ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

TO THE

GOVERNOR OF VIRGINIA,

FOR THE

YEAR 1892.

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ANNUAL REPORT OF THE ATTORNEY-GENERAL.

COMMONWEALTH OF VIRGINIA,
ATTORNEY-GENERAL'S OFFICE,
RICHMOND, *December 22, 1892.*

To His Excellency, PHILIP W. MCKINNEY,
Governor of Virginia:

GOVERNOR—I have the honor to submit *my third* annual report.

Since my last report, of November 12, 1891, I have tried the following cases, *viz.:*

SUPREME COURT OF APPEALS OF VIRGINIA.

1. Lashley *vs.* Commonwealth. Indictment for murder from the Corporation Court of Danville. *Affirmed.*

2. Lyles *vs.* Commonwealth Indictment for murder from the Corporation Court of Danville. *Affirmed.*

3. Commonwealth *vs.* Larkin. Indictment for practicing law without license. From the Corporation Court of Lynchburg. *Reversed* because the trial court *improperly* instructed the jury.

4. Carpenter *vs.* Commonwealth. Warrant under "section 3729," Code 1887, *for wilful trespass upon realty,* and trespasser fined; appealed to Clarke County Court; verdict against the appellant, and judgment thereon; appealed to *the Circuit Court of Clarke county,* and the County Court's judgment affirmed; and then appeal was taken to the Court of Appeals, and *affirmed by a divided court of four* judges.

5. Mary Miller *vs.* Commonwealth. From the Circuit Court of Rockingham. Prosecution by warrant under "section 3790," Code 1887, *for keeping a house of ill-fame;* appealed to the County Court of Rockingham county, *and there tried before a jury as provided by "sections 4107, 4108," Code 1887. Verdict and judgment thereon. Reversed. Section 4106,* "so far as it confers upon justices of the peace concurrent jurisdiction with the County Court *over the offence of keeping a bawdy house," held to be repugnant to section 10, Article 1, Constitution of Virginia.* Further, that "*sections 4107 and 4108,*" which gives this class of cases the right of appeal to the County, Corporation or Hustings Court, *there to be tried without formal pleadings in writing before a jury in the same manner as if indicted for the offence in said court, does not relieve said section of such repugnancy.* This decision was made January 14, 1892. I asked for a rehearing, and the case was reargued. *The majority judges* (the court was composed of *four* judges) adhered to their opinions, *and Judge B. W. Lacy again dissented.*

6. Commonwealth *vs.* Dodson,
Same *vs.* Roper,
Same *vs.* Ballentine,
were coupon cases, and affirmed by an evenly-divided court of four judges. The pivotal

point in each case the constitutionality of the Acts of the General Assembly *approved March 30, 1871, and March 28, 1879, concerning the public debt and its settlement.* In these cases I was ably and efficiently assisted by *Hon. H. R. Pollard* and *W. H. C. Ellis*, of Norfolk, counsel for the "Sinking Fund Commissioners."

7. Gaines *vs.* Commonwealth. Indictment for murder. From the Circuit Court of Essex county. *Affirmed.* I was assisted in this case by *Colonel William R. Aylett, of King William*, who prosecuted in the lower court. *Colonel Aylett* is an experienced and able prosecutor, and measured fully up to his reputation. He was clear in statement, pithy and pointed, forcible, logical and convincing.

8. Hill *vs.* Commonwealth. Indictment for shooting, *with intent to maim, disfigure, &c.* From the Circuit Court of Fauquier county. *Affirmed.*

9. Anthony *vs.* Commonwealth. Indictment for larceny. From the Circuit Court of Shenandoah. *Affirmed.*

10. Combined Saw and Planer Company *vs.* Flournoy, Sec'y, &c. *Mandamus to construe the statutes enacted February 10th and amended February 28th, 1890* [Acts 1889–'90, pages 43, 98] *concerning "Charter-Fees." Held* charters granted under "section 1145, Code 1887," commonly called "*Court Charters*," cannot be taxed. Your Excellency's attention is directed to this decision. During the pendency of the suit large sums of money were paid into the treasury by companies and corporations *chartered by courts.*

11. Robinson *vs.* Commonwealth. Indictment for murder. From the Corporation Court of Lynchburg. *Affirmed.*

12. Hite *vs.* Commonwealth. Indictment for burglary. From the Circuit Court of Brunswick. *Reversed.*

13. Roadcap *vs.* Commonwealth. Indictment for *felonious* assault. From the Circuit Court of Rockingham. *Reversed.*

14. Berkley *vs.* Commonwealth. *Warrant for unlawful assault, tried before a justice and then appealed to the County Court of Charlotte and* then to the Circuit Court of Charlotte county. *Reversed.*

15. Hodges *vs.* Commonwealth. Indictment for murder. From the Circuit Court of Franklin. *Affirmed.*

16. Dye *vs.* Commonwealth. Indictment for murder. From Circuit Court of Fauquier. *Dismissed.*

17. Gran Simmons *vs.* Commonwealth. Indictment for murder. From Circuit Court of Lee. *Reversed.*

18. Tilley *vs.* Commonwealth. Indictment for murder. From Circuit Court of Carroll. *Affirmed and rehearing granted.*

19. Brown *vs.* Commonwealth. Indictment for arson. From the Circuit Court of Franklin. *Reversed. This is the third appeal and fourth new trial granted Brown.*

20. Talt. Hall *vs.* Commonwealth. Indictment for murder. From the Circuit Court of Wise. *Affirmed.*

21. Davis *vs.* Commonwealth. Indictment for murder. From the Circuit Court of Tazewell. *Affirmed.*

22. Joshua Webster *vs.* Commonwealth. *Indictment for selling liquor in a local-option district without a license.* From the Circuit Court of Montgomery. *Affirmed.*

23. Prince *vs.* Commonwealth. Indictment for felonious shooting. From the Circuit Court of Wythe. *Affirmed.*

24. Whitlock *vs.* Commonwealth. *Information—practicing medicine without a license.* From Corporation Court of Winchester. *Affirmed.*

25. Commonwealth *vs.* Dunlop. *A coupon case.* From the Circuit Court of Petersburg. *Affirmed.*

26. Commonwealth *vs.* Ford, trustee. *A coupon case.* From the Circuit Court of Richmond. *Affirmed. In this case I was assisted by the Hon. H. R. Pollard, counsel for the Sinking Fund Commissioners.*

27. Shelton *vs.* Commonwealth. Indictment for burglary. From the Circuit Court of Prince William. *Reversed.*

CIRCUIT COURT OF RICHMOND.

1. Commonwealth *vs.* Speece, clerk of Bedford county. Judgment *February 25, 1892,* $643.35. Judgment *April 4, 1892,* $202.83. Interest from December 15 1889, and costs.

2. Commonwealth *vs.* Joseph H. Taylor's administrator, clerk of Scott county. Judgment February 25, 1892, $261.54. Interest from December 15, 1890, and costs.

3. Commonwealth *vs.* Hamilton's administrator et als, clerk of Augusta county. Judgment October 21, 1890, $895.52. Interest from November 1, 1883, and costs.

4. Commonwealth *vs.* R. W. Adams' administrator. *Treasurer of Fredericksburg.* Judgment for $5,085 67.

5. Same *vs.* E. C. Bragdon and O. D. Foster, sureties for R. W. Adams. *Judgment for like sum.*

6. Commonwealth *vs.* David A. French, treasurer of Wise county. *Three motions* are pending against French and his sureties. In two of them judgments were obtained December 20, 1893—viz.: one for $6,408.77 and the other for $10,959.41, to be credited by $4,454.63 as of 2d December, 1892.

The following cases stand as in my last report, and as received from Mr. Ayers:

Commonwealth *vs.* A. J. Cleek et als.
Commonwealth *vs.* Berger et als (two cases).
Commonwealth *vs.* Mayo et als.
Commonwealth *vs.* Given's sureties.
Commonwealth *vs.* Sears et als.
Commonwealth *vs.* Ingle'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, but circumstances beyond my control have prevented the 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.

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

CIRCUIT COURT OF THE UNITED STATES—WESTERN DISTRICT OF VIRGINIA.

Ex-parte Walter S. Roberts. *Habeas corpus.* Roberts was fined, and for non-payment of the fine imprisoned in the jail of Nelson county. Tendered *coupons* in satisfaction of the judgment, which were refused by the sheriff, who was advised that "*fines*" belong to "the Literary Fund," and through it go to the "public schools"—therefore, "*a school-tax*," and set apart by chap. 31, Code 1887, p. 230, for this purpose; and, being "*a school-tax*," under the decision of the United States Supreme Court in "Vashon *vs.* Greenhow," (135 United States Reports, 671) *could not be paid in coupons.* Judge H. L. Bond, who granted the writ, held Roberts' tender "good" and discharged him from custody.

American Harrow Company *vs.* Shafer, commissioner, et als. *Injunction* to restrain Commonwealth's officers from enforcing the law imposing a license-tax upon complainant. Answers filed and case continued.

The following cases stand as in my last report, and as received from Mr. Ayers:

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.
Cornelius Zirkle *vs.* William H. Wightman, trespass on the case.
H. M. Smootz *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 case.
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 will, I presume, be dismissed when called for trial.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

John T. Gibbons *vs.* Schooner Alice I. Venable, and two other cases. *Libel in Admiralty.* These vessels were confiscated and sold by the Commonwealth under the statutes for the protection of oysters (section 2170 chap. 97 and chap. 98, Code 1887), purchased by the Commonwealth, sold to the present owner, and in his possession libelled.

These cases have been recently decided by Judge Robert W. Hughes and the liens asserted by the libellants enforced. An appeal will *probably* be taken. Judge James E. Heath, of Norfolk, counsel for the owner of the "Schooner Elexena" will prepare the appeal, the Commonwealth of Virginia bear the costs, and I assist him in the appellate court. Judge Hughes' opinion is as follows:

"UNITED STATES DISTRICT COURT AT NORFOLK NOVEMBER 30, 1892.

S. F. Hastings *vs.* Schooner "Elexena." Libel of material men, and petition of material men for materials furnished; libellant and petitioners being citizens of Maryland. Also a claim of several seamen for arrears of wages.

J. T. Gibbons *vs.* Schooner "Alice J. Venable." Libel of material man, and petition of material men for materials furnished, the libellant being a citizen of Maryland. Also claims of seamen for wages.

J. T. Gibbons *vs.* Schooner "Samuel T. White." Libel and petition of material men for materials furnished, the libellant being a citizen of Maryland.

The answer of present owner and claimant in each case avers that the vessel was seized and sold by the State of Virginia, and that at such sale he became purchaser, and now holds the same under a bill of sale executed by a sheriff of the State.

OPINION OF THE COURT.

These three vessels, arrested, condemned and sold under forfeiture proceedings instituted by the State of Virginia for violation of laws enacted for the protection of oyster beds belonging to the State, have been libelled in this court for claims of material men and seamen, which constituted liens in admiralty upon the several vessels before their seizure by officers of the State under penal laws of the State.

Some of these claims will be allowed by this court, some of them disallowed; but the question in the case of each vessel will remain, whether penal and forfeiture proceedings prosecuted by the State to a sale of a vessel arrested *in delicto* divests a lien in admiralty previously resting upon that vessel. Inasmuch as it is expressly enacted by section 2186 of the Code of Virginia that such sale "shall vest in the purchaser a clear and absolute title to the property sold," the question already stated takes the additional form, whether that clause of the section is operative, or null and void, as to previously subsisting admiralty liens.

These libels were not filed in either case during the pendency of the forfeiture proceedings prosecuted by the State. They were each of them brought after the final confiscation of the vessels, and after their coming into the hands of the purchasers. There was no actual conflict of jurisdiction between the court in which the criminal proceedings were had and the admiralty court. It was not until the confiscation of the vessels was finally consummated that suit in admiralty was instituted here to enforce the respective maritime liens. So that another form of the question which has been stated is, whether an admiralty lien can be divested, under proceedings, even criminal in character, by a common law court.

The provisions of the Code, authorizing the arrest and confiscation of vessels for violations of oyster laws, are such as intentionally exclude all rights of innocent creditors of the vessels sold. The posting of a notice of the information filed for the forfeiture of the offending vessel, on the front door of the courthouse at which the proceeding is conducted, and its publication in a newspaper of the State, such posting and publication, it is enacted, "shall be sufficient service of the notice on all persons concerned in interest." It is further enacted, that "ignorance of the respondent or other contestant that the property seized was being used in violation of law shall be no defence. Nor shall it be ground of defence, that the person by whom the said property was used in violating the law has not been convicted of such violation."

The sale of a ship by an admiralty court for the satisfaction of maritime liens, in due course of a suit in admiralty, gives title to the purchaser against all the world. It gives such title by virtue of the maritime law, which is part of the law of nations.

The provisions of the Code of Virginia as to the trial, the notice of trial, and the sale of a vessel arrested for violations of oyster laws are intended, without the sanction of the maritime law, or of the law of nations, to make the sale of a vessel under the proceeding of the local court as conclusive against the world as a sale in admiralty. So that the question already stated assumes the additional form, whether the rights of maritime creditors in a ship can be divested by a local court by a proceeding unknown to the maritime law.

Let it be premised that it is declared by the Constitution of the United States, that "Congress shall have power to constitute tribunals inferior to the Supreme Court;" that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may, from time to time, ordain and establish;" that "the judicial power shall extend to all cases of admiralty and maritime jurisdiction;" that "no State shall pass any law impairing the obligation of contracts;" and that "no person shall be deprived of property without due process of law."

Let it be also premised that Congress in exercising its powers derived from the Constitution has provided that the district courts of the United States shall be courts of admiralty, and has, by the ninth section of the Judiciary Act of 1789, enacted that these courts "shall have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction."

The precedent principally relied upon by the respondents to the libels pending in this court is that of Taylor *vs.* Carryl, 20 Howard, 583. In that case a creditor at large of the owners of the barque Royal Saxon, of Londonderry, Ireland, then lying in the port of Philadelphia, whose claim was not maritime, sued out a foreign

attachment at Philadelphia, under which the ship was arrested and held to answer the judgment of the court of common law from which the attachment issued. While this suit was pending, the seamen on board the ship filed a libel for their wages in the admiralty court sitting at Philadelphia, process under which was duly served by its marshal. While the suit at common law was still pending, the admiralty court pronounced a decree in favor of the libellants. Under this decree execution was issued, and the ship sold by the marshal and delivered to the purchaser. Thereupon the plaintiffs in the common law suit replevied the ship in the suit instituted in the common law court

Under order of this court the sheriff sold the ship. These proceedings, thus briefly described, went to the Supreme Court of the United States for review; and that court held that in order to give jurisdiction to the admiralty court the arrest under its process must have been valid; and this was not the case when the vessel was, at the time of the seizure, in the actual and legal possession of the sheriff.

This case is far from being all fours with the one at bar; and decided nothing more than that a ship held in custody, pending a litigation by one court, is not liable to process of arrest by another court, even although the latter be a court of admiralty. This case of Taylor *vs.* Carryl, is, however, full of instruction for us in the one we have now under consideration.

The Supreme Court was divided on the question of the competency of the admiralty court at Philadelphia to deal with the Royal Saxon while in custody of a common law court. The majority held that it was not. The justices who dissented from this view were the admiralty judges—Taney, of Baltimore; Grier, of Philadelphia; Wayne, of Savannah; and Clifford, of Belfast, Maine. As the dissenting opinion of Chief Justice Taney is a luminous beacon in American jurisprudence, I will extract freely from it:

He says, among other things: "There are some principles of law which have been so long and so well established that it is sufficient to state them, without referring to authorities. The lien of seamen for their wages is prior and paramount to all other claims on the vessel and must be first paid.

"By the Constitution and laws of the United States, the only court that has jurisdiction over this lien, or is authorized to enforce it, is the admiralty court, and it is the duty of that court to do so. The seamen, as a matter of right, are entitled to the process of the court to enforce payment promptly, in order that they may not be left penniless and without the means of support on shore; and the right to this remedy is as well and firmly established as the right to the paramount lien. No court of common law can enforce or displace this lien. It has no jurisdiction over it, nor any right to obstruct or interfere with the lien, or the remedy which is given to the seamen.

"A general creditor of the ship-owner has no lien on the vessel. When she is attached by process from a court of common law, nothing is taken, or can be taken, but the interest of the owner remaining after the maritime liens are satisfied. The seizure does not reach them. The thing taken is not the whole interest in the ship. And the only interest which this process can seize is a secondary and subordinate interest, subject to the superior and paramount claims of the seamen's wages; and what will be the amount of those claims, or whether anything would remain to be attached, the court of common law cannot know

until they are heard and decided upon in the court of admiralty. I do not understand these propositions to be disputed.

"Under the attachment, therefore, which issued from the common law court of Pennsylvania, nothing was legally in the custody of the sheriff but the interest of the owner, whatever it might prove to be, after the liens were heard and adjudicated in the only court that could hear and determine them. * * * The question, then, is simply this: Can a court of common law, having jurisdiction of only a subordinate and inferior interest, shut the doors of justice for twelve months or more against the paramount and superior claims of seamen for wages due, and prevent them from seeking a remedy in the only court that can give it? I think not. * * * And it is equally a denial of the right of the court of admiralty to exercise the jurisdiction conferred on it by the Constitution and laws of the United States.

"Now, it is very clear that if this ship had been seized by process from a common law court of the United States for a debt due from the owner, the possession of the marshal under that process would have been superseded by process from the admiralty upon a preferred maritime lien. This I understand to be admitted. And if it be admitted, I do not see how the fact that this process was from a common law court of a State, and served by its own officers, can make any difference; for the common law court of a State has no more right to impede the admiralty in the exercise of its legitimate and exclusive powers than a common law court of the United States.

"And the sheriff, who is the mere ministerial officer of the court of common law, can have no greater power or jurisdiction over the vessel than the court whose process he executes. He seizes what the court has a right to seize; he has no right of possession beyond it; and if the interest over which the court has jurisdiction is secondary and subordinate to the interest over which the admiralty has exclusive jurisdiction, his possession is secondary and subordinate in like manner, and subject to the process on the superior and paramount claim. It is the process and the authority of the court to issue it that must determine who has the superior right. * * * In the case of *The Flora*, 1 Haggard, 298, the vessel had been seized by a sheriff upon process from the Court of King's Bench. She was afterwards, and while in possession of the sheriff, arrested upon process from the admiralty on a prior maritime lien, and was sold by the marshal while the sheriff still held her under the common law process. The sale by the marshal was held to be valid by the King's Bench. * * * That court sanctioned the sale * * * upon the ground that the marshal acted under a court of competent authority (see note 301), and they refused to interfere with the surplus which remained after payment of the seamen's wages, which had been paid into the registry of the admiralty, even in behalf of the creditor who had seized under their own process. * * * It was conceded on all hands that the possession of the sheriff was no obstacle to the arrest by the marshal.

"It seems, however, to be supposed that the circumstance that the common law court of a State—and not the United States—distinguishes this case from the case of *The Flora*, and is decisive in this controversy. And it is said that the Royal Saxon was in the possession of another sovereignty and in the custody of its law, and that no process could be served upon her issuing from the court of a different sovereignty, without infringing upon the rights of the State and bringing on unavoidably a conflict between the United States and the State. If by another and

different sovereignty it is meant that the power of the State is sovereign in its sphere of action, as marked out by the Constitution of the United States, and that no court or officer of the United States can seize or interfere with property in the custody of an officer of a State court, where the property and all the rights in it are subject to the control of the authorities of the State, nobody will dispute the proposition. But if it is intended to say that, in the administration of judicial power, the tribunals of the States and the United States are to be regarded as the tribunals of separate and independent sovereignties, dealing with each other in this respect upon the principles which govern the comity of nations, I cannot assent to it. The Constitution of the United States is as much a part of the law of Pennsylvania as its own constitution, and the laws passed by Congress pursuant to the Constitution are as obligatory upon the courts of the States as upon those of the United States; and they are equally bound to respect and uphold the acts and process of the courts of the United States, when acting within the scope of their legitimate authority. * * * * * The Constitution and laws which establish the admiralty courts and regulate their jurisdiction are a part of the supreme law of the State; and the State could not authorize its common law courts to issue any process, or its officers to execute it, which would impede or prevent the admiralty court from performing the duties imposed upon it, in exercising the power conferred on it by the Constitution and laws of the United States. The States have not, and cannot have, any jurisdiction in admiralty and maritime liens, to bring them into conflict with the courts of the United States.

"The Constitution and laws of the United States confer the entire admiralty and maritime jurisdiction expressly upon the courts of the general government. And admiralty and maritime liens are therefore outside of the line which marks the authority of a common law court of a State, and excluded from its jurisdiction. And if a common law court sells the vessel to which the lien has attached, upon condemnation, to pay the debt, or on account of its perishable condition, it must sell subject to the maritime liens, and they will adhere to the vessel in the hands of the purchaser and of those claiming under him. * * * I cannot be persuaded that a court which, by the Constitution of the United States has no jurisdiction of the subject-matter—that is, the maritime lien—can directly or indirectly delay the court which, by the Constitution, has exclusive jurisdiction from fulfilling its judicial duty, or the seamen from pursuing their remedy, where alone they can obtain it."

It does not appear whether the seamen, after the final conclusion of the common law suit brought their libel in admiralty to assert their lien against the purchaser of the Royal Saxon. But as the common law suit, begun in 1847, did not end until 1858, it must be presumed that they had in the long interval been scattered by the winds to the four quarters of the earth.

It can hardly be pretended that the late Chief Justice Taney, who for maintaining the supremacy of State laws in a matter within the proper sphere of State authority in a memorable case, was the best abused judge that ever sat upon the bench, was capable of disparaging the authority of a State court, in the case in which he delivered the opinion from which the foregoing extracts were made.

The only question in that case of Taylor *vs.* Carryl, which was before the Supreme Court, was not whether the arrest and sale of the ship by the common law court in a suit against the owner by a creditor at large could be ordered at

all, but simply whether the admiralty could interpose to subject the ship to a maritime lien during the pendency of the common law suit. Five of the justices held that the admiralty could not interpose, four of the justices dissenting from that ruling and holding that the admiralty court could not be thus delayed in the exercise of its especial and exclusive powers.

The practice of the King's Bench of England, a tribunal supposed by lawyers who have not kept pace with the progress of legal science in modern times, to be especially hostile to the admiralty jurisdiction, is different from that established by the Supreme Court of the United States in Taylor *vs.* Carryl. Not only in the case of *The Flora*, cited by Judge Taney, did it give way to the admiralty, but it is the practice of that court in like cases to do so.

Nor are the other courts of England any longer influenced by the passionate invectives of Lord Coke against the admiralty. In the case of Harman *vs.* Bell, reported in this country in 22d English Law and Equity, 62, we find a case heard on appeal in Privy Council, similar in principle to the one at bar. I quote and condense from the syllabus.

"A Scotch steamer ran down an English vessel in the Humber. * * * A suit was commenced by the owners of the English vessel against the owner of the steamer, in the Court of Sessions in Scotland, for the damage, and the steamer was arrested under process of that court. Afterwards, and pending these proceedings, the steamer was sold by the Scotch Court without notice to the purchaser of this unsatisfied claim against her. The proceedings in the Court of Session were still pending when the steamer, having come within the jurisdiction of England, was again arrested under process of the High Court of Admiralty in England, and an action for damage commenced in that court, for the same cause of action as was still pending in Scotland. The owner of the steamer who had purchased her appeared under protest in the admiralty court, and pleaded first *lis alibi pendens*, and secondly that he was a purchaser for value without notice.

"Held, first, that the plea of *lis alibi pendens* was bad, as the suit in Scotland was in the first instance *in personam*, the suit being commenced by process against the persons of the owners of the vessel (the defendants) and the arrest only collateral to secure the debt, while the proceedings in the admiralty court in England were, in the first instance, *in rem*, against the vessel, and therefore, the two suits being in their nature different, the pendency of one suit could not be pleaded in suspension of the other.

"Secondly, that, as by the civil law a maritime lien does not include or require possession, but being the foundation of proceedings *in rem*, such lien travels with the thing, into whosesoever possession it may come; and when carried into effect by a proceeding *in rem*, relates back to the period when it first attached. The steamer was liable for the damages committed by her, though in the hands of a purchaser without notice of the damage or of the proceedings instituted against her."

I think it is plain, from what has been said, that a maritime lien cannot be divested by any proceeding in a civil action in a common law court; that such court cannot exercise jurisdiction over the lien, either directly or indirectly; and that a State of this Union, cannot, under the Constitution, confer jurisdiction to divest this lien—the lien attaching at the moment of the contract or tort in which it originates, and traveling with the ship wherever it may go, into whosesoever possession it may come, by whatever right or accident. Nor can it be

adjudicated in the United States by any other court than those upon which, by the Constitution and laws of the United States, the exclusive jurisdiction over it is conferred.

The State of Alabama once passed a law by which she aimed to confer on certain State courts, as to certain maritime contracts, a jurisdiction over ships precisely the same as that possessed by the United States courts of admiralty. But the law became a nullity under the decision of the Supreme Court of the United States in the case of *The Belfast*, 7 Wallace, 624, in which it was held that—

"In all cases where a maritime lien arises, the original jurisdiction to enforce it by a proceeding *in rem* is exclusive in the district courts of the United States, as provided by the ninth section of the Judiciary Act of 1789. State legislatures have no authority to create maritime liens; nor can they confer jurisdiction upon a State court to enforce such a lien by a suit or proceeding *in rem*, as practiced in admiralty courts. The statute of 7th of October, 1864, of the State of Alabama, is therefore unconstitutional and void."

The admiralty jurisdiction, under the law of nations, is criminal as well as civil. The States, in ceding, by the Constitution, to the judicial power of the United States the cognizance of "all cases of admiralty and maritime jurisdiction," retained no part of the jurisdiction, either civil or criminal; and when Congress created certain courts as admiralty courts, the admiralty jurisdiction passed *exhaustively* to them by virtue of the Constitution, and it was unnecessary for Congress to enact in express words, as it did, that this jurisdiction in civil causes should be exclusive.

The jurisdiction *in rem*, belonginging to admiralty courts—that is to say, the power to deal with ships by name as sentient beings, irrespectively of ownership or other condition or circumstance—belongs exclusively and peculiarly to the admiralty, and cannot be conferred, either for civil or criminal purposes, by State legislation upon the common law courts of a State, so as to operate in derogation or exclusion of the power of the admiralty to enforce maritime liens in due course of admiralty procedure.

In evasion of these settled principles of admiralty law, it avails nothing to contend that the police laws of a State are superior to them. Analagous in this respect to the law of Virginia providing for the seizure *in rem* and confiscation of vessels engaged in violating her oyster laws, are the penal laws of Congress, enacted for the suppression of the slave trade and the unlawful catching of Africans on the Guinea coast. It was held by the Supreme Court that the sale of property forfeited under laws against the slave trade by proceedings in one of the circuit courts of the United States (which are common law courts) did not affect the maritime liens of seamen and material men upon the property forfeited. In the case of St. Jago de Cuba, 9 Wheaton, 409, it was held that "the claims of seamen for wages, and of material men for supplies, where the parties were innocent of all knowledge of, or participation in, the illegal voyage, are preferred to the claim of forfeiture on the part of the Government." The court says in its opinion in that case: "The precedence of forfeiture has never been carried further than to overreach common law contracts, entered into by the owner; and it would be unreasonable to extend them further"; "forfeiture does not ride over the rights derived under maritime contracts, whether they be called liens or privileges;" "in the case of wreck and salvage, it is unquestionable that forfeitures would be superseded; and we see no ground on which to preclude any other maritime

claim, really and honestly acquired. We concur in the opinion of the court below, that the fair claims of seamen, and subsequent material men, are not overreached by the previous forfeitures."

While this is so, yet it is undoubtedly true that the rights of seamen and all others on board of an offending vessel at the time of her arrest, and also the rights of the owner of the vessel, whether he be innocent of her offence or not, may be confiscated in due course of proceeding by the common law courts of the States, as well as of the United States. United States *vs.* The Malek Abdel, 2 Howard, 209.

The cases of Voorhees *vs.* Bank, 10 Peters, 44; Faulk *vs.* Zimmerman, 14 Wallace, 113; McNitt *vs.* Turner, 16 Id., 365; McCready *vs.* Virginia, 94 U. S., 391; and Boggs *vs.* Commonwealth, 76 Virginia, 989, are not in point. They would be in point if only the regularity of the proceeding in the common law court were in question. Where a court of common law, having replete jurisdiction of a suit, has passed final decree or judgment, the regularity of its proceedings cannot be examined collaterally. But where their jurisdiction is confined within certain limits by the Constitution of the United States, their jurisdiction may be examined collaterally, so far as they transcend the limits of their constitutional powers.

None will deny the competency of the State of Virginia to pass laws of forfeiture and confiscation effectual for the important purpose of protecting her oyster beds from piratical depredation. Such laws, as far as they can be operative, should be upheld and respected by the public and by the courts. The question here is, not upon the policy of such laws or upon the competency of the State to enact them, but simply whether, when enacted, they can be made to empower the common law courts to exercise admiralty jurisdiction in prejudice of maritime liens, the States having—as the Supreme Court of the United States says in United States *vs.* Beavans, 3 Wheaton, 336, and in Jones *vs.* League, 18 Howard, 76—"parted with the power so to legislate as to conflict with the admiralty jurisdiction or laws of the United States." Having parted with that power, the State of Virginia cannot exercise it to the divesting and destruction of maritime liens resting upon vessels seized and confiscated under her laws for the protection of oyster beds where the seamen, material men and others holding these liens are innocent of participation in the acts for which the vessels are confiscated.

It is urged by the Attorney-General of Virginia that the oyster fundum of the State, if liens arising anterior to confiscation were given precedence over forfeiture, would be destroyed, as vessels would go upon voyages of trespass "plastered all over with liens." But maritime liens are few, of definite character, and difficult to counterfeit.

To be valid, they must be of recent origin; staleness destroys them. The court would stultify itself to admit the possibility of such abuses as this learned officer apprehends. Besides, it must be remembered that constitutional rights cannot be brushed away by mere suspicions of fraud. The admiralty court will always lean towards the State in adjudicating these liens, and will rigidly scrutinize all such claims.

I come, therefore, to the examination of the claims of the libellants and petitioners in the three cases at bar:

In the case of the schooner *Elexena* there are two claims of material men. That of S. F. Hastings for $36.63 for sails and repairs of sails, &c., is stale as to $23.63, only $13 is therefore allowed. That of Crockett & Connorton for $62.36,

for supplies furnished within six months before the seizure of the vessel by the State of Virginia, is allowed. Decree will be entered for these sums. As to the claims of seamen filed in this case, amounting to $126.03, it appears from the imperfect papers presented in their behalf that they were on board of the *Elexena* at the time of her capture *in delicto*, presumably participating with the vessel in her violations of the laws of the State. Their claims are therefore disallowed.

As to the case of the schooner *Alice J. Venable*, the claim of the libellant, J. T. Gibbons, is for sails and repairs of sails furnished within six months before the seizure of the vessel, amounting to $68.59: which is allowed. That of Prendergast & Sons for sails and other material furnished within six months before the seizure of the vessel, amounting to $346.35, is allowed. As to the claims of seamen preferred in this case, amounting to $100.81, it is almost a necessary presumption, from the papers evidencing the claims, that the seamen were on board the offending vessel at the time of her seizure, and they were therefore disallowed.

In the case of the schooner *Samuel T. White*, the claim of libellant for sails and tackle amounting to $168, furnished within six months before seizure, is allowed. That of Ernest Parsons, amounting to $208.70, is disallowed in part and allowed in part. Items to the amount of $60.70 are disallowed as stale. Items to the amount of $13 for sails furnished after the seizure of the vessel are disallowed as not within the cognizance of the court. Of this claim the sum of $135 is allowed. Decree will be entered accordingly."

EX-PARTE WILLIAM MARSH.

In April last, at the request of James H. Fletcher, Jr., Commonwealth's Attorney for Accomac, I assisted in the trial of *William Marsh*, a citizen of Maryland, indicted in the county court of Accomac county, and charged with violation of "*section 2156*," Code 1887, which makes dredging for oysters *a felony*.

Marsh was defended by Hon. John Goode, Senator J. W. G. Blackstone, and John P. Poe, Attorney-General of Maryland, found guilty, fined $300, and imprisoned in the county jail for three months. *Writ* of *habeas corpus* was granted by Judge Bond, and after several unavoidable continuances submitted on printed briefs October 22d past in the city of Baltimore, Maryland. Judge Bond has not announced his decision.

The gist of the contention, the meaning of *the compact made in 1785* at Mt. Vernon between Virginia and Maryland, referred to in "Section 13," Code 1887, and the effect of this alleged compact upon the jurisdiction of Virginia's courts over trespassers who are citizens of Maryland. However determined, doubtless the case will be taken to the court of last resort, the Supreme Court of the United States.

The status of following cases unchanged since my last report, and as received from Mr. Ayers:

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 cited, but they remain on the docket.

THE SUPREME COURT OF THE UNITED STATES.

The following cases stand upon the docket of this court, with *status* unchanged since my last report, viz.:

Abram *vs.* Winston,
Rose *vs.* same,
Mills *vs.* same.
Royall *vs.* Greenhow.
Royall *vs.* Childrey,

appeals from the Circuit Court of the United States for the Eastern District of Virginia.

The defendants are proceeded against by tax-payers, who tendered coupons, "for trespass," "*as trespassers*," &c.; "the trespass"—*this:* That they served "process" upon the plaintiffs, as required by statute approved May 12th, 1887, sometime called "the coupon-crusher." Demurrers to the declarations were sustained, and appeals taken.

1. William H. Jones *vs.* Commonwealth of Virginia,
2. J. J. Dillard *vs.* E. S. Moorman, treasurer,
3. Mallan Bros. *vs.* Bransford, treasurer,

appeals from the Supreme Court of Appeals of this Commonwealth, stand as in my report for 1890.

"Writs of error" to the Corporation Court of Lynchburg have been allowed in

1. Litchford, surviving partner, *vs.* Day, sergeant,
2. R. M. Wooling & Co. et als. *vs.* Bransford, treasurer, and Day, sergeant,
3. James H. Gregory et als. *vs.* same.

VIRGINIA *vs.* TENNESSEE.

The evidence has been concluded and the record, printed, and by stipulation this case will be heard *on the seventh day of March 1893*, and stands at the head of the court's docket for that day.

EX-PARTE VIRGINIA VS. JUDGE JOHN PAUL.

[*Petition for Writ of Mandamus.*]

The writ has issued; Judge Paul answered, and will be argued *January 23, 1893;* is familiar to your Excellency *as "Carrico's Case,"* removed to the United

States Circuit Court for the Western District of Virginia from Smyth County Court. *Joseph H. Carrico*, a citizen of Virginia and resident of Smyth county, in December, 1891, as deputy marshal, had in charge a prisoner, and was taking him from Independence, in Grayson county, to Marion, the county seat of Smyth. Carrico dined about ten o'clock in the morning at the house of *Mr. Phipps*. After leaving Phipps' met Mr. Bennington, and half a mile further Reuben and James Nelson (brothers) quietly walking on the public road. *Reuben* was in front, with a sack on his shoulder, and *James* followed. Carrico halted Reuben and demanded what he had in his sack, and at the same time covered Reuben with his pistol, which was drawn and in his hand. James Nelson demanded Carrico's authority, but without reply Carrico turned the pistol upon *James* and fired. James Nelson fell, and in a few minutes died. When found was lifeless, stark and cold, a pistol buckled around him in its holster, and he lying upon pistol and holster. Carrico did not stop, but he and his prisoner passed on as unconcerned as if only a mad dog had been killed. Was arrested, put in jail and indicted by a grand jury of Smyth county for this nomicide. Judge Paul issued *writ of habeas corpus*, took Carrico from the custody of the jailor and removed the case of "Commonwealth *vs.* Joseph H. Carrico" to the United States Circuit Court for the Western District of Virginia. With *Mr. A. M. Dickenson*, Commonwealth's attorney for Smyth, I appeared before *United States District Court* at Abingdon, January 8, 1892, when return to *the writ of habeas corpus* was made, and in May following prosecuted Carrico in the United States Circuit Court for the Western District of Virginia. He was defended by Captain F. S. Blair, the United States District Attorney, and the Assistant United States District Attorney, and found guilty of "*voluntary manslaughter.*" *On Carrico's motion this verdict was set aside and he admitted to bail upon his own recognizance!* That the question of jurisdiction between *the Commonwealth* and *Federal Court* might be speedily determined, I applied to the Supreme Court for "writ of mandamus," and asked that Judge Paul be required to remand the violator of Virginia's laws and murderer of her citizen to her own court for trial. I cannot too highly commend to your Excellency my associate, *Mr. Dickenson*, the prompt, energetic, faithful and efficient Commonwealth's attorney for Smyth county. He has followed this case at his own expense and given to it both time and money, for which service he should be liberally compensated, and I hope your Excellency will see that this is done by the next Legislature,

PROPERTY AT FORTRESS MONROE.

Some time past your Excellency requested my opinion as to the power of the State to tax the hotel properties and business at Fortress Monroe.

I examined into the matter, and concluded that the hotel's property and business, and the business and property of resident citizens *could be taxed.*

The Auditor has thus instructed the Commissioners of the Revenue, and the matter is now before the courts for adjudication.

I give the resolutions passed by Congress which bear upon this question.

[*Private Resolution—No. 11.*]

Joint resolution to authorize the enlargement of the Hygeia Hotel at Fortress Monroe, Virginia:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be and he is

hereby authorized to grant permission to Henry Clark, proprietor of the Hygeia Hotel, at Fortress Monroe, Virginia, to enlarge the said hotel in such manner as may be compatible with the interests of the United States: *Provided*, That such enlargement, or any buildings hereafter erected by any person or persons upon the lands of the United States at Fortress Monroe, shall be at once removed at the expense of the respective owners whenever the Secretary of War shall deem such removal necessary, and no claim for damages therefor shall be made upon the Government of the United States: *And provided further, That the building so to be enlarged shall be subject to taxation under State and National authority the same as other property. Approved June 25, 1868.*

[See Acts 1819–'20 and 1820–'21, chap. 73 p. 102, passed March 1, 1821.]

[*Public Resolution—No. 17.*]

Joint resolution authorizing the Secretary of War to grant a permit to John F. Chamberlin to erect a hotel upon the lands of the United States at Fortress Monroe, Virginia:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be and he is hereby authorized to grant permission to John F. Chamberlin to build a hotel upon the lands of the United States at Fortress Monroe, Virginia, upon such site and with such plans and dimensions as may be approved by the Secretary of War: *Provided*, That the State of Virginia, by its General Assembly and Governor, shall, by proper legal enactment, give the consent of said State to the erection of such hotel, and that the building or buildings erected shall be removed at the expense of the owner or owners whenever the Secretary of War shall so direct; and no claim for damages by reason of such removal shall be made upon the Government of the United States: *And provided further, That the buildings so erected shall be subject to State and National taxation as other property. Approved March 3, 1887.*

[See Acts Extra Session 1887, chap. 11, p. 9.]

PULLMAN CAR COMPANY.

During the session of the Legislature, 1891–'2, I was asked by *the Finance Committees* to advise them as to the State's power to impose a tax upon the "Pullman Car Company?"

It is my opinion the State can tax this and telegraph companies, *provided* the basis of valuation of their property be that sanctioned by the Supreme Court of the United States in Pullman Car Company *vs.* Penna.; Same *vs.* Hayward (141 U. S. Reps. 18–36); Western Union Tel. Co. *vs.* Mass. (*Id.* 40–47.)

My report to the chairmen of the Finance Committees was as follows, viz.:

Hon. TAYLOR BERRY, *Chairman of Senate Finance Committee, and*
Hon. B. B. MUNFORD, *Chairman of House Finance Committee:*

GENTLEMEN—In compliance with your request to advise you as to the power of the State to tax the "*Pullman Car Company*" and corporations of like kind doing business in this Commonwealth, and formulate my views into a bill or amendments to existing statutes, I have the honor to report that, in my opinion, *Virginia* has the right and power to tax the "*Pullman Car Company*" and corporations of like kind doing business within this Commonwealth.

The States of Indiana, New York and Wisconsin taxed "the capital stock" and "gross earnings" of this company. Tennessee put a tax of $50 upon the privilege of operating such cars, but these laws were adjudged unconstitutional and void.

Pennsylvania and *Kansas* taxed the "Pullman Company" upon the property used within these States, and assessed its value at such part of its "capital stock" as the number of miles over which its cars were run *within* bore to the whole number of miles over which its cars were run within and without said States.

These statutes have been held constitutional and valid by the Supreme Court of the United States. The cases, viz., "Pullman Palace Car Company *vs.* Pennsylvania;" "Same *vs.* Hayward," are found in 141 U. S. Reports, pages 18–36 and 36–39.

This basis of valuation and assessment the same high tribunal has held proper and legal as to "*telegraph companies*" in three cases from Massachusetts reported in the same volume, pages 40–47. I therefore suggest to your honorable committees that the tax law for 1891–'92 be modified and new sections added, as in manner and form following, viz.:

In "section 21" (Acts 1889–'90, p 209) omit "sleeping cars," and strike out *this* word *in the first sub-section*. This change made add a new section, viz.:

(Title) *Tax on Pullman cars, dining-cars, parlor-cars and sleeping-cars run within the State.*

SEC. —. Every conductor, manager, agent or employee in control and charge of a Pullman car or cars, palace car, dining-room car or sleeping car or cars that make regular trips in this State over railroads, and not owned or leased by the railroad company to which they are attached, on the 1st day of May, 1892, and on the 1st of May in each year thereafter, shall make to the Auditor of Public Accounts a report in which shall be stated—

1. The name of the company and the name and postoffice address of its president.

2. *The capital stock* of the company owning or leasing said car or cars.

3. The number of miles of railroad over which cars are run *within* the State.

4. The number of miles of railroad over which cars are run *within* and *without* the State—And make oath thereto before some officer of this Commonwealth authorized to administer oaths.

The Auditor of Public Accounts shall forward a copy of said report to the Board of Public Works, and said board shall assess the company or companies owning or leasing said cars, taking as basis of assessment and valuation such proportion of the company's *capital stock* as the number of miles of railroad over which its cars were run *in the State* bears to the whole number of miles over which its cars were run *in this and other States.*

The tax thereon shall be thirty cents on every hundred dollars of the assessed value, the proceeds of which shall be applied to the support of government; and a further tax of ten cents on every hundred dollars' worth of the assessed value, which shall be applied to the support of the public free schools of the State.

A certified copy of the board's assessment shall be forwarded by the secretary of the board to the president or other proper officer of the company assessed

and said officer, within sixty days after its receipt, shall pay the tax aforesaid into the treasury.

Should default be made, the auditor shall deliver the tax-ticket to any county or city treasurer and take his receipt; and said treasurer shall collect the said tax, and he is authorized and empowered to distrain and sell any personal property of the company found within his city or county. The treasurer shall pay over to the Auditor within thirty days all taxes collected, and his compensation be that allowed for the collection of other taxes. The company operating or using said cars shall be held liable to the Commonwealth for the taxes due thereon.

SEC. —. Any company, conductor, agent, manager or employee violating the provisions of the preceding section shall pay a fine of not less than $100 nor more than $500 for each offence, to be recovered as provided in "section 712," Code of Virginia.

These fines shall be kept separate and apart from the other revenue of the State and [as directed by the Constitution] paid to the credit of the public school and literary fund, and in payment *only* gold or silver coin, United States treasury notes or National bank notes shall be received.

THE SOLDIERS' HOME.

March 25, 1892, Major Norman V. Randolph submitted to me the deed from *R. E. Lee Camp, No. 1, Confederate Veterans*, to the Commonwealth, executed and delivered in conformity with the act approved March 3d, 1892, entitled "*an act making an annual appropriation to the Confederate Soldiers' Home, and in consideration therefor accepting a conveyance from R. E. Lee Camp, No. 1, Confederate Veterans, of the property owned by it and now used for said home.*" [Acts 1891–'92, page 978, chap. 625.] I accepted the deed, and it was delivered to the clerk to be recorded.

Directly bearing upon this deed is my letter to Senator Taylor Berry, of Amherst county:

COMMONWEALTH OF VIRGINIA,
ATTORNEY-GENERAL'S OFFICE,
RICHMOND, *February 15, 1892.*

Hon. TAYLOR BERRY *and Hon.* D. GARDINER TYLER, *Senate of Virginia:*

MY DEAR SIRS—I have the honor to submit the following report in the matter of R. E. Lee Camp, No. 1, Confederate Veterans.

This corporation was created by act of the Legislature March 13th, 1884 (Acts 1883–'84, pages 521–2), and purchased November 8th, 1884, the real estate known as "The Soldiers' Home" from C. M. Robinson and wife, who executed to the Camp a deed with general warranty in fee simple. The grantors covenanted that they had the right to convey; that the estate was not encumbered for quiet enjoyment and further assurance.

The charter confers in terms no powers to sell or mortgage. The language of "section 3," that "Said association may acquire title to and hold land for the purpose of founding a home for invalid and infirm Confederate soldiers or for the education and maintenance of the children of invalid and infirm or deceased Confederate soldiers; provided, that the said association shall not hold at any time more than five hundred acres of land." The general statutes relating to

corporations, "section 1068," provides that "every corporation, in respect to which it is not otherwise provided, shall have perpetual succession, a common seal, * * * may sue and be sued, implead and be impleaded, contract and be contracted with, * * * *purchase, hold and grant estates, real and personal.*"

The Camp, the 11th April, 1889, made sales at public auction of a part of the land purchased from Robinson and wife, amongst others, to Mr. H. Wythe Davis. Mr. Davis refused to comply with the terms of sale, and the Camp sued in the Chancery Court of the city of Richmond, and prosecuted its suit to a successful termination.

Mr. John Howard, a lawyer of skill, experience and reputation, especially in the branch of the profession known as "Corporation Law," who is counsel for Davis, informs me that his client will appeal, and he has the record and is now preparing the petition. In the Chancery Court *Mr. Howard* attacked *the title* held by the Camp; contended it had not power to sell real estate; further, when "the trust" ceased, by the failure of "*cestuis qui trusts*," the real estate will revert to the grantors. He announces his purpose to press the case, and take it through State and Federal courts having jurisdiction.

Charter and statute law, as I understand and construe them, confer upon the Camp *power*, explicit and clear, "*to purchase, hold and grant estates, real and personal.*"

I do not think that "section 1407," which relates to conveyances of land to benevolent associations, with the sections referred to in this section, apply to "*Lee Camp.*" The Camp is a chartered company, and the law which applies to it found in its charter and general statutes upon corporations. Code 1887, chapter 46.

My opinion is that "Lee Camp, No. 1, Confederate Veterans," "may contract and be contracted with, sue and be sued," and may "purchase, hold and grant" real and personal estate, when it acts in conformity with its by-laws. I am further of the opinion that the real estate held by the Camp may escheat to the Commonwealth, but cannot revert to the grantors.

As requested, I send herein a form of a bill to aid in your work.

Yours respectfully,

R. TAYLOR SCOTT,
Attorney-General.

A BILL

(TITLE) *To Purchase from R. E. Lee Camp, No. 1, Confederate Veterans, the real estate known as "The Soldiers' Home," in the County of Henrico.*

Be it enacted by the General Assembly of Virginia, That the Commonwealth of Virginia doth purchase from R. E. Lee Camp, No. 1, Confederate Veterans, the lot of land in Henrico county known as "The Soldiers' Home," containing —— acres, on the terms and conditions following:

First. The grantor shall execute, deliver and record a good and sufficient deed, with general warranty, whereby shall be conveyed to the Commonwealth the lot of land aforesaid, which deed shall be accepted by the Attorney-General.

Second. This deed shall contain a covenant by the Commonwealth that the grantor may occupy, use, manage and control the granted premises as heretofore, but only for the same object and purposes for which it is now used: *Provided, however*, The grantor may surrender its possession and estate and terminate its

holding: *And provided, further*, That from the date of surrender the grantor shall have no right or claim to purchase money thereafter to become due, nor shall there be liability therefor in law or equity upon the Commonwealth.

Third. When the grantor's deed shall be accepted by the Attorney-General and put to record by the grantor, the Auditor of Public Accounts, on the — day of ——, 1892, and on the same day in each year thereafter for the period of —— years, shall pay to R. E. Lee Camp, No. 1, Confederate Veterans, the sum of —— dollars.

This act shall be in force from its passage.

THE LIBRARY BUILDING.

The result of my investigation into this matter is given in my letter to your Excellency as *President of the Board of Building Commissioners*, and is as follows:

RICHMOND, *April 12th, 1892.*

Governor P. W. MCKINNEY,

President of the State Board of Building Commissioners:

GOVERNOR—A letter of the 6th instant from the Secretary of your Board requests my opinion upon the following points to-wit:

(a.) The power of your Board to locate the new library building on the ground occupied by the Executive's stables.

(b.) What are the boundaries defined by statute of that portion of the square set apart for the Governor?

(c.) Does the act approved March 3d, 1892, confer authority upon the Board to tear down any building now standing in the Capitol Square?

In May, 1779 (the third year of the Commonwealth), an act was passed removing the capitol from Williamsburg to Richmond, and this act provided:

"That six whole squares of ground, surrounded each of them by four streets, and containing all the ground within such streets, situate in said town of Richmond, * * * shall be appropriated to the use and purpose of public buildings.

On one of the said squares shall be erected one house for the use of the General Assembly, to be called the Capitol. * * * On one other of said squares shall be erected another building to be called the halls of justice. * * *

One other of said squares shall be reserved for the purpose of building thereon hereafter a house for the several executive boards and offices to be held in; *two others with the intervening street shall be reserved for the use of the Governor of this Commonwealth for the time being*, and the remaining square shall be appropriated to the use of the public market.

2. The said houses shall be built of brick, in a handsome manner, with walls of brick and stone, and porticos, where the same may be convenient or ornamental, and with pillars and pavements of stones" (10 Hen. Stats. at Large, p. 85.)

In October, 1784, the Directors of Public Buildings were authorized to provide apartments for Legislative, Judiciary and Executive in the Capitol, instead of erecting special buildings (11 Hen. Stats., p. 496.) These Directors were Jacquelin Ambler and William Hay, gentlemen.

At short intervals appropriations were made for the Governor's house, procuring furniture, repairs, &c., as will appear from 13 Hen. Stats., chap. 63, p. 306;

Stats. at Large (new series), chap. 71, p. 338; *Id.*, Vol. Second, 1796–1802; Acts 1823, chap. 7, p. 10; Acts 1824, chap. 29, p. 32; Acts 1826, p. 9; Acts 1829–30, p. 7; Acts 1830–31, p. 133.

March 12th, 1834, Blair Bolling and W. H. Richardson were appointed commissioners "to contract for repairs, &c., * * * and to sell the old stable on the Governor's lot; also to contract for and superintend the repairs of the walls and have a new stable, carriage-house, and a new cross wall built thereon at the back of the present stable, in such manner as they may direct; provided, the expenditure thereby incurred do not exceed ($1,600) sixteen hundred dollars, which sum is hereby appropriated for the said purposes" (Acts 1833–34, p. 26).

In 1835, 1837, 1838, 1840 and 1844, the Legislature again made appropriations to be used upon the Governor's house and buildings, but nowhere have I found the special boundaries defined more accurately than in the "Act of May, 1779."

March 2d, 1846, an act was passed "to provide for the repairs to the Capitol and Governor's house and erection of courthouse, "section 4" of which is as follows: "* * * cause to be erected on the vacant lot which lies on the eastern side of the Capitol Square, between the Governor's stable and *the museum* a building for the use and accommodation of the Court of Appeals, &c."

"Section 7" empowered the Executive to dispense with the sale of the property to be sold, and cause the old museum to be repaired and fitted up for a courthouse in lieu of that to be built.

The site of the old museum is well known; it stood in the square and faced towards the Exchange Hotel; since its removal the topography of the square has been changed.

In my opinion, in the selection of a site for the new building your board is confined to the vacant and unoccupied parts of the Capitol Square.

Further, that it cannot remove any building standing thereon, nor use that part of the square set apart and dedicated "to the use of the Governor of this Commonwealth." This property is in the charge and custody of the "Register of the Land Office," and only the Legislature can change the uses for which he holds it.

Yours very respectfully,

[Signed] R. TAYLOR SCOTT,
Attorney-General.

BRANSFORD, TREASURER, *vs.* LARKIN ET ALS.

This suit was brought about a year ago *in the Circuit Court of Lynchburg* to enjoin certain *fi fas* which had issued against *Mr. Bransford* on ten judgments recovered against him by sundry tax-payers, who sued Bransford as treasurer *in assumpsit* for money paid to him as treasurer and turned by him into the treasury of the Commonwealth. The Circuit Court followed the Court of Appeals in its ruling in "Mallan Bros. *vs.* Bransford, treasurer"—86 Virginia 675—and perpetuated the injunction.

STATUTES WHICH NEED REVISION.

I again direct your Excellency's attention to chapter 197, *section* 4047, construed in *the Howells' "habeas corpus"* by the Court of Appeals at Wytheville.

To "*sections* 3049," 3063 and 3079 providing compensation for judges when holding terms for their brothers. These statutes do not *in terms* apply to *the Hustings Court* of this (Richmond) city, and the omission should be supplied.

To the "*registration laws*"—construed by the Court of Appeals in "Clay *vs.* Ballard" and "Coleman *vs.* Sands." These laws will be found in Code 1887, chapter 8, pages 80–86.

The court *holds* that "*section* 84" confers upon the voter a right to demand and have "copy" of the books. If this be the legislative purpose, compensation should be provided for this work.

CITY OF PETERSBURG *vs.* VIRGINIA AND CAROLINA RAILWAY COMPANY.

In April last I filed petition for the Auditor in this case for taxes of 1885, 1886, 1887, 1888, 1889, 1890 and 1891, and recovered for the Commonwealth $700—the amount due less $173.38. which had been paid thereon.

THE PUBLIC DEBT.

Difficulties arose as to *the form* of the bond to be issued under the last act, which provides for the settlement of the public debt, "*the manuscript bond*" to be issued, and other incidentals, as to which I was consulted by the "Sinking-Fund Commissioners." These troubles and difficulties have all been removed, and the settlement under said act consummated. Some of *our own people, especially taxpayers in the cities*, continue to tender coupons, and complain grievously of "*the jury statute*," its expense and burdens, but fail to apply the remedy always at hand—*let the coupon severely alone.* Then, and not until then, will the Commonwealth be at peace, and, as is her sovereign right, control the funds in her treasury.

Respectfully submitted,

R. TAYLOR SCOTT,
Attorney-General.