of wilful perjury committed in his testimony given before a notary public of the said city, in the matter of contest between George D. Wise and Edmund Waddill for a seat in the Fifty-first Con-

gress. Whilst so under arrest and in the custody of said police sergeant, the said Loney sued out a writ of *habeas corpus* from the Circuit Court of the United States for the Eastern District of Virginia, and upon the hearing the court held that the courts of the United States have exclusive cognizance of the offence, and discharged him from the custody of the sergeant; from which judgment an appeal was taken.

The cases were advanced upon motion of the State of Virginia and set down for argument on the second Monday in October. When they were called for hearing the court passed them to be heard before a full bench, and they will probably be heard in January next.

CASES DECIDED IN THE SUPREME COURT OF APPEALS OF VIRGINIA.

Laube vs. Commonwealth.
Cooper vs. Commonwealth.
Ellett vs. Commonwealth.
McGahey vs. Commonwealth.
Bryan vs. Commonwealth.
Commonwealth vs. Hurt.

These were writs of error to judgments of the circuit courts in coupon cases, involving the constitutionality of the acts of the General Assembly requiring the production of the bond to prove coupons genuine, forbidding the introduction of expert testimony in such cases, and the act requiring suits to be brought against tax-payers who have tendered coupons.

These cases were all tried at the last term of the court and decided in favor of the Commonwealth.

Couch, Treasurer, vs. Marye, Auditor.

This was an application to the Circuit Court of the city of Richmond for a mandamus to compel the Auditor to pay certain fees due the treasurer upon sales of delinquent lands. The court refused to grant the writ, and the said Couch obtained a writ of error from the Supreme Court of Appeals.

The case was argued at the last term of the court and decided in favor of the treasurer.

Redd et als. vs. Commonwealth.

This was a writ of error to a judgment of the Circuit Court of the city of Richmond rendered against the defendants as sureties of a defaulting treasurer, and was decided at the last term of the court in favor of the Commonwealth.

Commonwealth vs. Latham, Judge.

This was a petition for a writ of prohibition to restrain the judge of the Hustings Court of the city of Lynchburg from proceeding to try and decide certain chancery

causes pending in his court against the Commonwealth, in which injunctions have been granted against the Commonwealth in violation of the statute which confers exclusive jurisdiction upon the Circuit Court of the city of Richmond in all such cases.

The case was heard at the last term of the court, decided in favor of the Commonwealth, and a writ of prohibition granted.

Hausenfluck vs. Commonwealth. Affirmed.

Williams vs. Commonwealth. Affirmed.

Vaughan vs. Commonwealth. Reversed.

Smith vs. Commonwealth. Affirmed.

Hicks vs. Commonwealth. Reversed.

The above were upon writs of error to judgments of the lower courts convicting the appellants of felony, and were either affirmed or reversed as per marginal notes.

CASES PENDING IN THE SUPREME COURT OF APPEALS OF VIRGINIA.

Glover vs. Commonwealth.

Johnson vs. Commonwealth.

Page vs. Commonwealth.

Stoneham vs. Commonwealth.

Brown vs. Commonwealth.

Graveley vs. Commonwealth.

Washington vs. Commonwealth.

Muscoe vs. Commonwealth.

Allan vs. Commonwealth.

These are all writs of error granted to judgments of the lower courts convicting the parties of crimes, and have matured upon the docket since the last term. They are all ready for argument, and will probably be tried at the November term of the court.

Commonwealth vs. Tunstall.

Preston's Administrator vs. Larkin.

Bransford, treasurer, vs. Lawless.

Bransford, treasurer, vs. Tunstall.

Bransford, treasurer, vs. Kinckle.

Bransford, treasurer, vs. Bigbie Brothers & Co.

Bransford, treasurer, vs. Karn & Hickson.

Bransford, treasurer, vs. Edwards.

Bransford, treasurer, vs. Gregory Brothers.

Bransford, treasurer, vs. Terry.

Bransford, treasurer, vs. Guggenheimer.

These are all coupon cases involving the constitutionality of the acts of the General Assembly forbidding expert testimony and requiring the production of the

bond. The Hustings Court of the city of Lynchburg (prior to January 1, 1889) disregarded the decisions of the Supreme Court of Appeals, and the cases were brought up to correct its erroneous rulings. The cases are ready for argument, and will be tried at the November term of the court.

Callan vs. Bransford, treasurer.
Fealy vs. Bransford, treasurer.
Morrison vs. Bransford, treasurer.
Robinson vs. Bransford, treasurer.
Manning vs. Bransford, treasurer.
Breathed vs. Bransford, treasurer.
Jones vs. Bransford, treasurer.
Gregory vs. Bransford, treasurer.
Butler vs. Bransford, treasurer.
Smith vs. Bransford, treasurer.
Kegney vs. Bransford, treasurer.
O'Brien vs. Bransford, treasurer.
Hurley vs. Bransford, treasurer.
Lee & Co. vs. Bransford, treasurer.
Gills & Anderson vs. Bransford, treasurer.
Tauner vs. Bransford, treasurer.
Langley vs. Bransford, treasurer.
Lucado & Sons vs. Bransford, treasurer.
Cantieri & Co. vs. Bransford, treasurer.
Dillard vs. Bransford, treasurer.
Roberts & Brother vs. Bransford, treasurer.
McCarron vs. Bransford, treasurer.
Norvell vs. Bransford, treasurer.
Jackson vs. Bransford, treasurer.
Parsons vs. Bransford, treasurer.
Johnson vs. Bransford, treasurer.
Manning vs. Bransford, treasurer.
Reynolds & Co. vs. Bransford, treasurer.
Perrow & Co. vs. Bransford, treasurer.
Mallan & Brother vs. Bransford, treasurer.
Mallan vs. Bransford, treasurer.
Cheatham vs. Bransford, treasurer.
Collins vs. Bransford, treasurer.
Wall vs. Bransford, treasurer.
Lazarus vs. Bransford, treasurer.
Fazzi vs. Bransford, treasurer.
Byrne vs. Bransford, treasurer.
Magri vs. Bransford, treasurer.
Helbig vs. Bransford, treasurer.
McCarron vs. Bransford, treasurer.
Martin vs. Bransford, treasurer.
Smith vs. Bransford, treasurer.
Carter vs. Bransford, treasurer.
Baugn vs. Bransford, treasurer.

These are all suits brought in the Hustings Court of the city of Lynchburg to recover from the treasurer of the city money which had been paid under protest to obtain certificates for procuring revenue licenses. They were all decided in favor of the treasurer in the court below, and the coupon tenderers have procured writs of error from the Supreme Court of Appeals. The cases have all been matured for hearing, and will be tried at the next term of the court, commencing on the 5th of November.

CIRCUIT COURT OF THE CITY OF RICHMOND.

The following common-law cases are pending in the Circuit Court of the city of Richmond :

Commonwealth vs. A. G. Cleek et als.
 Commonwealth vs. Burger et als (two cases).
 Commonwealth vs. Mayo et als.
 Commonwealth vs. Givens's sureties.
 Commonwealth vs. Sears et als.
 Commonwealth vs. Ingles's sureties.
 Commonwealth vs. Jones et als.
 Commonwealth vs. Austin et als (four cases).
 Commonwealth vs. Taylor et als.
 Commonwealth vs. Miller et als.
 Commonwealth vs. Thomas et als.

The above suits were brought against treasurers and clerks for money due to the State. They are matured and ready for trial.

Commonwealth vs. James River Steamboat Company.

This is a coupon case, which has matured and is ready for trial.

Robinson vs. Greenhow.
 Brown, Davis & Co. vs. Greenhow.
 Saunders & Son vs. Greenhow.
 Chaffin & Co. vs. Greenhow.

These are coupon suits, matured and ready for trial.

The following chancery cases are now pending in the Circuit Court of the city of Richmond :

Commonwealth vs. Hilton's administrator. This case is practically disposed of.

Richmond and Petersburg Railroad Company vs. S. Brown Allen et als. This was a suit for an injunction which was granted and made perpetual.

Commonwealth vs. Huffman et als. This was a suit to subject certain property of defendants to the payment of a judgment.

Commonwealth vs. Page, escheator. This was a suit to recover certain property which came into defendant's hand by virtue of his office.

Farmers Bank vs. Alexandria Canal Company. Decree entered in this suit March 3, 1887, on commissioner's report.

Commonwealth vs. Grantham. The object of this suit was to subject property of defendant to satisfy a judgment.

Commonwealth vs. Millan. The object of this suit was to clear the title and subject certain land of the defendant to the payment of a judgment.

The above are all old cases, and, with two exceptions, will be disposed of at the present term of the court.

The following suits against treasurers and clerks were brought in the Circuit Court of Richmond, and dismissed before trial on account of the debts due having been paid :

Commonwealth vs. A. O. Sullivan and sureties.

Commonwealth vs. James A. Tilman and sureties.

Commonwealth vs. E. M. Crump and sureties.

Commonwealth vs. J. M. Speece and sureties (two cases).

Commonwealth vs. McLeod Kasey and sureties.

Commonwealth vs. W. K. Alexander and sureties.

Commonwealth vs. Carroll and sureties.

Commonwealth vs. Kinberly and sureties.

The following coupon cases against State officers were dismissed by the plaintiffs :

Parsons vs. Commonwealth.

Straus vs. Greenhow.

Warren & Quarles vs. Greenhow.

Christian & White vs. Greenhow.

Warwick & Co. vs. Greenhow.

Ford, trustee, vs. Greenhow.

Bernicchi vs. Greenhow.

Green & Blackwell vs. Greenhow.

Smith & Perkins vs. Greenhow.

The following judgments against treasurers and clerks were rendered during the year :

Commonwealth vs. Givens et als.

Commonwealth vs. Cocke et als.

Commonwealth vs. Henderlite et als.

Commonwealth vs. McCartney et als.

The following cases were disposed of as follows :

Commonwealth vs. Adams Express Company. Judgment for defendant.

This was a case in which it was attempted to make the Adams Express Company pay the penalty for not depositing the bonds required by section 1216 of Code of Virginia.

W. S. Gordon vs. Marye, auditor. Judgment for defendant.

This was a suit to compel the auditor to pay for expert testimony for the Commonwealth in a criminal case ; the amount having been certified by the judge of the Hustings Court of Richmond.

CASES DECIDED IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

Beattie vs. Taylor.

Ellett vs. Greenhow.

Cooper vs. Winston.

These were suits brought against treasurers to recover damages for refusal to receive coupons taxes, where suits have subsequently been brought under the act of May 12, 1887, to obtain judgments against the tax-payers ; the plaintiffs averring the act of the treasurer refusing to receive the coupons as the cause of damages sustained by suit and judgment.

The cases were heard early in January last and decided in favor of the State ; the court holding the judgment of the State court subsequently rendered conclusive of all questions raised by plaintiff.

Royall vs. Potts et als.

Cooper vs. Potts et als.

Freedman vs. Healey. No. 1.

Freidman vs. Healey. No. 2.

These were all trespass suits, and have been dismissed at the cost of plaintiffs.

Commonwealth vs. Baltimore and Ohio Railroad Company.

This is a suit originally brought in the Circuit Court of the city of Richmond to recover judgment against the company for taxes due the State—the company having tendered coupons in payment. The defendant company being a non-resident, removed the case to this court. The case would have been tried ere now, but the death of Judge Sheffey and other incident causes have prevented it.

Gatewood vs. The State of Virginia.

Parsons vs. Marye, auditor.

These cases were fully argued and submitted to the court for decision in 1886, and the court has been *deliberating* upon them ever since.

IN EQUITY.

James P. Cooper vs. Lewis P. Winston, sheriff.
D. K. Stewart vs. J. W. Southward, sheriff.

These are injunction suits to restrain the sheriffs from levying executions upon judgments rendered under the act of May 12, 1887.

Temporary restraining orders were issued, to which Winston, sheriff, paid no attention. The principles were settled against plaintiffs by the decision in cases first cited *supra*, but they still remain on the docket.

CASES IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

S. Brown Allen et als. vs. Marye et als.

This is an injunction suit brought to restrain levy of an execution in favor of the Commonwealth against the plaintiffs after a tender of coupons. The case arose from a payment made by S. Brown Allen as late Auditor of Public Accounts to one Hamilton without authority of law, for which judgment was obtained against him by the State and enjoined as above.

Samuel Moore vs. William H. Wightman, trespass on the case.
Samuel Garber vs. William H. Wightman, trespass on the case.
William Penn vs. William H. Wightman, trespass on the case.
John H. Wine vs. William H. Wightman, trespass on the case.
H. M. Smootz vs. William H. Wightman, trespass on the case.
Cornelius Zirkle vs. William H. Wightman, trespass on the case.
J. W. Wakeman vs. William H. Wightman, trespass on the case.
John S. Lafton vs. P. C. Gore, trespass on the ease.
W. H. Ebert vs. P. C. Gore, trespass on the case.
W. L. Brown vs. P. C. Gore, trespass on the case.
W. W. Glass vs. P. C. Gore, trespass on the case.
Mrs. S. W. Tidball vs. P. C. Gore, trespass on the case.
J. S. Robinson vs. P. C. Gore, trespass on the case.
George W. Ward vs. P. C. Gore, trespass on the case.
James Ginn vs. P. C. Gore, trespass on the case.
M. A. Mitchell vs. John W. Bransford.
P. Gregory vs. E. S. Moorman.
W. W. Larkin vs. H. C. Joyner.

The above are suits instituted to recover damages for refusal to receive coupons and for levying executions. The cases are matured and ready for trial, but the

principles involved have been adjudicated in other cases decided in the eastern circuit, and they will be dismissed upon trial.

DISPUTED BOUNDARY LINE BETWEEN VIRGINIA AND TENNESSEE.

I beg leave to say that I have fully investigated the question of the boundary line between this State and the State of Tennessee, and have arrived at the conclusion that in order to definitely settle and ascertain the true line between the two States it will be necessary to institute suit in the Supreme Court of the United States.

There can be no question that the State of Tennessee is now exercising jurisdiction over a considerable portion of territory north of the line established by the deed of cession from the State of North Carolina to the General Government, the act of Congress admitting the State into the Union, and the present Constitution of the State.

Whilst this is true, both States in the year 1800 appointed commissioners to adjust and settle the dispute then existing between them as to the true boundary line between the two States.

By direction of these commissioners a compromise line was run, marked, and reported to the two States with recommendation that it be adopted. Both States passed acts confirming and ratifying the report of the commissioners and adopting the line thus established. This compact gave the State of Tennessee a considerable slice from the State of Virginia, and established the line from two to three miles north of the true line, which is due east and west in latitude 36 degrees and 30 minutes north.

The compact between the two States was never ratified by Congress, as required by clause 3, section 10 of Article I of the Constitution of the United States, which provides that—

“3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, *enter into any agreement or compact with another State* or with a foreign power, or engage in war unless actually invaded or in such imminent danger as will not admit of delay.”

It would seem that this compact, never having been ratified by Congress, and having been entered into through mistake of fact as to the true location of the line, would not be regarded as binding upon the State; in which event the line would be established south of the compromise line, by which the State would regain considerable territory.

But independent of this claim, the compromise line run in the year 1800 has, by lapse of time, the improvement of the country, natural waste and destruction, and other causes, become indistinct, uncertain, and unknown, and as far back as 1856 both States appointed commissioners to re-run and re mark the line. These commissioners acted and made a report which was rejected by the General Assembly, and provision was made for the appointment of other commissioners. The State of Tennessee refused to appoint other or new commissioners, and has steadily refused all overtures of this State looking to a settlement of the question from 1860 to the present time. Serious complications have arisen between the citizens and property owners in the town of Goodson, Virginia, and Bristol, claimed to be in the State of Tennessee, which have resulted in serious and extensive litigation, and would have resulted in bloodshed, growing out of attempts made by municipi-

pal officers of both towns to exercise jurisdiction over disputed territory, which was only prevented by the forbearance and wise counsel of influential citizens of both towns. It will thus be seen that there is no other course open to the State to settle the question as to the disputed boundary other than by resort to a suit in the Supreme Court of the United States.

I have been engaged in the preparation of a bill, which is about completed and will be presented in the Supreme Court of the United States early in the present term.

Very respectfully,

R. A. AYERS,
Attorney-General.