

ANNUAL REPORT

OF THE

ATTORNEY GENERAL,

FOR THE YEAR ENDING

DECEMBER 31, 1865.

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Commonwealth of Massachusetts.

ATTORNEY GENERAL'S OFFICE, }
January 1, 1866. }

To the Honorable Speaker of the House of Representatives :

SIR,—I herewith submit to the legislature a list of the cases, with statements of the disposition made of them, argued, tried and conducted by the Attorney General in the Supreme Judicial and Superior Courts, during the year commencing on the third Wednesday of January last, the day on which my official term commenced, and ending on the thirty-first of December A. D. eighteen hundred and sixty-five.

Among the cases which the Attorney General has conducted, there are several in the Supreme Court of the United States.

These are prosecutions under the liquor law. They were carried by the defendants on writs of error from our state courts to the court in Washington. The defendants have shown that they have licenses under the Internal Revenue law, which, they contend, authorize the sale and keeping of intoxicating liquor in violation of the statutes of this Commonwealth.

The Supreme Court of this state, in two cases, one of which is reported in the sixth of Allen's Reports, page 445, and the other of which will appear in Mr. Allen's tenth volume, have decided that the licenses which the defendants hold do not confer upon them any such authority as is claimed by them. This question is thoroughly and ably discussed by the court in the reported cases; and it is believed that the national tribunal will sustain the view which our court has taken.

The four cases which were the earliest carried to the Supreme Court at Washington, in one of which, if not in all, this question is thought to be fairly raised, have not as yet

been reached for argument in the course of the docket, but will probably be disposed of during the present term.

The cases which were carried up during the present year, eight in number, either have already been or will be dismissed, by agreement of the counsel for the defendants. None of these last named cases had been before the Supreme Judicial Court of this state, and the record in all of them appeared to be in other respects defective.

Motions to dismiss these cases, upon the ground that they had never been before the Supreme Court of this Commonwealth, and upon the ground that the records were defective, were prepared. I was present in Washington at the opening of the court, for the purpose of filing and arguing these motions; but the counsel for the defendants agreed with me in writing that the cases should be dismissed without argument.

A great many liquor cases have, within a short time, been removed from the state courts into the Circuit Court of the United States. I believe, that this course will neither benefit the defendants, nor seriously delay the final result; indeed, it is not improbable that a result may be reached earlier than would be possible in the state courts. Some legislation will be necessary in regard to the payment of costs in these cases.

There are many crimes which affect individuals and private interests; these cases, where the offender is known, are almost always prosecuted, and counsel are retained to manage the cause for the Commonwealth in the lower courts by the persons interested. But there are many offences which affect only the public. Violations of the laws as to gaming, as to houses of prostitution, and as to sales of liquor, are of this class. There are but few prosecutions for these offences, compared with the frequency of their commission. Even when complaints are instituted, they often fail, because no person has sufficient interest in the result to employ counsel to represent the government in the lower courts.

The theory of our law is, that the Commonwealth shall always be the prosecutor. In the Superior and Supreme Judicial Courts, public officers are appointed and paid by the State, whose duty it is to represent the Commonwealth in criminal and civil cases. I would suggest to the legislature the expediency of making some provision by which, in such cases as

I have referred to, if not in all criminal prosecutions, some public prosecutor may be employed in the lower courts.

In this connection, I respectfully suggest the division of the Commonwealth into criminal districts. Under our present statutes, there are in most of the counties one or more police courts, and in almost every town one or more trial justices. I believe it would tend to a more efficient and economical administration of criminal justice if the several counties were divided into two or more districts, and one person were appointed in each, who should hold his courts at the business centre of his district, and should have exclusive power of trying such criminal cases therein as are now tried by police courts and trial justices. Where police courts now exist, their districts might be enlarged, or such other course might be adopted as should be deemed best by the legislature.

The civil business of the Attorney General has, from various causes, so increased as to have become larger, and attended with much more difficulty than his criminal business. I respectfully suggest to the legislature that a statute be enacted providing that civil actions instituted in the name or in behalf of the Commonwealth, may be brought either in Suffolk County or in the county where the defendant lives, or has his place of business.

The statutes now provide that certain suits in behalf of the Commonwealth shall be brought in the name of the treasurer. In such cases, if the defendant prevails, he recovers costs against the treasurer, and may have execution running against him and his property. This is, to say the least, annoying to that officer. I would respectfully recommend the passage of a statute, authorizing all such suits to be brought in the name of the Commonwealth. If the defendant recovers costs in such a suit, the General Statutes already point out the manner in which they shall be paid.

I have the honor to be,
Very respectfully,
Your obedient servant,

CHESTER I. REED,
Attorney General.

CASES

Argued and conducted by the Attorney General from January 1st to December 31st, 1865.

COUNTY OF BARNSTABLE.

Commonwealth *v.* James Keenan. S. J. C. *Single sale of liquor.*
 Exceptions S. C. Exceptions overruled.

COUNTY OF BERKSHIRE.

Commonwealth *v.* John Hagerman. S. J. C. *Common seller of liquor.*
 Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Eliza Mead. S. J. C. *Common seller of liquor.*
 Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Mary Mead. S. J. C. *Common seller of liquor.*
 Exceptions S. C. Exceptions sustained.

Commonwealth *v.* John Mead. S. J. C. *Common seller of liquor.*
 Exceptions S. C. Exceptions sustained.

Commonwealth *v.* Dan Devanny. S. J. C. *Assault and battery.*
 Exceptions S. C. Exceptions sustained.

Commonwealth *v.* Morris Crotty *et al.* S. J. C. *Riot.* Exceptions sustained.

COUNTY OF BRISTOL.

Commonwealth *v.* New Bedford Gas Light Company. S. C. *Contract, for tax.* Not reached for trial.

Commonwealth *v.* Jacob N. Lincoln. S. J. C. *Obtaining money under false pretences.* Exceptions S. C. Not decided.

Commonwealth *v.* Owen Eagan. S. J. C. *Single sale of liquor.*
 Exceptions S. C. Exceptions waived.

Commonwealth *v.* Richard W. Walton. S. J. C. *Liquor nuisance.*
 Exceptions S. C. Not decided.

Commonwealth *v.* James Greenen. S. J. C. *Liquor nuisance.*
 Exceptions S. C. Not decided.

COUNTY OF ESSEX.

Sidney C. Bancroft *v.* Lyman Dike (commandant of camp at Lynnfield in 1861) *et al.* S. C. *Tort.* Judgment for plaintiff for \$100 without costs.

Commonwealth v. William Hawkes. S. J. C. *Receiving stolen goods.* Exceptions S. C. Indictment *not pros'd.*

Commonwealth v. Norman F. Edgerley. S. J. C. *Having counterfeit money with intent to pass the same.* Exceptions S. C. Exceptions sustained.

Commonwealth v. Joseph Johnson. S. J. C. *Polygamy.* Exceptions S. C. Exceptions overruled.

Commonwealth v. John McLoud. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions overruled.

Commonwealth v. Salem and South Danvers Railroad Company. S. C. *Contract, for use of Essex Bridge.* Judgment for plaintiff.

Commonwealth v. Luke Norton. S. J. C. *Obtaining money under false pretences.* Report S. C. Not decided.

Commonwealth v. Jeremiah Leavitt. S. J. C. *Assault upon officer.* Exceptions S. C. Not argued.

COUNTY OF FRANKLIN.

Commonwealth v. Jerome V. C. Smith *et al.* S. J. C. *Bill in equity to secure rights under mortgage.* Bill dismissed.

COUNTY OF HAMPSHIRE.

Trustees of Smith Charities v. Inhabitants of Amherst *et al.* S. J. C. *Bill in equity for instructions as to charity.* Not decided.

Commonwealth v. Samuel M. Elwell. S. J. C. *Common seller of liquor.* Exceptions S. C. Exceptions waived.

Commonwealth v. Samuel M. Elwell. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions waived.

Commonwealth v. John Hannah. S. J. C. *Common seller of liquor.* Exceptions S. C. Exceptions waived.

Commonwealth v. John Hannah. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions waived.

COUNTY OF MIDDLESEX.

Commonwealth v. Herman Haupt. S. J. C. *Contract.* Case sent to an assessor to ascertain the amount due to the plaintiff.

Commonwealth v. Fitchburg Railroad Company. S. J. C. *Causing death, &c.* Exceptions S. C. Exceptions overruled.

Commonwealth v. Charles E. Sweeney. S. C. *Tort, for penalty.* Judgment for plaintiff.

Commonwealth v. James Coburn. S. J. C. *Common drunkard.* Exceptions S. C. Not argued.

Commonwealth v. Ebenezer Withington. S. J. C. *Keeping unlicensed dog.* Exceptions S. C. Exceptions overruled.

Commonwealth v. Middlesex Hose Manufacturing Company. S. C. *Contract, for tax.* Judgment for plaintiff.

Commonwealth v. Cambridge Gas Light Company. S. C. *Contract, for tax.* Not reached for trial.

Commonwealth v. Lowell Gas Light Company. S. J. C. *Contract, for tax.* Not argued.

Commonwealth v. Michael Traverse. S. J. C. *Common seller of liquor.* Exceptions S. C. Not decided.

Commonwealth v. Thomas Ryan. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions overruled.

Commonwealth v. John O'Brien *et al.* S. J. C. *Rape.* Exceptions S. C. Exceptions overruled.

Commonwealth v. William Lydston. S. J. C. *Defacing dwelling-house.* Exceptions S. C. Exceptions overruled.

Commonwealth v. Thomas Salmon. S. J. C. *Liquor nuisance.* Exceptions S. C. Exceptions overruled.

Commonwealth v. Christopher Garrett *et al.* S. J. C. *Murder.* Plea—guilty of manslaughter. Sentence—Hugh Garrett, ten years imprisonment; James and Christopher Garrett, each five years imprisonment.

Commonwealth v. Martin Kennedy. S. J. C. *Murder.* Plea—guilty of manslaughter. Sentence—fifteen years imprisonment.

COUNTY OF NORFOLK.

Commonwealth v. Mary Wall. S. J. C. *Single sale of liquor.* Exceptions S. C. Exceptions waived.

Commonwealth v. Ann Daily. S. J. C. *Common seller of liquor.* Exceptions S. C. Exceptions overruled.

Commonwealth v. Haskett D. Blanchard. S. J. C. *Keeping disorderly house.* Exceptions S. C. Exceptions overruled.

Commonwealth v. Nathan Holbrook. S. J. C. *Common seller of liquor.* Exceptions overruled.

COUNTY OF PLYMOUTH.

Commonwealth v. Charles F. Norton. S. J. C. *Embezzlement.* Exceptions S. C. Exceptions overruled.

COUNTY OF SUFFOLK.

Henry K. Oliver, Treasurer, v. Boott Cotton Mills. S. J. C. *Contract, for tax on dividends of non-resident stockholders.* Appeal S. C. Not decided.

Henry K. Oliver, Treasurer, v. Fireman's Insurance Company. S. J. C. *Contract.* (As above.) Appeal S. C. Not decided.

Henry K. Oliver, Treasurer, *v.* Webster Bank. S. J. C. *Contract.* (As above.) Appeal S. C. Not decided.

Henry K. Oliver, Treasurer, *v.* Eastern Railroad Company. S. C. *Contract.* (As above.) Continued to await the decision of the above cases.

Henry K. Oliver, Treasurer, *v.* Washington Mills. S. J. C. *Contract.* (As above.) Appeal S. C. Not decided.

Commonwealth *v.* Isaac J. Cutter. S. C. *Contract, to recover money paid on forged order.* Not reached for trial.

Henry K. Oliver, Treasurer, *v.* Liverpool and London Fire Insurance Company. S. J. C. *Petition for injunction.* Not argued.

Commonwealth *v.* Benjamin F. Nichols. S. J. C. *Selling adulterated milk.* Exceptions S. C. Exceptions overruled.

Commonwealth by Insurance Commissioners *v.* Mill River Loan Fund Association. S. J. C. *Petition for injunction.* Judgment for respondents, and petition dismissed.

Henry K. Oliver, Treasurer, *v.* Brome Mining Company. S. C. *Contract, for tax.* Judgment for plaintiff.

Henry K. Oliver, Treasurer, *v.* Colonial Gold Company. S. J. C. *Contract, for tax.* Exceptions S. C. Not decided.

Henry K. Oliver, Treasurer, *v.* Cornwall Copper Mining Company. S. J. C. *Contract, for tax.* Appeal S. C. Not decided.

Henry K. Oliver, Treasurer, *v.* Gilbert River Gold Mining Company. S. J. C. *Contract, for tax.* Appeal S. C. Not decided.

Henry K. Oliver, Treasurer, *v.* Halifax Gold Mining Company. S. J. C. *Contract, for tax.* Exceptions S. C. Not decided.

Henry K. Oliver, Treasurer, *v.* National Lead Mining Company. S. C. *Contract, for tax.* Plaintiff nonsuit.

Henry K. Oliver, Treasurer, *v.* Stewart Gold Mining Company. S. C. *Contract, for tax.* Judgment for plaintiff.

Commonwealth *v.* Boston Wharf Company. S. J. C. *Contract, for tax.* Appeal S. C. Not decided.

Commonwealth *v.* Hamilton Manufacturing Company. S. J. C. *Contract, for tax.* Appeal S. C. Not decided.

Commonwealth *v.* New England Slate and Tile Company. S. C. *Contract, for tax.* Not decided.

Commonwealth *v.* Grand Trunk Copper Mining Company. S. C. *Contract, for tax.* Settled.

Commonwealth *v.* Boston Water Power Company. S. J. C. *Contract, for tax.* Not reached for trial.

Commonwealth *v.* Cary Improvement Company. S. J. C. *Contract, for tax.* Not reached for trial.

Atherton Wales *v.* S. Augusta Wales *et al.* S. J. C. *Bill in equity in which some public charities are concerned.* Not decided.

Commonwealth *v.* James McGovern. S. J. C. *Soliciting to leave the Commonwealth to enlist.* Exceptions S. C. Exceptions overruled.

Edward P. Jeffries *v.* Commonwealth. S. J. C. *Error for reversal of judgment of S. C.* Not argued.

Commonwealth *v.* Horace H. Waite. S. J. C. *Selling adulterated milk.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Charles B. Jennings. S. C. *Contract, to recover money paid by mistake.* Defendant defaulted, and case continued for judgment to January Term, 1866.

Commonwealth *v.* William Dillon. S. J. C. *Murder.* Plea—guilty of manslaughter. Sentence—twelve years imprisonment.

Commonwealth by Insurance Commissioners *v.* Traders' Mutual Fire Insurance Company. S. J. C. *Injunction &c.* Receiver ordered to render final account.

Commonwealth *v.* John Ryan. S. J. C. *Murder.* Plea—guilty of manslaughter. Sentence—fifteen years imprisonment.

Commonwealth by Insurance Commissioners *v.* Eagle Fire Insurance Company. S. J. C. *Injunction &c., and motion for removal of receivers.* Receivers resign their trust, and a new receiver is appointed.

Edward Jackson *v.* Wendell Phillips *et al.* S. J. C. *Bill in equity to determine construction of certain charitable bequests in will.* Not decided.

Commonwealth *v.* Provident Institution for Savings. S. J. C. *Contract, for tax.* Not reached for trial.

Commonwealth *v.* Francis O. J. Smith. S. J. C. *Subornation of perjury.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Parker H. Barry. S. J. C. *Liquor nuisance.* Exceptions S. C. Not decided.

Commonwealth *v.* Suffolk Railroad Company and Trustee. S. C. *Contract, for tax.* Not reached for trial.

Commonwealth *v.* J. E. Willard, *alias* Woodward. S. J. C. *Liquor nuisance.* Exceptions S. C. Not argued.

Commonwealth *v.* Maria Lambert. S. J. C. *Keeping house of ill fame.* Exceptions S. C. Not argued.

Attorney General *v.* New England Manufacturing Company. S. J. C. *Information.* Not reached for trial.

COUNTY OF WORCESTER.

Commonwealth *v.* Mary Conner. S. J. C. *Single sale of liquor.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* John Cain. S. J. C. *Common seller of liquor.*
Exceptions S. C. Exceptions overruled.

Commonwealth *v.* George L. Mowry. S. J. C. *Robbery.* Excep-
tions S. C. Exceptions overruled.

Commonwealth *v.* Mary McQueeny. S. J. C. *Lewd, wanton and
lascivious person.* Exceptions S. C. Exceptions waived.

Commonwealth *v.* John McCabe. S. J. C. *Common seller of liquor.*
Exceptions S. C. Exceptions overruled.

Commonwealth *v.* Lewis O. Thompson. S. J. C. *Adultery.* Excep-
tions S. C. Exceptions overruled.

Commonwealth *v.* Philip Nulty. S. J. C. *Common seller of liquor.*
Exceptions S. C. Exceptions overruled.

Commonwealth *v.* William Byrne. S. J. C. *Common seller of liquor.*
Exceptions S. C. Exceptions overruled.

Commonwealth *v.* John J. Walker. S. J. C. *Common seller of
liquor.* Exceptions S. C. Exceptions overruled.

Commonwealth *v.* George H. Childs. S. J. C. *Common drunkard.*
Exceptions S. C. Exceptions overruled.

T A B L E

Showing the Number of Criminal Cases pending on questions of Law in the Supreme Judicial Court during the year 1865, and the disposition thereof, by Counties.

COUNTIES.	Cases pending.	Decided for the Commonwealth.	Decided against the Commonwealth.	Argued, but not yet decided.	Not yet argued.
BARNSTABLE,	1	1	-	-	-
BERKSHIRE,	6	2	4	-	-
BRISTOL,	4	1	-	3	-
ESSEX,	5	2	1	1	1
HAMPSHIRE,	4	4	-	-	-
MIDDLESEX,	10	8	-	1	1
NORFOLK,	4	4	-	-	-
PLYMOUTH,	1	1	-	-	-
SUFFOLK,	10	6	-	1	3
WORCESTER,	10	10	-	-	-
Totals,	55	39	5	6	5

T A B L E

Showing the Number and Character of Criminal Cases pending on questions of Law in the Supreme Judicial Court during the year 1865, and the disposition thereof:

OFFENCES.	Cases pending.	Decided for the Commonwealth.	Decided against the Commonwealth.	Argued, but not yet decided.	Not yet argued.
Adultery,	1	1	-	-	-
Assault and battery,	1	-	1	-	-
Assault upon officer,	1	-	-	-	1
Causing death on railroad,	1	1	-	-	-
Common drunkard,	2	1	-	-	1
Common seller of liquor,	14	11	2	1	-
Defacing dwelling-house,	1	1	-	-	-
Embezzlement,	1	1	-	-	-
False pretences,	3	-	-	2	1
Having counterfeit money with intent, &c.,	1	-	1	-	-
Keeping disorderly house,	1	1	-	-	-
Keeping house of ill-fame,	1	-	-	-	1
Keeping unlicensed dog,	1	1	-	-	-
Lewd, wanton and lascivious person,	1	1	-	-	-
Liquor nuisance,	9	5	-	3	1
Murder,	4	4	-	-	-
Polygamy,	1	1	-	-	-
Rape,	1	1	-	-	-
Riot,	1	-	1	-	-
Robbery,	1	1	-	-	-
Selling adulterated milk,	2	2	-	-	-
Single sale of liquor,	4	4	-	-	-
Soliciting to leave the Commonwealth to enlist,	1	1	-	-	-
Subornation of perjury,	1	1	-	-	-
Totals,	55	39	5	6	5

