













STATE OF DELAWARE.

---

JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

AT A SESSION OF THE

GENERAL ASSEMBLY

CONVENED AND HELD AT DOVER, ON TUESDAY, THE SIXTH  
DAY OF JANUARY, IN THE YEAR OF OUR LORD ONE  
THOUSAND NINE HUNDRED AND THREE, AND  
OF THE INDEPENDENCE OF THE UNITED  
STATES THE ONE HUNDRED AND  
TWENTY-SEVENTH.

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1903

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# OFFICERS AND MEMBERS OF THE HOUSE OF REPRESENTATIVES.

## SPEAKER,

HENRY S. ANTHONY, Kent County.

## CLERK,

RICHARD HODGSON, New Castle County.

## READING CLERK,

JAMES W. ROBERTSON, New Castle County.

## ENROLLING CLERK,

EDWARD P. HAZZARD, Sussex County.

## CHAPLAIN,

REV. LOUIS E. BARRETT, D. D., Kent County.

## ATTORNEYS,

FRANCIS M. WALKER, New Castle County.

WILLIAM L. GOODING, Kent County.

FRANK H. DAVIS, Kent County.

## SERGEANT-AT-ARMS,

JOHN W. MONTAGUE, Kent County.

## PAGE,

HARRY RASH, Kent County.

## MEMBERS,

HENRY G. BUCKMASTER, New Castle County, . . . . .	Wilmington
JAMES P. JONES, New Castle County, . . . . .	Wilmington
JOHN BANCROFT, New Castle County, . . . . .	Wilmington
THOMAS M. MONAGHAN, New Castle County, . . . . .	Wilmington
WILLIAM M. CONNELLY, New Castle County, . . . . .	Wilmington
ABRAHAM L. TYRE, New Castle County, . . . . .	Wilmington
WILLIAM R. FLINN, New Castle County, . . . . .	Newport
WILLIAM M. EASTBURN, New Castle County, . . . . .	Union
JOHN W. MORRISON, New Castle County, . . . . .	Christiana
CHAUNCEY P. HOLCOMB, New Castle County, . . . . .	New Castle
DAVID C. ROSE, New Castle County, . . . . .	Newark
WILLIAM A. PRICE, New Castle County, . . . . .	Delaware City
LEONARD V. ASPRIL, Jr., New Castle County, . . . . .	Odessa
EDWARD HART, New Castle County, . . . . .	Townsend
SAMUEL C. DERRICKSON, New Castle County, . . . . .	Townsend
HENRY S. ANTHONY, Kent County, . . . . .	Smyrna
CHARLES H. PARADEE, Kent County, . . . . .	Dover
GEORGE COOK, Kent County, . . . . .	Kenton
WILLIAM H. GEHMAN, Kent County, . . . . .	Dover
THOMAS M. GOODEN, Kent County, . . . . .	Dover
SAMUEL CARL HUGHES, Kent County, . . . . .	Felton
THOMAS E. WARREN, Kent County, . . . . .	Camden
JOSEPH FRAZIER, Kent County, . . . . .	Frederica
JAMES WILBUR POWELL, Kent County, . . . . .	Harrington
LAVINUS AUSTIN, Kent County, . . . . .	Milford
JOHN W. BENNETT, Sussex County, . . . . .	Milford
OLIVER A. NEWTON, Sussex County, . . . . .	Bridgeville
FRANK ALLEN, Sussex County, . . . . .	Seaford
SAMUEL J. MESSICK, Sussex County, . . . . .	Laurel
SAMUEL J. LOWE, Sussex County, . . . . .	Delmar
RUFUS D. LINGO, Jr., Sussex County, . . . . .	Dagsboro
JOHN G. TOWNSEND, Jr., Sussex County, . . . . .	Selbyville
FRANK W. LAWSON, Sussex County, . . . . .	Georgetown
THOMAS R. PURNELL, Sussex County, . . . . .	Georgetown
JOSEPH D. THOMPSON, Sussex County, . . . . .	Rehoboth



# JOURNAL

OF THE

## House of Representatives.

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Dover, Delaware, January 6, 1903.

At a session of the General Assembly of the State of Delaware, convened and held at Dover, on Tuesday, the sixth day of January, in the year of our Lord one thousand nine hundred and three, and of the independence of the United States of America the one hundred and twenty-seventh,

Messrs. Henry G. Buckmaster, James P. Jones, John Bancroft, Thomas M. Monaghan, William M. Connelly, Abraham L. Tyre, William R. Flinn, William M. Eastburn, John W. Morrison, Chauncey P. Holcomb, David C. Rose, William A. Price, Leonard V. Aspril, Jr., Edward Hart and Samuel C. Derrickson,

Of the several Representative Districts of New Castle County, and

Messrs. Henry S. Anthony, Charles H. Paradee, George Cook, William H. Gehman, Thomas M. Gooden, Samuel Carl Hughes, Thomas E. Warren, Joseph Frazier, James Wilbur Powell and Lavinus Austin,

Of the several Representative Districts of Kent County, and

Messrs. John W. Bennett, Oliver A. Newton, Frank Allen, Samuel J. Messick, Samuel J. Lowe, Rufus D. Lingo, Jr., John G. Townsend, Jr., Frank W. Lawson, Thomas R. Purnell and Joseph D. Thompson,

Of the several Representative Districts of Sussex County,  
 Appeared and took their seats.

The House was called to order by Mr. William R. Flinn,  
 who was elected temporary Speaker.

On motion of Mr. Anthony, Mr. Leonard V. Aspril, Jr.,  
 was elected temporary Secretary.

The Speaker pro tempore appointed Messrs. Holcomb and  
 Tyre a committee to secure the certificates of election from the  
 Prothonotary and Judges.

Judges Pennewill and Boyce and Prothonotary Speakman  
 were admitted and delivered to the Speaker pro tempore the  
 certificates of election for the several counties.

By the returns set forth in the certificates from the Su-  
 perior Court of New Castle County it appeared that at the  
 General Election held on the Tuesday next after the first Mon-  
 day in November, in the year of our Lord one thousand nine  
 hundred and two, for New Castle County, according to the Con-  
 stitution and laws of the State of Delaware, the following per-  
 sons were duly chosen Representatives in the General Assembly,  
 from the several Representative Districts in said New Castle  
 County, to wit:

Henry G. Buckmaster, Representative District Number  
 One.

James P. Jones, Representative District Number Two.

John Bancroft, Representative District Number Three.

Thomas M. Monaghan, Representative District Number  
 Four.

William M. Connelly, Representative District Number  
 Five.

Abraham L. Tyre, Representative District Number Six.

William R. Flinn, Representative District Number Seven.

William M. Eastburn, Representative District Number  
 Eight.

John W. Morrison, Representative District Number Nine.

Chauncey P. Holcomb, Representative District Number Ten.

David C. Rose, Representative District Number Eleven.

William A. Price, Representative District Number Twelve.

Leonard V. Aspril, Jr., Representative District Number Thirteen.

Edward Hart, Representative District Number Fourteen.

Samuel C. Derrickson, Representative District Number Fifteen.

By the returns set forth in the certificates from the Superior Court of Kent County it appeared that at the General Election held on the Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred and two, for Kent County, according to the Constitution and laws of the State of Delaware, the following persons were duly chosen Representatives in the General Assembly, from the several Representative Districts in said Kent County, to wit:

Henry S. Anthony, Representative District Number One.

Charles H. Paradee, Representative District Number Two.

George Cook, Representative District Number Three.

William H. Gehman, Representative District Number Four.

Thomas M. Gooden, Representative District Number Five.

Samuel Carl Hughes, Representative District Number Six.

Thomas E. Warren, Representative District Number Seven.

Joseph Frazier, Representative District Number Eight.

James Wilbur Powell, Representative District Number Nine.

Lavinus Austin, Representative District Number Ten.

By the returns set forth in the certificates from the Superior Court of Sussex County it appeared that at the General Election held on Tuesday next after the first Monday in November, in the year of our Lord one thousand nine hundred

and two, for Sussex County, according to the Constitution and laws of the State of Delaware, the following persons were duly chosen Representatives in the General Assembly, from the several Representative Districts in said Sussex County, to wit:

John W. Bennett, Representative District Number One.

Oliver A. Newton, Representative District Number Two.

Frank Allen, Representative District Number Three.

Samuel J. Messick, Representative District Number Four.

Samuel J. Lowe, Representative District Number Five.

Rufus D. Lingo, Jr., Representative District Number Six.

John G. Townsend, Jr., Representative District Number Seven.

Frank W. Lawson, Representative District Number Eight.

Thomas R. Purnell, Representative District Number Nine.

Joseph D. Thompson, Representative District Number Ten.

The members-elect were then duly qualified according to the Constitution and laws of the State of Delaware, and the act of Congress entitled "An act to regulate the time and manner of administering certain oaths," the oath of office being administered by William R. Flinn, a member of the House of Representatives of the State of Delaware, from Representative District Number Seven of New Castle County, to Henry S. Anthony, a member of said House of Representatives, from Representative District Number One of Kent County, in the words following, to wit:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of Representative in the General Assembly from Representative District No. 1 in Kent County, according to the best of my ability; and I do further solemnly swear that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consider-

ation or reward for the giving or withholding a vote at the election at which I was elected to said office.

HENRY S. ANTHONY,

Representative in the General Assembly from Representative District No. 1 in Kent County.

Sworn to before me this Sixth day of January, A. D. 1903.

WM. R. FLINN,

Representative in the General Assembly, District No. 7 of New Castle Co., Delaware.

The said Henry S. Anthony, a member of the House of Representatives of the State of Delaware, from Representative District Number One of Kent County, administered the same oath of office to the other members of said House of Representatives, from the several Representative Districts, to wit: Henry G. Buckmaster, Representative from Representative District Number One of New Castle County; James P. Jones, Representative from Representative District Number Two of New Castle County; John Bancroft, Representative from Representative District Number Three of New Castle County; Thomas M. Monaghan, Representative from Representative District Number Four of New Castle County; William M. Connelly, Representative from Representative District Number Five of New Castle County; Abraham L. Tyre, Representative from Representative District Number Six of New Castle County; William R. Flinn, Representative from Representative District Number Seven of New Castle County; William M. Eastburn, Representative from Representative District Number Eight of New Castle County; John W. Morrison, Representative from Representative District Number Nine of New Castle County; Chauncey P. Holcomb, Representative from Representative District Number Ten of New Castle County; David C. Rose, Representative from Representative District Number Eleven of New Castle County; William A. Price, Representative from Representative District Number Twelve of New Castle County; Leonard V. Aspril, Jr., Representative from Representative District Number Thirteen of New Castle County; Edward Hart, Representative from Representative District Number Fourteen of New Castle County; Samuel C. Derrickson, Representative from Representative District Number Fifteen of New Castle County; Charles H. Paradee, Representative from Representative District Number Two of Kent County; George Cook, Rep-

representative from Representative District Number Three of Kent County; William H. Gehman, Representative from Representative District Number Four of Kent County; Thomas M. Gooden, Representative from Representative District Number Five of Kent County; Samuel Carl Hughes, Representative from Representative District Number Six of Kent County; Thomas E. Warren, Representative from Representative District Number Seven of Kent County; Joseph Frazier, Representative from Representative District Number Eight of Kent County; James Wilbur Powell, Representative from Representative District Number Nine of Kent County; Lavinus Austin, Representative from Representative District Number Ten of Kent County; John W. Bennett, Representative from Representative District Number One of Sussex County; Oliver A. Newton, Representative from Representative District Number Two of Sussex County; Frank Allen, Representative from Representative District Number Three of Sussex County; Samuel J. Messick, Representative from Representative District Number Four of Sussex County; Samuel J. Lowe, Representative from Representative District Number Five of Sussex County; Rufus D. Lingo, Jr., Representative from Representative District Number Six of Sussex County; John G. Townsend, Jr., Representative from Representative District Number Seven of Sussex County; Frank W. Lawson, Representative from Representative District Number Eight of Sussex County; Thomas R. Purnell, Representative from Representative District Number Nine of Sussex County; Joseph D. Thompson, Representative from Representative District Number Ten of Sussex County.

A motion was made and seconded that the House take a recess for one hour,

Which motion

Was Lost.

On motion, the House went into the nomination and election of permanent Speaker.

Mr Warren nominated Mr Henry S. Anthony.

Mr. Rose nominated Mr. Chauncey P. Holcomb.

Mr. Townsend and Mr. Monaghan were appointed tellers.

Mr. Anthony, receiving the majority of the votes, was declared elected Speaker of the House.



Mr. Holcomb and Mr. Tyre were appointed a committee to escort Mr. Anthony to the chair, who took his seat, after a few remarks.

Mr. Anthony was then sworn in as Speaker by Mr. Monaghan, Representative from Representative District Number Four of New Castle County, taking the following oath of office:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of Speaker of the House of Representatives in the General Assembly according to the best of my ability; and I do further solemnly swear that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office.

HENRY S. ANTHONY,

Representative in the General Assembly from Representative District No. 1 in Kent County.

Sworn to before me this Sixth day of January, A. D. 1903.

THOMAS M. MONAGHAN,

Representative of District No. 4 of New Castle County of the State of Delaware.

On motion of Mr. Flinn, the House then went into the nomination and election of Clerk of the House.

Mr. Bancroft nominated Richard Hodgson.

Mr. Hart nominated W. A. Scott.

Richard Hodgson, receiving the majority of votes, was declared elected Clerk of the House, and was then duly sworn in by the Speaker, taking the following oath of office:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of Clerk of the House of Representatives in the General Assembly according to the best of my ability; and I do further solemnly swear that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to con-

tribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office.

RICHARD HODGSON.

Sworn to before me this Sixth day of January, A. D. 1903.  
HENRY S. ANTHONY, Speaker.

On motion, of Mr. Rose, the House then went into nomination and election of Sergeant-at-Arms.

E. Lowe and John Montague were nominated.

Mr. Montague, receiving the majority of votes, was declared elected, and was duly sworn in by the Speaker, taking the following oath of office:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of Sergeant-at-Arms of the House of Representatives in the General Assembly according to the best of my ability; and I do further solemnly swear that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office.

JOHN MONTAGUE.

Sworn to before me this Sixth day of January, A. D. 1903.  
HENRY S. ANTHONY, Speaker.

On motion of Mr. Townsend, the House then went into nomination and election of Reading Clerk.

Jas. W. Robertson and John W. Hutchison were nominated.

Jas. W. Robertson, receiving the majority of votes, was declared elected and was duly sworn in by the Speaker, taking the following oath of office:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of Reading Clerk of House of Representatives in the General Assembly according

to the best of my ability ; and I do further solemnly swear that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office.

JAMES W. ROBERTSON.

Sworn to before me this Sixth day of January, A. D. 1903.

HENRY S. ANTHONY, Speaker.

On motion, of Mr. Tyre, the House then went into nomination and election of Chaplain.

Rev. L. E. Barrett and Rev. Joseph Brown Turner were nominated.

Rev. L. E. Barrett, receiving the majority of votes, was declared elected.

The following resolution was read and adopted :

Be it resolved by the House of Representatives, That the Clerk of the House is instructed to notify the Senate that the House is duly and regularly organized and has elected Henry S. Anthony, Speaker, and Richard Hodgson, Clerk, and is ready to proceed to business.

On motion, of Mr. Aspril, the House then went into nomination and election of Enrolling Clerk.

Wm. H. Kane and Geo. L. Townsend, Jr., were nominated.

Geo. L. Townsend, Jr., receiving the majority of votes, was declared elected and was duly sworn in, taking the following oath of office :

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Delaware, and that I will faithfully discharge the duties of Enrolling Clerk of House of Representatives in the General Assembly according to the best of my ability ; and I do further solemnly swear that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving

or withholding a vote at the election at which I was elected to said office.

GEO. L. TOWNSEND, Jr.

Sworn to before me this Sixth day of January, A. D. 1903.

HENRY S. ANTHONY, Speaker.

Mr. Baynum, Clerk of the Senate, being admitted, informed the House that the Senate had appointed a committee of two on the part of the Senate, to act with a like committee of three on the part of the House, to notify the Governor that both Houses of the General Assembly are duly organized and ready to receive any communication he may send them.

Committee on the part of the Senate, Messrs. Allee and Wright.

He also informed the House that the Senate had adopted and requested the concurrence of the House in the following Senate Joint Resolution:

Senate Joint Resolution No. 1, entitled:

“Joint Resolution providing for the adjournment of the General Assembly from January 6, 1903, to January 12, 1903.”

The following resolution was read and adopted:

Resolved, That the rules of the last House shall be the rules of the present House until regular rules have been adopted for the government of the present House.

Hon. Caleb R. Layton, Secretary of State, was admitted, and presented the Governor's message, and accompanying documents.

On motion, the reading of same was deferred.

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#### GOVERNOR'S MESSAGE.

State of Delaware,  
Executive Department.

To the Members of the Senate and  
House of Representatives:

You have assembled under very auspicious circumstances. During the two years that have just expired, the welfare and

prosperity of this Commonwealth have been manifestly increased. The conditions that have attended our agricultural, mechanical and manufacturing enterprises have been of that exceptionally prosperous character which has distinguished the state of the whole country. The revenues have largely increased, without an increase of taxation. The administration of public affairs by the several departments of State has been clean and highly efficient. In one county of the State the law has been successfully evoked to secure an honest and economical administration of its affairs. In another, faithfulness and economy have restored a credit impaired for more than thirty years. The affairs of the various public institutions have been administered with care and fidelity. Altogether, the people have enjoyed unsurpassed peace and plenty.

The execution of law is reposed under the Constitution in the hands of the Governor and the several departments of the State Government. They can execute only the enactments made by you. The function of the Legislature, therefore, in making the laws by which the State is governed, and to which the people must give submission as long as they continue in force, is one of unequaled power in a republican form of government, and attended by the gravest responsibility. Much legislation is no indication of its value. Well considered and intelligent legislation conveys a blessing to the people, and inspires them with obedience and patriotism. It should accordingly be the earnest determination of all concerned in such a grave and responsible duty to discharge it ably, carefully and conscientiously.

The Constitution and the obligations of established usage lead me to address to you such observations, and to make such specific recommendations as my personal conversance with the administration of the Gubernatorial office has brought to my attention.

#### FINANCES.

The finances of the State are in a very satisfactory condition. This statement is true also of the several counties. In Sussex County orders are at par for the first time since 1876. This is due largely to the admirable administration of county affairs, through a restoration of honesty, of economy and of sound business principles. The recent reform movement in New Castle County, reinforced by the departments of public

justice, has restored an honest and economical government to the people, with the result, if the present determination continues, of a lessening tax rate, while increasing the efficiency of the public service.

The last Legislature, although in no sense chargeable with extravagance, made very liberal allowances above those made by previous Legislatures. This was due doubtless to the fact that the State had more money for appropriation. However, while this liberality is not to be condemned, inasmuch as all the appropriations then made were urgently demanded in order to increase the efficiency, and enlarge the benefits of our public institutions, especially of our public schools, it ought not to be taken as a criterion for future action unless justified by public necessity.

The following is a summary of the assets and liabilities of the State, and of the investments for the benefit of the general fund as well as those for the benefit of the school fund:

#### ASSETS.

##### Investments, Benefit of General Fund.

###### Bank Stock.—Par Value \$200.00.

20 shares National Bank of Delaware, at \$500 per share . . .	\$ 10,000 00	
	<u>          </u>	\$ 10,000 00

###### Mortgages.

Junction and Breakwater Railroad Company, at 3 per cent . . .	\$185,000 00	
Breakwater and Frankford Railroad Company, at 3 per cent. . . .	200,000 00	
	<u>          </u>	385,000 00

##### Benefit of School Fund.

###### Bank Stock.

5,700 shares Farmers' Bank at \$122.50 per share . . . . .	\$698,100 00	
254 shares Union National Bank at \$88 per share . . . . .	22,352 00	
114 shares National Bank of Smyrna, at \$65 per share . . . . .	7,410 00	

37 shares National Bank of Delaware, at \$430 per share. . . .	15,910 00	
	<hr/>	743,772 00

## Bonds.

One bond, State of Delaware, at 6 per cent . . . . .	\$156,750 00	
	<hr/>	156,750 00
Surrendered bank stock, Farmers' Bank . . . . .		22,035 00
Cash in treasury, November 30, 1902 . . . . .		82,811 12
		<hr/>
		\$1,400,368 12

It is well to observe that in addition to the assets just stated the State has expended, within the last few years, for buildings of public institutions the sum of at least \$200,000.

## LIABILITIES.

250 bonds, \$1,000 each, at 3 per cent., issue of 1887, payable June 1, 1907, redeemable at option of the State on any June 1, or December 1, in or after 1897 . . . . .	\$250,000 00	
75 bonds, \$1,000 each, at 4 per cent., issue of 1891, payable July 1, 1901, redeemable at option of the State on July 1, or January 1, in or after 1893 . . . . .	75,000 00	
35 bonds, \$1,000 each, at 3½ per cent., issue of 1895, payable July 1, 1915, redeemable at option of the State on any January 1, in or after 1906 . . . . .	35,000 00	
245 bonds, \$1,000 each, at 3 per cent., issue of 1897, payable December 1, 1927, redeemable at option of the State on any June 1, or December 1, after December 1, 1922 . . . . .	245,000 00	
	<hr/>	605,000 00
One bond State of Delaware to School Fund, at 6 per cent., issued July 1, 1881, payable July 1, 1906, \$156,750 00		

Certificate of indebtedness to trustees  
of Delaware College at 6 per cent.,  
perpetual . . . . .

83,000 00

239,750 00

\$ 844,750 00

Total assets . . . . . \$1,400,368 12

Total liabilities . . . . . 844,750 00

\$ 555,618 12

From estimates made by the State Treasurer the receipts  
and expenditures for the year 1903 will approximate as follows:

#### General Fund.

Receipts of the General Fund . . . . . \$450,000 00

Estimated Expenditures . . . . . 350,000 00

#### School Fund.

#### Estimated Receipts.

Income from Investments . . . . . \$ 25,081 56

Appropriation from General Fund . . . . . 120,000 00

Total . . . . . \$145,081 56

For a more particular account of the receipts and expenditures of the State, for the two years past, I refer you to the report which will be submitted to you by the State Treasurer.

I desire further to call your attention to a brief comparative statement of the income derived from the operation of the General Corporation Law, passed in 1899, and the annual franchise tax derived from the corporations created thereby.

#### Corporation Tax collected by Secretary of State.

For the year 1899 . . . . . \$ 67,550 45

For the year 1900 . . . . . 41,504 58

For the year 1901 . . . . . 49,718 06

For the year 1902 . . . . . 72,657 20

#### Annual Franchise Tax collected by the State Treasurer.

For the year 1899 . . . . . \$ 8,307 95

For the year 1900 . . . . . 25,865 10



For the year 1901 . . . . . 37,310 52

The amount of annual franchise tax given in the above statement for the year 1901, includes only the tax collected by the State Treasurer up to December 1, 1902. It must be noted that the amount of the annual franchise tax for the year 1902 is not known, inasmuch as the tax has not been assessed, and therefore has not been collected, but will approximate \$50,000 if the above ratio is maintained, which there is no reason to doubt.

### EDUCATION.

From the earliest period of the history of this State, public education has received an attention in keeping with the wisdom of those who framed our institutions. At no time has this attention lessened. On the contrary, an increased interest has been manifested, especially in the last decade, by the most thoughtful among us, both men and women, who regard the perpetuity of our institutions as commensurate with the diffusion of intelligence among the people—a work necessarily for the State itself. A few under all conditions and under all governments will seek knowledge for its own sake. The majority of the people must have the means provided for them, and be incited even, to the acquisition of knowledge—the best safeguard to the State and to society generally. This provision is found in our common school system, which furnishes all the necessary facilities of a general character for mental training, and opens the doors of knowledge to all alike, regardless of the conditions of birth, circumstance or race.

At the last session of the General Assembly, an increased appropriation, amounting to \$120,000, was made to the Public School Fund, in addition to the income received from investments; \$25,000 to Delaware College, for the erection and repair of its buildings, in addition to the annual appropriation of \$20,000 for current expenses; \$6,000 for the erection and repair of buildings at the State College for Colored Students, in addition to the annual appropriation of \$5,000 for current expenses; and finally, an appropriation of \$6,000 annually, for two years, to be equally divided between the three counties, for the erection and repair of school houses for colored children, all of which reflects the deep and practical interest of the State in the subject of Public Education.

In continuation of this most commendable interest, I strong-

ly urge upon the Legislature the importance of renewing these appropriations, and if possible making additions thereto.

The appropriation for the General School Fund should be increased to \$135,000, in order that better teachers, at better salaries, may be secured; and the appropriation for the erection and repair of school houses for colored children, should be re-enacted for two years more, with a larger discretionary power vested in the County School Commissions for its expenditure. Those districts, the ablest in resource, have already taken advantage of the appropriation; those less able should have a greater assistance.

Other changes in our school laws, looking toward a more perfect system, will be presented by the State Board of Education, which will deserve your most serious consideration and approval.

#### CO-EDUCATION.

A growing sentiment is displayed among the people favoring equal opportunity for advanced education to the young of both sexes. This opportunity has already been provided for young men by Delaware College. To secure the same for young women a demand has been made in certain quarters for the erection and equipment of a State Normal School. This proposition seems in view of our present conditions to be unadvisable.

The State is small, the population therefore limited, and its ability to undertake the task of practically supporting two colleges is of doubtful propriety when one hitherto has taxed its resources. The better solution would be to open the doors of Delaware College to both sexes and give each of them equal advantages for mental training; or at least to establish therein, in addition to the other courses, a Normal School Course. The time is coming when the participation of women in all our civil affairs will be voluntarily sought as an infusion of indispensably new elements into our citizenship. The proper provision for this will be found in co-education, which has proved successful to a high degree in other States.

#### STATE LIBRARY COMMISSION.

The State Library Commission, created by the last Legislature, has, during its two years of existence, demonstrated the valuable character of this form of educational effort.

Notwithstanding it is in its incipency, it has made such progress, and has been attended by such popular approval, as to warrant the continued support of the State in its further development.

#### DEAF, DUMB, BLIND AND IMBECILE CHILDREN.

I desire very especially to call you attention to those unfortunates in our midst who have been deprived of certain faculties by the operation of natural laws. I refer to the deaf, dumb, blind and feeble-minded children of the State. Very wisely and humanely a limited provision formerly has been made for their maintenance and instruction in institutions outside of this State. Our statutes practically divide these unfortunates into two classes, namely: The imbecile children having a greater or less impairment of the mental faculties; and the deaf, dumb and blind with impairment of certain special senses. As to the imbecile children the law now provides, "That not more than fourteen imbecile children from this State shall be provided for in the institution at the same time, and that not more than twenty-eight hundred dollars shall be paid by the State in any one year." The institution referred to in the paragraph quoted is "The Pennsylvania Training School for Feeble Minded Children," at Elwyn, Pa. As to the deaf, dumb and blind the number provided for is limited by the legislative appropriation, which, up to this time, has been inadequate to meet the demands of all applications.

It is unnecessary to argue at length upon the injustice of granting the aid of the State to fourteen imbecile children to the exclusion of others who have an equal claim to such aid and to an equal opportunity for mental improvement. The same observation can be made as to the deaf, dumb and blind. Owing to our limited population it would be inadvisable to erect institutions and supply them with skilled instructors, (an evidently greater expense to the State than the practice now adopted,) but the Legislature should make appropriations sufficiently large to provide for all of these unfortunates, and not for those only who make prior applications. I therefore recommend the repeal of the limitation upon the number of imbecile children admitted into the Pennsylvania Training School for Feeble Minded Children, at Elwyn, Pa.; and that a sufficient appropriation be granted to provide for all the deaf, dumb and blind capable of improvement who may make application.

I submit herewith, the report of Dr. John J. Black, the State custodian of these children, and invite your attention especially to the fact that several of these unfortunates are shown by this report to be incapable of any improvement whatever.

The law should be amended, giving the Governor or some competent authority, power to remove at any time any inmate of these institutions, who by experience, is shown to be incapable of instruction and of sufficient improvement to warrant their longer retention—it being borne in mind that these institutions, within the contemplation of our statutes, are not asylums, but are schools for improvement only.

The appropriation of \$7,000 annually, for the two years past, made by the Legislature for the maintenance of these wards of the State, has not been overdrawn during this administration, and there is consequently no deficiency.

#### THE STATE HOSPITAL AT FARNHURST.

This institution is under able and intelligent management. It is of greater magnitude than any other of a public character in this State, and it might be said the most expensive one, without in any way reflecting upon its administration by the Board of Trustees. When, however, it was first projected, its most ardent advocate computed the maximum cost of its maintenance at not more than \$30,000 per annum. At the last session of the Legislature however, an appropriation was made of \$17,000, to discharge debts previously created to that amount, and the further sum of \$53,500 per annum, for two years, for current expenses. This shows an increase of nearly one hundred per cent. for current expenses above the original estimates.

The object of these statements is to bring to the attention of the Legislature the fact that this increase is undoubtedly due to the admission of a large number of inmates, who, under the scope of the law creating this institution, have no right of admission.

The State Hospital at Farnhurst was primarily in its conception a "Hospital"—and for the insane only, and it might be said, for the curable insane. The certificate of admission must state, that in the sworn judgment of the two examining physicians, "the disease of the person is of such a character as requires, in their judgment, hospital treatment," conveying beyond doubt the implication that incurable cases were not contem-

plated by the law. Unless a more rigid scrutiny be had as to the admission of patients into this institution, the expenses of its maintenance will be one of rapid increase.

### STATE BOARD OF HEALTH.

At the time of its creation the State Board of Health was quite generally regarded as useless, the result of a desire to increase the number of public officials and to multiply expense by new offices. This opinion has quite as generally been abandoned. The principles that underlie the operations of this function of our State government are those of medicine. No science probably has developed so rapidly or so benignly for mankind. Scourges deadly and full of terror, that once decimated whole communities, have with greater knowledge been met and successfully resisted. The origin of Disease, the laws of Sanitation, of Prophylaxis, of Segregation of the infected and of general Therapeutics are more definitely comprehended and as a result the life of man increased and made happier.

What in a measure the physician is to the household, the Board of Health is to the State. There is no function of intelligent civil action as inexpensive to the people joined with a greater benefit. This has been amply demonstrated in the capacity, intelligence and devotion of the members of the Board of Health in its successful efforts to arrest and stamp out the recent invasion of the dreaded scourge, smallpox, during the last year.

I herewith submit the twelfth biennial report of the State Board of Health with the recommendation that whatever reasonable increase of appropriation for the better equipment thereof is asked for should be cheerfully granted.

### SANATORIUM FOR CONSUMPTIVES.

The advisability of establishing a sanatorium for the cure and the eradication of the most prevalent scourge, by which human life is endangered, known in modern science as tuberculosis, should command at your hands the most serious consideration. The possession of health to men is one of the most inestimable blessings. The infliction of fatal, loathsome and lingering disease, the most grievous of burdens imposed upon man. No more beneficent, philanthropic, intelligent enterprise could be undertaken than that which seeks to alleviate pain and suffering, to guard the well and uninfected from contamination

by a deadly disease, and to restore to health and strength those already suffering and infected.

I commend to each member of the General Assembly the personal perusal and consideration of a very able brochure recently issued by John J. Black, M. D., of New Castle, entitled "Consumptives in Delaware," which will show that this question is receiving very practicable and earnest consideration at the hands of philanthropists and the Legislatures of other States.

### ELECTIONS.

The present election laws of this State have with one exception completely disappointed the expectations centered in the Australian Ballot system.

Practically the only good feature as compared with the old method of voting was the introduction of the booth and what might be termed the police regulations surrounding the polls which undoubtedly have made the elections of this State much freer from public disturbance.

Time has effectually shown the unpopularity of the payment of a registration fee as one of the constitutional conditions precedent to the exercise of the elective franchise. The imposition of this tax has not met the expectation of those who placed it among the provisions of the Constitution, in order that, by limiting the suffrage, elections might be raised to a higher standard. The registration fee imposed upon the voter should be abolished. It is vexatious to the people, and tends to increase rather than diminish the obligation of a certain class of voters upon those more able to pay it.

The requirement of a biennial registration of all the voters might be amended with great accommodation to the people and without in any way bringing injury to the State. The very large percentage of the voters of each district are permanent citizens therein and should be upon permanent registration lists. Registration boards should chiefly sit, after a general registration has once been had, for the purpose only of making those corrections brought about by death, removal, crime, age and change of residence. As it now is, many citizens lose their elective franchise because of absence from the State at the time of registration or by sickness and other causes. Very often they can only acquire the right to vote by staying within the State during the registration period, to the sacrifice of important business in-

terests. A permanent registration would obviate these difficulties.

### NATIONAL GUARD.

Liberal provision should be made for the National Guard of this State.

A thoroughly equipped and well drilled body of Militia is both a protection against domestic disturbance, as well as an indispensable nucleus for defense against invasion by a foreign enemy. In the early history of the country the environment of almost every citizen made him a capable soldier, ready at a minute's notice for defence against the foe. Changes of time and conditions make it imperative that a military organization should be permanently maintained to secure the same protection.

The recent encampment of the National Guard of Delaware, held at Newark, shows that an encampment can be held with credit to all engaged, and with a thoroughly honest expenditure of the money of the State.

I earnestly recommend that the National Guard of Delaware be increased to twelve companies; that they be given an appropriation for the purpose of defraying the expenses of a yearly encampment; that they be considered in the light of a State and National necessity, and encouraged to perfect their organization until it reaches the highest state of efficiency.

### THE NATIONAL FLAG.

The State, upon whose soil the Stars and Stripes first floated upon the field of battle, should pass such legislation as to effectually prevent (within its own borders) its desecration by the soulless advertiser, or by any other means involving it in contemptuous disrespect.

### COOCH'S BRIDGE MONUMENT.

The patriotic societies of this State have erected a monument at Cooch's Bridge to mark the spot where the Stars and Stripes were first unfurled in battle. The action of these societies deserves the commendation of every loyal citizen. The spot so distinguished should be carefully guarded and protected in the years to come. This can best be done by a proper recognition on the part of the State.

I therefore earnestly recommend that a commission for this purpose be created by this Legislature, consisting of three persons to be commissioned by the Governor, through the recommendation of the patriotic societies, with the power thereafter of perpetual succession to the commission itself, giving therewith such ample authority as will enable it to carry out the purpose of the societies so deeply interested in patriotic work in our State.

When it is remembered that the State was at no expense for the designing or the erection of this monument, and that the commission asks no remuneration for the performance of the duties that would devolve upon it by its creation, no good reason exists why this recommendation should not be complied with.

### THE LOUISIANA PURCHASE EXPOSITION.

The present year, one thousand nine hundred and three, marks one of the most important events of the history of the United States, the cession by France on April 30th, eighteen hundred and three, of what was known as the territory of Louisiana.

Commemorative of the acquisition of that vast territory from which has been carved thirteen States and two territories, a great exposition will be held at St. Louis, Missouri, called the "Louisiana Purchase Exposition." It is peculiarly fitting that this great event should be celebrated, because the purchase of the Louisiana Territory, in that it gave us a country stretching from the Atlantic to the Pacific and secured to us the untrammelled control of that all important waterway, the Mississippi River, was the stepping stone to our present unrivalled prosperity and position as a world power.

Stupendous efforts are being made to make this exposition eclipse all its predecessors. The greatest opportunity of modern times is offered to bring our sister States and the United States in competition and comparison with other nations of the world. The National Government has already appropriated nearly six millions of dollars in furtherance of this worthy enterprise, and twenty-five States and territories, including our most recent acquisitions, Porto Rico and the Philippine Islands, have made liberal appropriations that material proof of their civilization may be shown to the world. Productions and manufactures, representative of the highest skill of all corners of the earth, will be



exhibited, in emulous rivalry. It is expected that every State and territory of the United States at least will join in making this exposition a success. And I respectfully urge upon the members of this Legislature to make suitable provision for the erection of a State building and the collection of a representative exhibit, that we may keep pace with our sister States.

### SALARIED OFFICERS.

The question of the emolument of public officers has been often discussed in this State especially since the adoption of the present Constitution.

Owing to the necessity for competent public officials as indispensable adjuncts to the administration of public affairs, and the uncertain amount of business incident to any one of these civil functions, the fees received vary to such an extent that the most important offices have at times the least remuneration, and thereby the public service suffers. In view of this fact it seems advisable to place all offices upon a salaried basis, as rapidly as it can be done in accordance with the restrictions of the Constitution, as a more equitable and stable solution of the question, whether viewed from the standpoint of the State or from that of the office-holder himself.

### WORKHOUSE.

The proper disposition of convicted criminals while serving long terms of imprisonment commands the most thoughtful consideration. The problem is one of economy and obligation; of economy, inasmuch as the cost of maintenance of the convict is a burden upon the people; of obligation, inasmuch as it is clearly the duty of the State to surround him with an environment that will preserve his health and to some extent restore his morals, in the event of his again becoming a part of the body politic.

Hitherto imprisonment in this State has been synonymous with absolute idleness, a condition at once an expense to the taxpayer and a source of further deterioration to the convict. The duty of self-support does not end because the laws of the State have been broken. The only remedy so far found is that of labor—the first law imposed upon humanity. By this means the convicted criminal becomes almost, if not quite, self-supporting, and during his confinement has the most healthful stimulant to a sound body, and to the restoration of sound character.

I, therefore, strongly urge upon the Legislature the erection of a workhouse as a State institution for the employment of long-term convicts where they can be the most profitably employed; or, if more feasible, the purchase by the State of the grounds and buildings of the New Castle County Workhouse now in operation in that county.

The proposition advanced to provide by law for boarding at so much per diem the long-term convicts of Kent and Sussex Counties in the New Castle County Workhouse is not a proper solution of this matter. The question is one that concerns the whole State, and a workhouse should therefore be a State institution, under the control of the State and not under that of a county, subject as the latter would necessarily be to vexatious contentions as to cost of maintenance, payments therefor, and other disputes that might naturally arise.

### GOOD ROADS.

One of the most serious subjects that will doubtless come before you for legislation, will be that of improvement of the public roads. This question is known throughout the various States of the Union as the "Good Roads" question, and has been and is now receiving the attention of the most thoughtful and intelligent citizens, because of its supreme importance, not as a question of convenience or of comfort, or even of aesthetical improvement, but one of the most practical character from the standpoint of utility and economics. The present system (if any we have can be called such) is preeminently one of inadequacy and monetary waste. The methods now employed are antiquated and useless, being those employed for a century or more ago, with some few exceptions, where a superior enterprise of some locality has led to the adoption of somewhat more efficient processes and the use of better materials. No argument is necessary to determine the advantages to the people of macadamized roads. They are at once useful, beautiful and permanent, and therefore, in the long run, economical. No public enterprise can be undertaken in this State that will bring happier results to all the people. Land will necessarily be enhanced in value; agriculture made more remunerative and pleasurable; public intercourse facilitated; and the advent of people from other States largely promoted both as visitors and permanent residents. No State in the Union has a more favorable geographical configuration, being as it is long and narrow; nor a

topographical conformation more advantageous for economical road building, by reason of the character of its soil and its generally level surface.

The recommendations made upon this subject at the time of my inauguration, I repeat with all the greater insistence, as time has only increased the strength of convictions then held. The State should borrow an amount sufficient to construct at once a public highway of macadam from its northernmost to its southernmost boundary. Its construction should be placed in the hands of a skilled and practical expert, with a road commission to supervise the work. A sinking fund should be created from the public revenue to provide for the interest on the debt created, and to lessen this debt annually. This will give the present generation a heritage in its benefits, and impose justly some of the burden of the cost of its construction upon the generations to come.

#### LOCAL OPTION.

The Constitution provides that the question "whether the manufacture and sale of intoxicating liquors shall be licensed or prohibited" in any district of the State, may be submitted to a majority vote of the people by legislative provision.

It further provides that the submission of this question in any district shall be provided for by the Legislature whenever "a majority of all the members elected to each House of the General Assembly by the qualified electors in any district" shall request it.

There are thus two methods, or rather sources of initiative, in securing for the people the opportunity to express their desire upon this subject.

I recommend that this issue be referred to the people—who have a constitutional right to self-government in this as in all other matters affecting the welfare of this State.

#### FISH AND OYSTERS.

Legislation previously enacted for the regulation and preservation of fish and oysters, is involved in such inextricable confusion by reason of its multitudinous character, that it is the imperative duty of this Legislature to repeal the present laws, and enact others of a simple and practicable character, applicable alike to all the waters within the boundaries of the State.

Or if this be inadvisable for want of fuller knowledge, I recommend that a commission be created to inquire into the license laws and police regulations now existing, as well as into the actual condition of our fisheries and oyster beds, and to make report to the next Legislature, embodying therein the result of their investigation, and such suggestions as may seem to it to form the basis for proper legislation for the conservation of these most invaluable interests. Some wise action is imperative, if proper protection is to be given thereto.

The entire eastern boundary of Delaware is penetrated by numerous creeks and rivers, not to mention the waters of Delaware Bay itself, in all of which are found the most valuable food products in great abundance. This abundance, furnished almost entirely by nature, without cultivation, needs the utmost care, that its benefits may be preserved to the people in future generations.

#### PUBLICATION OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION.

I would suggest to the members of the General Assembly the propriety of publishing the proceedings of the last Constitutional Convention. The information would be a matter of not only general interest to the people at large but of especial interest, convenience and use to the courts, the bar and litigants generally in making clear the intent of the framers of our organic law.

#### INTERSTATE RELATIONS.

This State is at peace with the other States of the Union. Nothing exists in the nature of a serious dispute to disturb this peaceful condition. The only question at issue is the old one of disputed boundary between this State and the State of New Jersey. This has been argued at great length before the Supreme Court of the United States, which will eventually make a final and lawful settlement of the contention. Until this decision is rendered the Legislature should provide for maintaining the position of this State in the controversy.

I submit herewith the very able argument of the Attorney-General of this State, before the Supreme Court of the United States, upon this matter.

During the two years just past I have made twenty-five requisitions upon the Executives of other States, all of which were

duly honored; and have answered two requisitions made upon the Executive of this State.

### PARDONS, REPRIEVES AND REMISSIONS.

Obligatory to the provisions of the Constitution, I submit herewith a statement of the pardons, reprieves and remissions granted by me, with the reasons in full therefor.

### REPORTS.

I submit herewith the reports of the various departments of the State Government, for the fuller information of the General Assembly.

JOHN HUNN.

### LIST OF REPRIEVES, PARDONS AND REMISSIONS, BY THE GOVERNOR, FROM JANUARY 1, 1901, TO JANUARY 1, 1903.

This day, upon the recommendation of the Board of Pardons, the Governor granted a pardon unto Patrick McHugh, who was convicted at the November Term, A. D. 1900, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of breaking dwelling house with intent to commit larceny, and sentenced to pay a fine of one hundred dollars, to be whipped with twenty lashes and stand one hour in the pillory, and to be imprisoned for a term of two years, beginning on November 20, A. D. 1900, and ending on November 19, A. D. 1902, for the following reasons, viz.:

1. That the prisoner is suffering from a stricture of the Oesophagus that prevents him from swallowing anything but liquid or semi-liquid food.

And it appears from the certificate of Dr. John J. Black, the Jail Physician of New Castle County, that an artificial opening in his stomach may become necessary on account of progressive closing of the Oesophagus, and if pardoned he would be placed in the Marine Hospital as a discharged sailor who had served in the Spanish War.

2. That his pardon is recommended by the Chief Justice who sentenced him.

February 5, 1901.

This day, upon the recommendation of the Board of Pardons, the Governor granted a pardon unto George Henry Hutt and James Johnson, who were convicted at the May Term, A. D. 1892, of the Court of General Sessions of the Peace and Jail Delivery of the State of Delaware, in and for New Castle County, of the crime of murder in the second degree, and sentenced to forfeit and pay to the State of Delaware a fine of one thousand dollars each, to pay the costs of their prosecution, and be imprisoned during their natural lives, for the following reasons, viz:

1. That a fuller investigation and later development surrounding the history of the case have sufficed to create a reasonable doubt as to the guilt of the said Hutt and Johnson.

2. That the connection of the said Hutt and Johnson with the crime aforesaid has been almost wholly changed as far as the public sentiment of the community is concerned in which the aforesaid crime was committed.

3. And that the long term of imprisonment, to which the aforesaid Hutt and Johnson have been submitted, has been altogether sufficient.

May 16th, 1901.

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This day, the Governor respited Percy Smith, convicted at the May Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the sum of \$23.00 restitution money, the costs of prosecution, be whipped with ten lashes on Saturday, May 25th, A. D. 1901, between 10 o'clock A. M. and 2 o'clock P. M. and be imprisoned for the term of six months, commencing May 23, A. D. 1901, and ending November 22, A. D. 1901, of the whipping of lashes for thirty days.

May 24, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a pardon unto Jeremiah Harrigan, convicted at the November Term, A. D. 1881, of the Court of Oyer and Terminer, in and for New Castle County, of the crime of murder in the first degree, and sentenced to be hanged, by the neck until dead, on the twenty-fourth day of March, A. D. 1882, and on March 24th, A. D. 1891, the said Jeremiah Harri-

gan having been respited until the last Friday in March, A. D. 1950, for the following reasons, viz:

1. That the Hon. George Gray, then the Attorney General, has recommended the pardon. That all of the surviving jurors have likewise so recommended, because in their judgment, and in the light of facts subsequently ascertained, the extreme penalty of the law was a miscarriage of justice, and that his imprisonment of twenty years has expiated his offence.

June 4, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor commuted the sentence of Percy Smith, convicted at the May Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the sum of \$23.00 restitution money, the costs of prosecution, be whipped with ten lashes on Saturday, May 25th, A. D. 1901, between 10 o'clock A. M. and 2 o'clock P. M., and be imprisoned for the term of six months, commencing May 23, A. D. 1901, and ending November 22, A. D. 1901, by the removal of so much thereof as relates to whipping, having granted a respite thereof until June 23, A. D. 1901, for the following reasons, viz:

That the aforesaid Percy Smith is a youth, and that in the judgment of the Board of Pardons, that part of the sentence that relates to whipping can well be commuted, without detriment to the interests of the public.

June 4, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a pardon unto Percy Smith, convicted at the May Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the sum of \$23.00 restitution money, the costs of prosecution, be whipped with ten lashes on Saturday, May 25th, A. D. 1901, between 10 o'clock A. M. and 2 o'clock P. M., and be imprisoned for the term of six months, commencing May 23, A. D. 1901, and ending November 22, A. D. 1901, (the Governor having commuted the sentence by the removal of the lashes) for the following reasons, viz:

1. Because of the extreme youth of the said Percy Smith,

he being only 15 years of age; and because of the circumstances surrounding his case, which have been brought to the knowledge of the Board, and which were not presented to the Court at the time of his conviction.

July 2, 1901.

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This day, the Governor respited George Welsh, convicted at the September Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in any for New Castle County, of the crime of larceny, and sentenced to pay a fine, costs of prosecution, imprisoned, and to be whipped with five lashes, on Saturday, September 21, 1901, of the lashes imposed, until after the meeting of the Board of Pardons, the first Tuesday in October, 1901.

September 21, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor commuted the sentence of George Welsh, convicted at the September Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay a fine, costs of prosecution, to be imprisoned and to be whipped with five lashes on Saturday, September 21, 1901, (the Governor having respited the said George Welsh until after the meeting of the said Board, that part of his sentence relating to the lashes) for the following reasons, viz:

1. At the solicitation of the Attorney General by reason of assistance rendered the State by the revelations of the said Welsh.

October 1, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a full pardon unto Albert H. Palmer, convicted at the November Term, A. D. 1900, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the sum of one hundred dollars restitution money, a fine of two hundred dollars, pay the costs of prosecution, and be imprisoned for the period of four years, commencing November 27, 1900, and ending November 26, 1904, for the following reasons, vix:



1. Because upon the affidavits of the Jail Physican, and of Dr. John J. Black, that the said Palmer is suffering from Acute Progressive Muscular Atrophy, and that further imprisonment endangers his life.

October 1, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a full pardon unto Cyril B. Varian, convicted at the February Term, A. D. 1900, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of using female child for immoral purposes, and sentenced to forfeit and pay to the State of Delaware a fine of one thousand dollars, pay the costs of prosecution, and be imprisoned for the period of five years, commencing February 6, 1900, and ending February 5, 1905, for the following reasons, viz:

Because in the sworn opinion of the Jail Physican, he is on the point of contracting Tuberculosis, and because evidence has been produced before the Board of former good character, and other facts which, if produced at the time of trial, would have mitigated his sentence.

November 5, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor commuted the sentence of William Decker, convicted at the October Term, A. D. 1901, of the Court of General Sessions of the State of Delaware in and for Kent County, of the crime of larceny, and sentenced to pay to John H. Ross the sum of \$137.25, that he pay a fine of \$100, that he pay the costs of prosecution, that on Saturday, the 9th day of November, 1901, between the hours of 10 A. M. and 2 P. M. he be whipped with twenty lashes; stand in the pillory one hour and be imprisoned one year, commencing the 29th day of November, 1901, and ending the 28th day of October, 1902, by the removal of that part which relates to the pillory for the following reasons, viz:

On account of his present physical condition, characterized by fainting spells, associated with functional heart trouble.

November 5, 1901.

This day, the Governor respited James Cloner, convicted at the November Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to be whipped with ten lashes on Saturday, November 30, 1901, be imprisoned one year, commencing November 26, 1901, and ending November 25, 1902, and pay the costs of prosecution, of the lashes imposed until after the meeting of the Board of Pardons, the first Tuesday in December, 1901.

November 27, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor commuted the sentence of James Cloner, convicted at the November Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to be whipped with ten lashes, and to be imprisoned for one year, commencing November 26, 1901, and ending November 25, 1902, and pay the costs of prosecution (the Governor, having respited the said James Cloner of that part of his sentence relating to the lashes, until after the meeting of the Board of Pardons, the first Tuesday in December, 1901,) for the following reasons, viz :

The establishment of his previous good character, which, being without counsel, he did not do at the time of his trial.

December 3, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor granted an unconditional pardon unto Horace S. Collins, convicted at the September Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of using female child for immoral purposes, and sentenced to pay the costs of prosecution and be imprisoned for the period of one year, commencing the 27th day of September, A. D. 1901, and ending the 26th day of September, 1902, for the following reasons, viz :

That every member of the Grand Jury recommended his pardon; that every member of the Petit Jury that convicted him recommended his pardon; that the additional proof of the bad character and untruthfulness of Cora Hall, the sole witness against him, was presented.

December 3, 1901.

This day, upon the recommendation of the Board of Pardons, the Governor granted an unconditional pardon unto Herbert Watson, convicted at the September Term, A. D. 1899, of the Court of the General Sessions of the State of Delaware, in and for New Castle County, of the crime of breaking dwelling house with intent to commit larceny, and sentenced to forfeit and pay to the State of Delaware a fine of five hundred dollars, pay the costs of prosecution, stand one hour in the pillory and be whipped with twenty lashes, and be imprisoned three years, commencing September 22, 1899, and ending September 21, 1902, for the following reasons, viz:

I. By reason of the affidavit of Dr. Joseph H. Chandler, a physician in Centreville, Delaware, to the effect that he has known the said Herbert Watson from his birth, and that he was not at the time of the commission of the crime, and is not now, mentally responsible.

December 10, 1901.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a pardon and restoration to citizenship unto William Gibbons, convicted at the November Term, A. D. 1892, of the Court of General Sessions of the Peace and Jail Delivery of the State of Delaware,, in and for New Castle County, of the crime of conspiracy, and sentenced to imprisonment for ten years, beginning January 22, 1892, and ending January 21, 1902, that he forfeit and pay a fine of \$1,000, pay the costs of prosecution and restitution money of \$14,000, be whipped with fifteen lashes and stand one hour in the pillory, for the following reasons, viz:

By reason of the recommendation of the Board of Trustees of the New Castle County Workhouse, in accordance with the provisions of Section 5, Chapter 247, Volume 21, Laws of Delaware.

January 6, 1902.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a pardon and restoration to citizenship unto Edward Lang, convicted at the September Term, A. D. 1901, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the sum of three dollars and fifty cents restitution

money, to be imprisoned for the term of four months, commencing on the eighteenth day of September, A. D. 1901, and ending on the seventeenth day of January, A. D. 1902, and pay the costs of prosecution, for the following reasons, viz:

That the Board of Trustees of the New Castle County Workhouse have filed with the Board of Pardons a statement of good conduct in compliance with the provisions of Section 5, Chapter 247, Volume 21, Laws of Delaware.

January 17, 1902.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a pardon unto James Porter, convicted at the September Term, A. D. 1899, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay a fine of \$1,123.62 to the Bavarian Brewing Company, to pay the costs of prosecution, to be whipped with twenty lashes, and to be imprisoned for the period of three years, commencing September 22, 1899, and ending September 21, 1902, for the following reasons, viz:

Because of the production of evidence showing an alibi, which the counsel attempted at the trial, but failed.

February 4, 1902.

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This day, the Governor respited William Gannon, convicted at the February Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the costs of prosecution, on Saturday, February 8, 1902, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon he be whipped with ten lashes, and imprisoned for the period of six months, commencing February 5, 1902, and ending August 4, 1902, of the lashes imposed until after the meeting of the Board of Pardons, the first Tuesday in March.

February 7, 1902.

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This day, the Governor respited Edward Mulvey, Jr., convicted at the February Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the costs of prose-

cution, on Saturday, February 15, 1902, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon he be whipped with five lashes, and be imprisoned for the period of one year, commencing February 6, 1902, and ending February 5, 1903, of the lashes imposed, until after the meeting of the Board of Pardons, the first Tuesday in March.

February 13, 1902.

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This day, upon the recommendation of the Board of Pardons, the Governor commuted the sentence of William Gannon, convicted at the February Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the sum of \$149.20 restitution money, that on Saturday, February 8, 1902, between the hours of ten A. M. and 2 P. M. he be whipped with ten lashes, and be imprisoned for the period of six months, commencing February 5, 1902, and ending August 4, 1902, and pay the costs of prosecution, (the Governor having respited the said William Gannon of that part of his sentence relating to the lashes, until after the meeting of the Board of Pardons, the first Tuesday in March), for the following reasons, viz:

The recommendation of a large number of citizens of the locality wherein he resided and of the prosecuting witness.

March 4, 1902.

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This day, the Governor respited Edward Mulvey, Jr., convicted at the February Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the costs of prosecution, on Saturday, February 15, 1902, between the hours of ten o'clock in the forenoon and two o'clock in the afternoon he be whipped with five lashes, and be imprisoned for the period of one year, commencing February 6, 1902, and ending February 5, 1903, of the lashes imposed, until after the meeting of the Board of Pardons, the first Tuesday in April, having respited said Mulvey, Jr., until after the first Tuesday in March.

March 4, 1902.

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This day, upon the recommendation of the Board of Pardons, the Governor commuted the sentence of Edward Mulvey, Jr., convicted at the February Term, A. D. 1902, of the Court of

General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay \$5.00 restitution money, that on Saturday, February 15th, 1902, between the hours of ten A. M. and 2 P. M., he be whipped with five lashes, be imprisoned for the period of one year, commencing February 6, 1902, and ending February 5, 1903, and pay the costs of prosecution, (the said Edward Mulvey, Jr., having been respited, by the removal of the lashes), for the following reasons, viz:

The said Edward Mulvey, Jr., being an epileptic, subject to convulsions, and the probable serious consequences of the infliction of corporal punishment thereunder.

April 1, 1902.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a full pardon unto Montyaloo A. Cole, convicted at the November Term, A. D. 1899, of the Court of Oyer and Terminer of the State of Delaware, in and for New Castle County, of the crime of manslaughter, and sentenced to forfeit and pay a fine of five hundred dollars, pay the costs of prosecution, and be imprisoned for the period of five years, commencing November 27, 1899, and ending November 26, 1904, for the following reasons, viz:

The increasing ill health of the said Montyaloo A. Cole, and the serious consequences to be apprehended from further imprisonment.

April 1, 1902.

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This day, the Governor respited John Heck, convicted at the May Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the costs of prosecution, on Saturday, May 24, 1902, he be whipped with ten lashes, and that he be imprisoned for the period of six months, commencing May 21, 1902, and ending November 20, 1902, of the lashes imposed, until after the first Tuesday in June, the meeting of the Board of Pardons.

May 22, 1902.

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This day, the Governor upon the recommendation of the Board of Pardons, commuted the sentence of John Heck, con-

victed at the May Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the costs of prosecution, that on Saturday, May 24, 1902, he be whipped with ten lashes, and that he be imprisoned for the period of six months, commencing May 21, 1902, and ending November 20, 1902, (the Governor having granted a respite thereof to the said John Heck of that part of his sentence relating to the lashes until after the meeting of the Board of Pardons, the first Tuesday in June), for the following reason, viz:

On account of his age.

June 3, 1902.

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This day, upon the recommendation of the Board of Pardons, the Governor commuted the sentence of Nehemiah Harmon, convicted at the April Term, A. D. 1902, of the Court of Oyer and Terminer of the State of Delaware, in and for Sussex County, of the crime of murder of the first degree, and sentenced to be taken to the prison of Sussex County and to be detained in custody until Friday, the 18th day of July, 1902, and on that day between the hours of ten o'clock in the forenoon and four o'clock in the afternoon he be hanged by the neck until dead, the sentence of the said Nehemiah Harmon to imprisonment for life, for the following reasons, viz:

Upon the written statement of the Hon. Charles B. Lore, Chief Justice, and Judges William C. Spruance and William H. Boyce, who tried the case, that the evidence did not warrant such a verdict.

June 3, 1902.

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This day, upon the recommendation of the Board of Pardons, the Governor granted a full pardon unto John Conohan, of New Castle County, by restoring to said Conohan his citizenship.

June 3, 1902.

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This day, the Governor, upon the recommendation of the Board of Pardons, granted a full pardon unto John H. Bennett, Jacob C. Wilson, Wilbur E. Mills and John R. Mills, convicted at the April Term, A. D. 1902, of the Court of General Sessions

of the State of Delaware, in and for Kent County, of the crime of assault and battery, and sentenced to imprisonment for the period of six months, commencing the first day of May, A. D. 1902, and ending the first day of November, A. D. 1902, and pay the costs of prosecution, for the following reasons, viz:

Because the aforesaid pardon will result in the public good.  
September 2, 1902.

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This day, the Governor respited John Cunningham, convicted at the September Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay costs of prosecution, that on Saturday, 20, 1902, between the hours of 10 A. M. and 2 P. M. he be whipped with ten lashes, and that he be imprisoned for the period of three months, commencing September 17, 1902, and ending December 16, 1902, of the lashes imposed, until after the meeting of the Board of Pardons. the first Tuesday in October.

September 18, 1902.

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This day, the Governor respited Herbert J. McColley, convicted at the September Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay costs of prosecution, that on Saturday, September 20, 1902, between the hours of 10 A. M. and 2 P. M. he be whipped with fifteen lashes, and that he be imprisoned for the period of two years, commencing September 18, 1902, and ending September 17, 1904, of the lashes imposed, until after the meeting of the Board of Pardons, the first Tuesday in October.

September 19, 1902.

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This day, the Governor, upon the recommendation of the Board of Pardons, commuted the sentence of John Cunningham, convicted at the September Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the costs of prosecution and the sum of 73 cents restitution money, that on Saturday, September 20, 1902, between the hours of 10 o'clock A. M. and 2 o'clock P. M. he be whipped with ten lashes,



and that he be imprisoned for the period of three months, commencing September 16, 1902, and ending December 15, 1902; the Governor having granted a respite thereof to the said John Cunningham of that part of his sentence relating to the lashes, until after the meeting of the Board of Pardons, the first Tuesday in October, for the following reasons, vix:

His extreme youth and the imprisonment being sufficient punishment.

October 7, 1902.

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This day, the Governor, upon the recommendation of the Board of Pardons, commuted the sentence of Herbert J. McColley, convicted at the September Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of larceny, and sentenced to pay the costs of prosecution, the sum of \$53.34 restitution money, that on Saturday, September 20, 1902, between the hours of 10 o'clock A. M. and 2 o'clock P. M. he be whipped with fifteen lashes, and that he be imprisoned for the period of two years, commencing September 18, 1902, and ending September 17, 1904; the Governor having granted a respite thereof to the said Herbert J. McColley, until after the meeting of the Board of Pardons, the first Tuesday in October, for the following reasons, viz:

His youth and his long term of imprisonment being sufficient punishment for the crime committed.

October 7, 1902.

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This day, the Governor respited Frederick Vansant, convicted at the September Term, A. D. 1902, of the Court of General Sessions of the State of Delaware, in and for New Castle County, of the crime of perjury, and sentenced to pay a fine of two thousand dollars, and on Saturday, October 18, 1902, he stand one hour in the pillory, of the pillory, until after the meeting of the Board of Pardons, the first Tuesday in December, 1902.

October 14, 1902.

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This day, the Governor, upon the recommendation of the Board of Pardons, commuted the sentence of Frederick Vansant, convicted at the September Term, A. D. 1902, of the Court

of General Sessions of the State of Delaware, in and for New Castle County, of the crime of perjury, and sentenced to pay a fine of two thousand dollars, to pay the costs of prosecution, and that he stand one hour in the pillory, on Saturday, October 18, 1902, between the hours of 10 o'clock A. M. and 2 o'clock P. M., the Governor having granted a respite thereof, to the said Frederick Vansant, of that part of his sentence relating to the pillory, until after the meeting of the Board of Pardons, the first Tuesday in December, for the following reasons, viz:

The infliction of said punishment would serve no good end.  
December 2, 1902.

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## BIENNIAL REPORT OF THE STATE BOARD OF EDUCATION OF DELAWARE.

To the Members of the General Assembly:

In compliance with the law, we have the honor to submit the Biennial Report of the State Board of Education.

JOHN HUNN.  
CALEB R. LAYTON.  
PURNAL B. NORMAN.  
GEORGE A. HARTER.  
ANDREW S. ELIASON.  
HERMAN P. HAZELL.  
JAMES B. GILCHRIST.

January 6, 1903.

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## REPORT OF THE STATE BOARD OF EDUCATION.

In making this report and the recommendations therein to your Honorable Body it would be doing you great injustice if we were to assume that a single one of your dissents from the proposition that money expended in schools is a good investment. Therefore it is not necessary for us to enter into formal argument to prove the utility and the necessity of a common school education. No course of reasoning is necessary to convince you of its high importance. Therefore without further remarks we enter upon the discussion of the subjects.

The method of distributing the school fund as adopted by the law of 1901 was a decided improvement on all former plans. The last State Board made an error in giving the number of teachers for Sussex County, thus making the dividend less than was anticipated. There are employed in New Castle County, outside of the City of Wilmington, 130 white and 29 colored teachers; in Kent County, 148 white and 34 colored; in Sussex County, 235 white and 35 colored; making in all 611. If we add to this 110 teachers, allowed to the City of Wilmington, we shall have 721, the number as the present basis of distribution. The dividend for each teacher in 1902 was \$232.20. Supposing that the present appropriation is a basis for next year an increase of \$13,000 would give a dividend of \$250 to each teacher. Making some allowance for decrease in annual income and for increase of teachers, we recommend that the annual appropriation be increased \$15,000, thus making the annual appropriation \$135,000.

Our duties as educators are fully discharged until we get the best results attainable for the money expended. There are still defects in our system that must be remedied. The isolated, ungraded school is the chief defect. It is getting more and more difficult to obtain and retain the services of competent and enthusiastic teachers for these ungraded schools. They are cut off from the care and supervision of the graded school, and the annual visit of the Superintendent, and the county and local institutes, are the only professional inspiration. Teachers are leaving these schools for positions in the graded schools even at a lower salary. We believe that a system of rural graded schools would in a great measure eliminate this defect. The idea is that of centralization, establishing a central school with as many departments as the conditions might require and providing for the transportation of the pupils at the public expense. Some of the advantages of this plan are:

1. Small and consequently uninteresting schools disappear.
2. Rural pupils have the advantages of a graded school, each department of which is taught by one who has made special preparation for that grade.
3. The transportation plan increases attendance.
4. Close supervision by a principal whose business it is to visit the departments.

5. In many places it would decrease the cost of the school and permit a lengthening of the term.

6. Improved sanitary conditions, better heated and ventilated buildings, and children less exposed to stormy weather.

Wherever this system has been tried it has met with general approval. Even in Pennsylvania, where the transportation feature would be most difficult, the plan is a success. We give two extracts to show that educators in close touch with rural schools are enthusiastic over the system:

Ex-State Superintendent, John R. Kirk, of Missouri, says:

"The consensus of opinion among the most competent judges all over America is that all such systems as ours, consisting of isolated and often impoverished, small school districts, should be abandoned, and the small districts consolidated into others at least four or five times as large as ours usually are. These enlarged districts should be arranged partly according to the conformation of the land. Our existing scheme is very expensive. We should have two, three, four and six room buildings at the centers of population in interest. With the consolidation of districts will come provision for conveying the children to and from school in covered wagons. I most respectfully beg my farmer friends to be considerate and not dismiss this question with an idle laugh, or an ill-timed facetious remark. The question is: Shall our country boys and girls be allowed advantages to compare with those furnished city children? The idea of transportation is not novel. The entire school system of New Jersey is organized on this basis. New England, Michigan, Ohio and some other States are working out the same idea."

The following is from the report of Dr. Shaeffer, Superintendent of Pennsylvania:

"At a few places the experiment has been tried with marked success. From the province of Victoria in Australia comes the report that 158 schools were closed by this plan, and that after deducting the cost of conveyance, the saving amounted to \$50,000 per annum. The minister of education says that the system as a marked success, and if there is one feature as to its working that stands out more prominently than another, it is the remarkable regularity of the attendance of the children conveyed. In several of the New England States which have tried the same experiment, the land in remote districts is said to have

risen in value instead of depreciating in the market, as it was predicted by those opposed to the closing of the schools near their own farms."

We submit this matter for your earnest consideration and recommend that the County School Commissions be given authority to select some locality in each county in which the rural graded system may be put into operation.

The original boundaries of the school districts in the State may have been just and equitable, but they have long since lost this virtue. Until the present school law all changes of property from one district to another was made by special act. So many changes were made in order that taxation might be reduced, and for other trivial reasons, that these divisions have lost all claim to justice. Some districts are poor and unable to support a school, and a low tax rate in an adjoining one adds to the dissatisfaction and creates opposition to the public school. Something must be done to remedy these inequalities. The State is liberal in its appropriation to the individual district, and she should see that these districts are so divided that the remaining burden is borne equally by all sections of the county. In order that these defects may be eradicated we recommend that the County School Commissions of each county be given power to join two or more districts or transfer property from one district to another for purpose of equalization, or whenever it is shown that any district has ceased to have a sufficient number of children of school age.

The appropriation by the last General Assembly of \$2,000 a year to each county for the purpose of building and repairing school houses for colored children has been of great help to many sections able to comply with the provisions. There are many districts too poor to meet the requirements. We therefore recommend that the sum of \$2,000 annually for two years be appropriated in each county for building, repairing and furnishing school houses for colored children, under such rules as the County School Commissions shall determine, and that the members of the County School Commission of each county be allowed compensation to the amount of \$50.00 each for superintending the building and furnishing these school houses.

Special training is necessary in any line of work. A person trained in the Normal School is better fitted to begin school work than a person without that training. Recognizing this

fact it is important that we offer Normal graduates the same honors as are accorded them in other States. We therefore recommend that you give the Superintendents power to grant a certificate to teach in the county to persons holding certificates of graduation from Normal Schools, good in other States, or holding diplomas from a respectable college.

To establish a Normal School in our State would cost forty or fifty thousand dollars and an annual appropriation of ten or twelve thousand dollars. You may not think it wise to make that outlay at this time, nevertheless something ought to be done by the State to give this training to those wishing to teach. Pennsylvania has thirteen liberally endowed Normal Schools within easy reach of our own State. We are in a position to take advantage of her liberality. We earnestly urge that you place \$1000 annually into the hands of each County School Commission, to be applied towards sending to a Normal School persons wishing to prepare for teaching in the State. Any person taking advantage of this offer must have passed the ninth grade in our schools and be recommended by the County Superintendent. No more than \$100 to be applied to any student in one year.

Our educational department should be put more in touch with those of other parts of the country. In order to do this our Superintendents should attend educational associations and investigate the improved system of instruction in other sections. The meagre salary paid them at present would not justify them in making this outlay. Hence we are deprived of all the benefits arising from associations and instructions of these meetings. Our Superintendents are paid less salary than some of the principals of the State. We most earnestly urge that their salaries be increased to at least \$1,200 annually. These positions must be filled by competent educators, and in order to obtain this class of men you must be more liberal in their support.

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## THE FIRST ANNUAL REPORT OF THE STATE BOARD OF AGRICULTURE.

To His Excellency, John Hunn, Governor of Delaware:

Pursuant to the Act of General Assembly, Chapter 216, Volume 21, Laws of Delaware, we beg to submit the report of

the State Board of Agriculture for the year ending December 31, 1901, the first annual report of this body.

The members of the Board received their commissions and were duly qualified early in February 1901, and the first meeting was held on February sixth, when an organization was affected by the election of S. H. Messick, President, and A. W. Slaymaker, Secretary. The Secretary was instructed to notify transportation companies of the provisions of the law regulating the transportation and delivery of nursery stock, in accordance with which action the following circular was issued and sent by mail to all transportation companies doing business in Delaware:

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"State Board of Agriculture,  
Dover, Delaware.

### RULES GOVERNING THE TRANSPORTATION OF NURSERY STOCK.

1. All trees, plants, shrubs, buds, grafts, vines or cuttings, commonly known as nursery stock, received for shipment within the State, or to points outside the State, or for delivery within the State, must have attached thereto a certificate from proper officer showing that the goods have been examined and found to be free from San Jose scale or other insect pests liable to be transferred from nursery to orchard.
2. When the shipment originates outside the State, a certificate from a duly qualified State officer of the State in which shipment originates, given not earlier than September 1, 1900, will be a proper certificate good until August 31, 1901.
3. When the shipment originates within the State, a certificate from Wesley Webb, inspector, given not earlier than September 1, 1900, will be a proper certificate good until August 31, 1901.
4. When such nursery stock is received by any agent of any transportation company without such certificate attached, notice should at once be given to the agent at point of shipment and to the State Board of Agriculture at Dover, by whom directions as to the disposition of the shipment will be given.

5. These rules apply to shipments by mail or express, as well as to other lines of transportation, operating in the State.

See Sections 13, 14 and 15, Chapter 216, Volume 21, Laws of Delaware, for penalty for failure to comply with these rules.

By order of the State Board of Agriculture,

A. W. SLAYMAKER, Secretary."

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A second meeting was held on February 20, and a third on March 12. At this meeting, Wesley Webb was elected corresponding secretary of the Board and also inspector of orchards and nurseries and was instructed to begin at once a vigorous campaign against the San Jose Scale; to examine all suspected premises as speedily as possible, and whenever any scale is found to recommend, and if necessary, to enforce the application of the most approved remedies to secure the extermination of the pest in the State. Mr. Webb was further instructed to provide the card system of keeping records and to make careful notes by this system of all his work and also to make written reports every week to each member of the Board.

Frequent meetings have been held by the Board during the year when all the work before it has been considered carefully and in detail.

These meetings have all been open to the public, and one meeting was held in Milford, namely, on June 18th, and all farmers, especially fruit growers, were invited to attend and express their views and make to the Board any suggestions which they might desire to offer. This meeting was more particularly for the discussion of the question of peach yellows. The funds at the command of the Board would not permit a general inspection of all the peach orchards in the State to discover the presence of yellows, but, following out the suggestions made at this meeting, the inspector was instructed to examine certain parts of the territory adjacent to Milford to determine the general condition of the orchards and to encourage the voluntary destruction of diseased trees. This inspection, covering over 40,000 trees showed that about 10 per cent. of the trees were diseased with yellows, but the malady, for the greater part, was confined to neglected orchards, in some of which more than half the trees were diseased and absolutely worthless. The majority of peach



orchardists examine their trees at least once or twice a year and voluntarily destroy those that are diseased. It is the intention to the Board to pursue this work against peach yellows to the utmost extent of funds available for this purpose. To this end a large edition of a circular letter was issued, worded as follows:

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Bulletin No. 2.

### THE STATE BOARD OF AGRICULTURE.

S. H. Messick, Bridgeville, President.

A. W. Slaymaker, Camden, Secretary.

J. T. Shallcross, Middletown.

### THE PEACH YELLOWS LAW.

The Duty of the Board.—Trees Must Be Destroyed.

The State Board of Agriculture is required by the constitution, and by the laws made in conformity therewith, to abate and prevent plant diseases and insect pests. For half a generation the peach growers of Delaware have felt the need of concerted action to check the spread of the peach yellows. A tree diseased with yellows is worthless and the contagion is sure to spread from it, from tree to tree, from orchard to orchard, and the sooner such tree is destroyed the better. These facts led to a demand from the growers for a law that would ensure the speedy destruction of the diseased trees, and several years ago the Legislature provided such a law for a portion of the State. Wherever this law was operative the results were plainly and strikingly beneficial. When the new constitution was framed there was such a strong demand from the growers that provision was made for a Board of Agriculture with specific authority to eradicate plant diseases and insect pests. In due time the Legislature agreed upon the proper form of law to meet the constitutional requirement. This law makes it the duty of the Board to suppress and eradicate the peach yellows, and to make rules and regulations to accomplish that purpose. It is therefore now directed by the Board that all peach trees diseased with the yellows shall be destroyed by cutting off the tops at the earliest practical moment, and that all stumps, trunks and branches of such diseased trees shall be destroyed by fire before the first day of March, 1902.

Inspections of orchards will be made as rapidly as possible and all growers are requested to notify the Board of any violation of the law or of neglect to observe the above rule. Failure to obey the law or to carry out the directions of the Board will subject the owner and tenant to the penalties prescribed by the law.

### THE SAN JOSE SCALE.

Immediately upon its organization in March the Board commenced active operations to suppress the San Jose Scale. Transportation companies were notified that the law requires all nursery stock offered for transportation in Delaware to bear a valid certificate of inspection, and the companies have effectively enforced the law. Arrangements were also made for the inspection of all places known to be infested with the scale; and, by the active co-operation of the owners and tenants, with the efforts of the Board, rapid progress have been made in the eradication of this pest, so that it is confidently believed it is already under control. The work will be continued with vigor.

Dover, Del., July 1, 1901.

Copies of this circular were mailed to many peach growers and were otherwise distributed among the farmers.

One thousand copies of the law creating the Board and defining its duties were also printed, to be used as occasion demands, together with rules and regulations governing the transportation of necessary stock and the inspection, treatment and certification of nurseries, showing that nurserymen are required to fumigate all trees offered for sale. The nurserymen have provided fumigatories in accordance with the directions of the Board, which have been inspected and approved.

The inspections for San Jose Scale show infestations on about one hundred different premises in the State, many of them gardens with few trees or shrubs; others extensive orchards of peach, apple, pear, plum and other fruit and shade trees. There are cases of infestation in each of the three counties and while in some neighborhoods many of the young orchards are infested, in other places the cases may be ten or twenty miles apart. Many infested trees have been destroyed by axe and fire; others have been treated with a greater or less degree of success and all will be watched closely the coming spring and summer to

prevent the further spread of every orchard in the State as early as possible.

Early in the summer on outbreak of anthrax occurred in the lower part of New Castle County and its management was confided to Mr. Smallcross, the Commissioner from that county, by whom Dr. H. B. McDowell, of Middletown, was employed to give necessary expert attention. Dr. H. B. McDowell's report of the outbreak and the work done, which successfully and speedily suppressed it, is here given in detail.

Hon. JAMES T. SHALLCROSS,  
Commissioner of Agriculture.

I herewith submit my report as veterinarian in charge of the suppression of the outbreak of anthrax occurring in southern New Castle County, during the last summer.

When requested by you on behalf of your Board, on June 20th, to take charge of the work, I found the situation as follows:

There had been an outbreak of anthrax among a herd of cattle on the marshes belonging to H. S. Woodkeeper, near Taylor's Bridge, Blackbird Hundred; in this herd 12 head had died between the 10th and 21st of June; also on the marsh just across Blackbird Creek from Woodkeeper's, belonging to the farm tenanted by Harry Davis, where three head died.

The cattle pasturing on these marshes belonged to various owners, there being 38 head of cattle on Woodkeeper's marsh belonging to eight different owners, living in Blackbird Hundred and Appoquinimink, and 134 head on David's marsh, belonging to fourteen different owners. There was also 71 head of cattle pasturing on an adjoining marsh to David's, on the farm tenanted by N. Newman, that had been exposed to the cattle on David's marsh, these belonged to nine different owners.

Unfortunately, when the cattle commenced dying, Woodkeeper, David and Newman notified the owners that there was something wrong with the cattle and a great many of the owners came and took their cattle home, thus exposing almost all of Blackbird and Appoquinimink Hundreds to the contagion.

The outbreak on these marshes was undoubtedly traceable to an outbreak occurring there six years ago, when, before the

nature of the disease was known, some of the carcasses were allowed to lie exposed on the marshes; others were buried in shallow graves. Later in that attack, when the nature of the disease was known and the State, through Dr. A. T. Neale, had taken charge of the suppression of the disease, all carcasses were carefully cremated; where that was done there has been no further trouble.

The situation then, at this time, was a very grave one and seemed to call for the most energetic and thorough measures to cope with it.

After a conference with Dr. A. T. Neale, of our experiment station and yourself, and right here allow me to express our thanks to Dr. Neale for his great aid to us throughout this outbreak, we found him ever ready and willing to give us his aid and advice.

We found his suggestions invaluable; his previous experience in the disease and his deep research into the aetiology and the preventive treatment of it, made his advice very valuable.

At this conference we determined upon the following measures:

1st. The quarantining of all live stock that had been exposed to the contagion both directly through having been on the marshes and indirectly through having been exposed to those that had come from the marshes.

2nd. The inoculation which attenuated anthrax vaccine virus of all such stock, both cattle and horses.

3rd. The immediate cremation of all carcasses that had died of the disease.

4th. A close supervision over all stock that had been exposed, either directly or indirectly, and a constant watch over the exposed territory.

This work, as you can well imagine, called for an immense amount of work, covering as it did a territory nearly twenty miles by ten, and it was determined at once that I should have an assistant to carry out many of the details of the work that I found it impossible to look after myself. For this work, we selected Mr. S F. Shallcross, Jr., and we found him a very valuable aid to us in our work.

At this time we found the situation worse at the farm of Mr. V. O. Hill, near "The Tent," in Blackbird Hundred, than elsewhere. On our first visit there, we found the carcasses of seven head of cattle and twelve sheep in various stages of decomposition, lying on his meadow, there having been no effort whatever on the part of Mr. Hill to either bury or cremate the carcasses, and we found him so indifferent in regard to the matter that we determined that we would have to have the carcasses cremated ourselves, which we had done at once.

There were no other deaths from the disease until June 28th, when William H. Unrue, who had lost one on the Wood-keeper marsh, taking four others to his farm in the northwest part of Appoquinimink Hundred, nearly fifteen miles, lost three more cows in two days, and although these carcasses were well taken off, it (Unrue's) proved one of the worst sources of contagion we had to deal with, as taking it as a center, they lost twenty-two head of cattle and horses, on nine different farms, from the 28th day of June until the 12th of August.

In the prosecution of our inoculation work, there were inoculated 433 head of cattle and horses belonging to various owners, a list of whom I subjoin. There were also done for private account nearly 300 head. And to this inoculation work, together with the cremation of all carcasses and quarantining of infected herds, is our success due in suppressing the outbreak.

During this time we have held over 20 (twenty) post mortems on the bodies of suspected animals, our conclusions in every instance being confirmed on Pathological examination of the blood at our Experiment Station, Newark.

I have answered since I have had charge of this work over 150 calls to see suspected animals. Of course a great many of them were unfounded still at this time and in the infested territory it did not do to deny any. I have kept a constant supervision over all the territory, covering as it did a large part of Blackbird and Appoquinimink Hundreds and in one instance extending over into St. George's Hundred, and at this writing, September 1st, think the trouble is probably over for this year, but I would recommend to your Board that this territory should be carefully looked after next year, particularly those places where the attacks were the most virulent this year.

The following is a list of the cattle and horses inoculated by the State and also a list of the cattle, horses and sheep that died during the outbreak. Where the owner took the proper steps, as provided for in Chapter 451, Laws of Delaware of 1897, I have certified the facts to the Governor and trust that he will cause warrants to be issued to the owners as provided for in said act.

#### Horses and Cattle Inoculated.

James Dickson .....	36 head.
Cannon & Raymer .....	4 head.
T. Duhadaway .....	1 head.
H. David .....	26 head.
H. Woodkeeper .....	26 head.
Lee and Martin .....	10 head.
O. Hart .....	10 head.
George Shockley .....	4 head.
James Garten .....	1 head.
Nath. Newman .....	30 head.
V. O. Hill .....	21 head.
R. Rutledge .....	29 head.
Cornelius Davis .....	35 head.
S. J. Brockson .....	14 head.
Frank Burchard .....	12 head.
S. A. Collins .....	14 head.
S. Derrickson .....	11 head.
James Ginn .....	5 head.
Thomas Lattomus .....	32 head.
S. F. Smallcross .....	26 head.
James Smallcross .....	22 head.
M. Rothwell .....	16 head.
R. A. Cochran .....	48 head.

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433 head.

#### Cattle and Horses, Died During Outbreak.

V. O. Hill .....	13 head cattle.
V. O. Hill .....	16 head cattle.
A. Kelly .....	1 horse.
H. S. Woodkeeper .....	1 cow.
H. David .....	1 cow.
W. A. Alfrey .....	1 horse.
Benjamin Boyles .....	1 horse.

W. A. Unrue.....	4 cows.
John Tarbutton .....	2 horses.
Dr. Wright .....	2 horses.
Robert Ratledge .....	7 cows.
John Tarbutton .....	2 cows.
C. R. Davis .....	2 horses.
Thomas Lattomus .....	1 cow.
W. H. Staats .....	1 heifer.
R. A. Cochran.....	1 cow.
S. F. Smallcross.....	1 horse.
James Dickison .....	1 steer.
Daniel Keene .....	1 heifer.

Respectfully submitted,

H. B. McDOWELL, D. V. S.

Middletown, Del., Sept. 1901.

In accordance with Section 19 of the Act under which we are organized, we had printed 10,000 copies of an eight-page "Circular of Information," and had the same distributed to visitors at the Pan American Exposition.

Copies of this circular and such other documents as have been available have been sent to people from without the State who have written for such information. These letters have been numerous and the Board regret that we have not had a more extended and detailed report to send, that the desirability of Delaware as a home may be properly set before those who may desire to come here to live.

A summary of our expenses is herewith presented with vouchers.

#### Financial Statement.

Annual appropriation for the Commissioners.....	\$ 200.00
Annual appropriation for the work of the Board.....	1,000.00

#### Compensation and Expenses of Commissioners.

James T. Smallcross, New Castle County.....	\$66.66
A. W. Slaymaker, Kent County.....	66.66
S. H. Messick, Sussex County.....	66.68
1901.	
Apr. 3; Atlantic Refining Co., for oil.....	5.04

Apr. 23, the Sentinel Publishing Co.....	8.75
Apr. 23, Wesley Webb.....	51.86
May 20, Wesley Webb.....	48.00
June 5, Wesley Webb.....	46.69
June 5, the Sentinel Publishing Co.....	16.50
July 2, Wesley Webb.....	50.00
July 5, Wesley Webb.....	18.30
July 18, the Dover Index.....	52.65
July 18, the Sentinel Publishing Co.....	37.38
Aug. 5, Wesley Webb.....	68.65
Sept. 2, Wesley Webb.....	74.65
Sept. 18, the Dover Index.....	8.90
Oct. 2, Wesley Webb.....	68.95
Nov. 7, Wesley Webb.....	73.75
Dec. 4, Wesley Webb.....	73.65
Dec. 4, The Dover Index.....	6.80
Dec. 31, Wesley Webb.....	59.00
	<hr/> \$969.52
1902, Jan. 1, balance in hand.....	\$230.48

## SECOND ANNUAL REPORT OF THE STATE BOARD OF AGRICULTURE.

To His Excellency, Governor Hunn.

Sir—The work of the State Board of Agriculture during the second year of its existence has been prosecuted along the same lines as those pursued last year, and strictly in accordance with the law which created the Board. Meetings have been held at frequent intervals and careful consideration has been given to all matters that have come within our jurisdiction. The aim has been to secure the largest possible results from the meagre appropriation at our command.

The clerical or office work has increased rapidly during the year and its demands are imperative. Correspondence with the farmers of the State, who write upon a great variety of subjects, requires daily attention, and inquiries come from every State of the Union and from other countries which, in common courtesy,



must be answered promptly. To provide for this work the Board cast about for an office and by courtesy of the State Treasurer, it has had the use of his office in the State House, where we have placed a desk and other necessary office furniture. Here we have accumulated, during the short period of our occupancy of the room, reports from the State Boards of Agriculture, from the United States Department, and from other countries; bulletins from the experiment stations; and documents of various kinds from different sources. These contain valuable and necessary information upon the subjects with which we have to deal. While our present quarters serve us admirably, these facts indicate the necessity of provision for some suitable office where our clerical work can be done and where our papers and documents may be kept in a safe and convenient place, for we cannot always expect to trespass upon the office of the State Treasurer nor forever impose upon his generosity.

Our duties as prescribed by the Constitution, and the law which creates the Board, are stated in a general way to be as follows: The Board of Agriculture shall have and possess the power to abate, suppress, eradicate and prevent, by such means as shall be prescribed and provided by law or by rule, order or regulation of said Board, the San Jose Scale, peach yellows, pear blight and other contagious and infectious and injuriously dangerous diseases of fruit trees, plants, vegetables, cereals, horses, cattle and other farm animals; to devise such plans for securing immigration to this State of industrious and useful settlers as it may consider advisable, and to execute such plans in the manner prescribed by law.

Other duties are also prescribed by special sections of the law.

Fully and adequately to perform these duties would require much greater resources than have been given the Board and we have been compelled to confine our efforts to those things which were threatening most disastrously the agricultural interests of the State.

While it is explicitly stated in the Constitution that the Board shall have power to suppress and abate diseases of farm animals, the Legislature in arranging the details of the State enactment did not expressly provide means and methods by which this can be accomplished. But it left in force some acts of previous sessions of the General Assembly in which certain

powers and duties are vested in the Governor of the State. Under these acts, the members of the Board have been the agents of the Governor and whatever has been done in this direction has been done in execution of these older acts.

The chief disease to demand attention is anthrax of cattle, horses and mules; although calls have been received from all parts of the State for advice concerning bovine tuberculosis, swine plague and other troubles, and in cases where diseases of a contagious character have been suspected, veterinarians have been sent to make examinations.

Dr. H. B. McDowell, of Middletown, and Dr. Eves, of Wilmington, who successfully handled the outbreak of anthrax in New Castle County last year, were employed this season to vaccinate all the cattle, horses and mules in the infected territory where another outbreak was feared, and this precautionary measure appears to have been entirely successful so that no cases of this disease have appeared this year within the limits covered by this treatment. Dr. Eves attended to similar work near Wilmington.

The San Jose Scale insect has received more of our attention than all other insects, pests and diseases combined. As the inspections extended over the State new cases of infestation were found in considerable numbers so that it was decided to employ an assistant inspector, Mr. Webb having been continued as chief inspector the same as last year. Mr. H. C. Richardson of Kent County was selected as assistant and has been employed for about six months. We have been able to keep watch of all known cases of infestation, frequent visits by the inspectors to such places often being necessary; and to respond to all calls from all parts of the State. In addition, a considerable portion of Kent County and parts of New Castle and Sussex Counties have been covered by a systematic survey in which all orchards, old and young, of all kinds, have been examined tree by tree. The results have confirmed the fear that the San Jose Scale is pretty generally scattered over the State. While many of the younger orchards and nearly all of the older ones are entirely free from this pest, a considerable proportion of the young orchards, those under four or five years of age, are infested, and unless promptly treated are sure of speedy destruction.

The purpose of the Board has been to secure the most reliable information possible, from all available sources, especially

from the knowledge and experience of men, both orchardists and entomologists, who have been fighting this insect for several years and have been experimenting with various methods of treatment; and then by sending our inspectors wherever necessary to lay this information before the owners of infested trees; and advise them of the proper course to pursue. The Board has not advised the same course of procedure in all cases. When but few trees are affected in a young orchard, manifestly the best thing to do—the only sensible thing—is to destroy the infested trees at once. On the other hand, if the trouble is of long standing and has spread well through the orchard, the trees being yet in fair condition as to health and productiveness, they are no doubt worth saving; and vigorous, radical, thorough and immediate treatment is advised. In almost every instance the owners of orchards have hailed with pleasure the visits of the inspectors, and when the scale has been found upon their premises, they have gladly accepted the advice offered and have treated or destroyed their trees as expediency dictated. In some instances, however, they have not immediately appreciated the full importance of prompt and thorough measures, but the rapid progress of the trouble, which they have soon seen would surely utterly destroy all their orchards, has demonstrated sharply the necessity for action and the owners have then readily responded. A very few have continued to stand in their own light, until repeated visits by the inspector and a plain intimation that the law could not longer brook delays—that treatment must be made or the trees would be destroyed—has brought the desired result. The Board has not in any case felt called upon to invoke the application of the law through the courts.

While some portions of the State have been surveyed in a systematic manner the care of places known to be infested, and calls to examine suspected premises, have absorbed the greater part of our efforts.

By the active and cordial co-operation of the farmers, as above indicated, the results of this work have been as good as we had a right to expect. In many cases, especially where only a few young trees were infested, it is confidently believed that the scale has been eradicated, although it will not be safe to leave such places without examination for two or three years at least. Where thorough and repeated applications of approved sprays have been made the trouble has been reduced to a minimum. In some instances, whole orchards have been taken out

and burned. In all, the inspections have covered approximately 750,000 trees, and some of these have been examined several times during the year; of these 750,000 trees, 55,000 were found to be infested and nearly 25,000 of these have been destroyed. Treatment has extended to nearly all of the remaining trees, and in spraying the treatment is usually carried beyond the actual infestation, so that about 100,000 have been treated, the great majority of them with some form of coal oil emulsion. By these means a vast majority of the known cases are in a satisfactory condition, and in some of them the pest has been eradicated.

The results of different sprays have been watched with interest, and some experiments have been undertaken to determine the best and safest treatment. After an examination of the available information on the subject by the light of our own experience, a bulletin was issued—Bulletin No. 3—which contains a concise statement of the essentials in dealing with this pest. The bulletin is herewith transmitted.

It is probable that in the course of time insect and fungous enemies of the scale will appear in sufficient force to help hold it in check, but no immediate relief from this source can be expected. The Delaware Experiment Station has secured from the United States Department of Agriculture 50 of the Asiatic species of the Lady Bird Beetle and placed them in a suitable cage in a Kent County orchard. These will be watched with great interest and as they increase in numbers will be distributed in the infested districts of the State. This species multiplies rapidly and is very fond of the San Jose Scale, and perhaps offers more hope of relief than any other insect.

We cannot refrain from expressing regret that the attempt to control the San Jose Scale by suppressive legal measures and a systematic survey of the whole State was not begun several years earlier. A very large proportion of the cases of infestation are in orchards less than five years old, and in all instances where the orchards are but one or two years old the number of affected trees is very small, and these can be destroyed with trifling loss, and, what is more important, this secures the eradication of the scale. If this control had been inaugurated five years ago, a very large proportion of the damage already done might have been prevented and the situation at this time would be far less serious.

Some attention has been given to peach yellows, pear and apple blight; the strawberry root louse, codling moth, peach tree borers, and other troubles, but only incidentally to other work, not because there was no need or no call for it, but because the serious and extensive destruction threatened by the San Jose Scale overshadowed all these minor considerations.

These diseases exist, and the magnitude of the damage done by them demands that action shall be taken to lessen their ravages.

The damage done by insects and fungous diseases is enormous. It is difficult, perhaps, to estimate accurately its magnitude. Dr. Henry T. Fernald, State Entomologist of Massachusetts, and Prof. A. H. Kirkland were asked, independently, to estimate the damage done by insects in Massachusetts. Dr. Fernald placed the average at about 15 per cent. of the value of all farm products and, adding the cost of spraying, made the figures \$4,400,000. Professor Kirkland estimated the total damage at \$5,000,000; the percentage running from 5 per cent. in greenhouses and hot beds up to 25 per cent. to fruits, nuts and berries. The damage in Texas has been estimated, by high authority, to be not less than \$75,000,000 annually.

The census gives the total value of the agricultural products of Delaware in 1899 as \$9,220,777. In this year the fruit crop was almost a failure, the total value being placed at only \$562,180.

An average fruit crop is more like \$2,000,000 and the damage from insects runs all the way from probably 25 per cent. to 50 per cent.; and fungous troubles add so much that percentages are very hard to calculate. A better way is to consider what would happen if we had no such troubles; when our crops would be doubled and trebled. But on a fair basis, a conservative estimate would place the average injury from insects at about two million dollars and from fungous diseases at about another two millions, enough money every year to support all our public institutions; pay all the school teachers; all the running expenses of our entire State government, and then build good roads all over the State.

The law requires, "That the Board of Agriculture, whenever it shall receive reliable information, or shall otherwise know, that any dangerously injurious insect, pest or disease exists in

any tree, vine, shrub, plant or grain, anywhere in the State, shall, in addition to the other duties, acts and things herein prescribed to be done and performed by it, warn the farmers and other persons residing in the hundred in which any such insect, pest or disease exists, and also persons living near the infested places, of the nature of such insect, pest or disease, and the localities where it exists, and shall also furnish to the said farmers, and said other persons, any and all information and knowledge the said Board may have or be able to procure, of the remedies to be applied to suppress, abate and eradicate the said insects, pests or diseases." In order to carry out the intent of this section, the Board desires to publish circulars or bulletins setting forth the dangers and damages done by our most troublesome insects and diseases, together with the remedies therefor. The cost would not be excessive and the results would be a saving of many thousands of dollars annually.

Inspections have been made of all nurseries in the State and certificates granted according to law. The Board has adopted rules requiring the fumigation of all nursery stock before it is sold or shipped and has inspected the houses erected for this purpose to ascertain that they conform to the regulations and requirements that have been adopted. Some of the nursery men have adopted the plan of fumigating all buds and grafts before setting them. This precaution cannot be too highly commended nor can too much stress be laid upon care in every step of nursery management to make it certain that no infested stock goes upon the market or into the hands of planters. It is believed that proper fumigation will kill all scale insects; but this belief is not so absolute and the certainty of all fumigation being properly and completely done is not so unquestioned that it will be safe to allow any infested stock to escape destruction; and adequate fumigation, under the direct supervision of competent officials, should supplement all other inspections.

From the position that we hold as Commissioners of Agriculture, our attention has necessarily been called to the work of similar Boards in other States and we have been strongly impressed that many of these States are doing much more for their agricultural interests than we are in Delaware. We seem to be a little behind, but we have at least the nucleus of every organization and agency needed; we are making progress; a public spirit is developing through our college and experiment station, the Farmers' Institute and the Grange. A conference of these

agricultural organizations was held in Dover in November, when a day was devoted to the discussion of our most pressing and important problems, and at the close of the day, adjournment was had to a date in December, when the discussions were continued. A full account of this conference is appended to this report and we would recommend careful consideration by the General Assembly of the conclusions reached by this conference.

We have attended nearly all the meetings of the Farmers' Institute of the State, that we might give any needful information about the purpose and work of the Board.

### FINANCIAL STATEMENT.

The financial statement for the year is as follows:

1902,	
Jan. 1, balance.....	\$ 237.28
State appropriation .....	1200.00
	<hr/> \$1437.28

#### Expenditures.

Office furniture, printing, postage, steno-	
grapher .....	88.07
Spray pumps .....	35.00
Wesley Webb, salary.....	670.00
H. C. Richardson, salary, .....	204.00
H. C. Richardson, expenses.....	94.12
Wesley Webb, traveling expenses.....	99.40

#### Compensation of Commissioners.

S. H. Messick .....	66.66
A. W. Slaymaker .....	66.67
J. T. Shallcross.....	66.67
	<hr/> 1390.59

Jan. 1, 1903. Balance.....	46.69
Dover, Del., January 1, 1903.	

Bulletin No. 3.

### THE SAN JOSE SCALE.

The San Jose Scale is the worst pest that the orchardist has to fight. It is a minute insect, scarcely visible to the naked eye,

with a soft yellow body, protected by a waxy covering which prevents soapy and oily fluids from attacking it readily. Hence it is hard to kill.

It has wonderful powers of propagation. Each female may be the mother of 400 young, beginning to give birth to them when she is four weeks old; and these in turn become mothers in four weeks from birth, so that one female starting in spring may have before autumn a billion or two of descendants—more than a man could count in a hundred years, counting steadily ten hours a day.

This insect does not confine its injuries to one kind of fruit trees, but attacks nearly all of them. It is especially destructive to peaches, pears, apples and plums.

The State Board of Agriculture is doing everything possible with its present resources to help Delaware farmers fight against this insect. It sends men to examine orchards to determine whether the insect is present, and if found, to prescribe the best remedy and explain how to use it.

### THE REMEDIES.

Digging out the trees, root and branch, is in some cases advisable, namely, when the trees have already been made worthless, and again when only a few infested trees are found in a young orchard, say not more than two or three years old. When the scale has once become well established for several years, it is practically impossible to exterminate it even by cutting out the infested trees, unless the whole orchard is cut out. If the trees are not destroyed, they should be treated by spraying as soon as discovered, and at least twice a year. Two sprayings a year are better than one for several reasons, but one of the most important is that it is impossible to cover every part of the tree at one spraying, and if a single spot is missed thousands of the tiny insects will be left, to become a thousand billion before the summer is ended.

Anytime after the leaves fall is the time for the first treatment, and the second may be in March, or about the time that buds begin to swell. If two thorough sprayings are given every year the insect will be kept in check and the trees saved.

Coal oil, either crude or refined, may be used; and either as a mechanical emulsion, put on with a pump made for this pur-



pose, or as a soap emulsion. Or the crude oil may be used straight, but more material is required in this way.

The soap emulsion is made as follows: One gallon boiling water; one-half pound soap, any kind, well dissolved in the hot water; two gallons oil. Stir hard until they mix to form the emulsion. Add five gallons of water for a 25 per cent. emulsion or seven gallons for a 20 per cent. emulsion. The stronger emulsion will do no harm, but the weaker will do if two thorough sprayings are given as advised above. Any ordinary spray pump will do for this emulsion, but it is better to get a good one, and in spraying to put on a good pressure so as to make a fine mist.

The disadvantage in the soap emulsion is the trouble of mixing, but with proper kettles for heating the water, this is not a serious matter.

The advantage is that a more even coat of oil can be applied, for there is not yet on the market a pump that will give uniform and perfect satisfaction with the mechanical emulsion. Unless great care is used the percentage will be uneven. The pumps are also more expensive. But with these pumps, kerosene, 150 degrees flash test, or the crude oil, is put into one tank and the water into another, the proper attachments of hose and nozzles are made, and you are ready for business. In all cases a fine nozzle should be used.

Emphasis is placed upon two things and these are of the utmost importance. First: Spray twice a year. Second: Cover every part of every tree.

In case the infestation is not discovered until the trees are in foliage, or if on any trees the treatment has not been effective, a 15 per cent. kerosene emulsion, either soap or mechanical, may be applied at any time, covering the wood fully with the spray but avoiding the leaves as much as convenient.

There are other sprays, but at present the oil seems best and most convenient.

The lime, salt and sulphur mixture used on the Pacific Coast will give good results, probably, and may be tried as an experiment. This mixture is pretty severe on pumps and must not be made in copper kettles as it eats this metal very readily and will destroy a copper vessel in a few minutes.

Formula: Unslacked lime, 40 lbs.; flour of sulphur, 20 lbs.; common salt, 15 lbs.; and water enough to make 60 gallons. Take 10 lbs. of lime and 20 lbs. of sulphur and boil thoroughly in 20 gallons of water over a good fire for an hour and a half, or until the sulphur is thoroughly dissolved. When the solution becomes a clear amber color it indicates that the sulphur is practically dissolved. Stir frequently while boiling. Thoroughly slack the remaining 30 lbs. of lime with hot water and add the 15 lbs. of salt to it while still boiling, and stir until the salt is entirely dissolved. The lime and salt mixture is then added to the lime and sulphur solution, and is thoroughly stirred and boiled for a half hour longer. Hot water sufficient to bring the solution to six gallons is then added. The mixture should be sprayed while hot. Strain it thoroughly through a fine meshed wire gauze, before pouring into the pump. A Bordeaux or Seneca nozzle will be found the most satisfactory, as they can be easily cleaned, while others tend to become clogged.

Thorough spraying of all infested trees twice a year with any one of these remedies will meet the requirements of the law and will give as good results as we can expect, and at the least expense to the owner of the orchard. Work should be begun immediately, for later cold weather may make it impossible.

Dover, Del., Nov. 10, 1902.

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## REPORT OF THE STATE BOARD OF AGRICULTURE ON THE DELAWARE EXHIBIT AT THE PAN- AMERICAN EXPOSITION.

To the Honorable Senate and House of Representatives in General Assembly met:

Gentlemen: We have the honor to submit the following report of the Delaware exhibit at the Pan-American Exposition held in Buffalo, New York, in 1901.

The Legislature passed and on March 9, 1901, the Governor approved the following act:

Be it enacted by the Senate and House of Representatives of the State of Delaware in general assembly met:

Section 1. That the sum of one thousand dollars be and

the same is hereby appropriated to the State Board of Agriculture to defray the expenses of said Board in making an exhibition of the agricultural products of the State at the Pan-American Exposition at Buffalo.

The said appropriation shall be paid to said State Board of Agriculture by the State Treasurer out of any money to the credit of the general fund not otherwise appropriated.

Said State Board of Agriculture shall make a report to the next session of the General Assembly, setting forth all items of expenditure and shall submit their vouchers for such expenditure.

Upon investigation, it was found that the sum appropriated was not sufficient to make an exhibit in more than one of the departments of the exposition; and it was therefore decided, in view both of the predominant interests of the State and of the facilities at command for making the exhibit, to confine our efforts to making a display of fresh fruits in the Horticultural Building. With this object in view, we sent Wesley Webb, of Dover, to Buffalo to have a personal interview with the officials of the exposition, and, acting upon their advice, he installed in the space allotted to us plain shelving upon which were to be placed white plates on which to show the fruit. We were also informed by the Superintendent of Horticulture that it would be necessary for us to have an attendant in charge of the exhibits. Miss Katharine O. Huntley, of Dover, offered to perform this service without other compensation than the mere payment of her personal expenses. She proved a very efficient representative and won high praise from Mr. Van Derman, the pomologist of the exposition.

The necessary fruit was secured by being selected in the field or orchard and carefully packed under the direction of an agent of the Board.

During some parts of the season, from May 1st to November 1st, no fruits were ripening so as to be in condition for exhibition and it was at times difficult to secure that which was suitable for the display, but when there was any fruit to be had, the Board was able to secure a good supply and of the very choicest that grew in the State. Our exhibit of peaches and plums was acknowledged to be among the finest at the exposition and there were awarded to Delaware and its citizens three

gold medals, five silver medals, 17 bronze medals and 11 honorable mentions, as given in the following list, namely:

#### GOLD MEDALS.

Delaware State Board of Agriculture, Dover, General Display of fruits.

S. H. Derby, Woodside, display of fruits.

Joseph McDaniel, Dover, display of peaches.

#### SILVER MEDALS.

J. W. Killen, Felton, collection of chesnuts.

Myer & Son, Bridgeville, collection of strawberries.

Slaymaker & Son, Camden, collection of strawberries.

F. M. Soper, Magnolia, collection of plums.

Charles Wright, Seaford, collection of peaches.

#### BRONZE MEDALS.

Frank Bancroft, Camden, collection of apples.

Chas. Barker, Milford, display of peaches.

J. E. Carter, Smyrna, display of Abundance Plums and grapes.

Delaware Nurseries, Milford, display of fruits.

Reuben Ford, Brenford, display of fruits.

J. A. Frear, Wyoming, display of Satsuma Plums.

S. H. George, Farmington, display of peaches.

G. H. Gildersleve, Camden, display of peaches.

J. M. Huntley, Dover, collection of pears.

Wm. H. McKee, Dover, display of peaches.

Thomas Moore, Camden, display of fruits.

W. T. Massey, Smyrna, collection of grapes.

Alex. Pullen, Milford, display of peaches.

C. P. Swain, Bridgeville, display of peaches.

W. S. Todd, Greenwood, collection of strawberries.

E. Webb, Wyoming, display of peaches.

Wm. R. Webb, Wyoming, display of peaches.

#### HONORABLE MENTIONS.

M. C. Jackson, Harrington, display of fruits.

Charles Walton, Newark, display of peaches.

State Colored College, Dover, display of Wild Goose Plums.

Erasmus Jones, Bridgeville, collection of Mountain Rose Peaches.

C. W. Lord, Camden, display of Mountain Rose Peaches.

James T. Shallcross, Middletown, display of Satsuma Plums and pears.

C. C. Brown, Bridgeville, collection of peaches.

Dr. T. O. Clements, Dover, display of Elberta peaches.

J. W. Tharp, Harrington, collection of apples.

W. D. Mosley, Dover, display of seedling peaches.

Myer and Sons, Bridgeville, display of Yellow Transparent apples.

The Board has been able to keep within the appropriation of \$1,000. The expenditures are summarized as follows, and vouchers accompany this report :

Cost of installation.....	\$ 62.75
Miss Huntley, personal expenses.....	201.02
Expressage.....	261.91
Fruit .....	335.88
Postage, etc .....	7.16
Photographs .....	10.75
Wesley Webb, travelling expenses.....	57.08
Wesley Webb, services.....	53.75
	<hr/>
	\$990.30

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## REPORT OF DR. JOHN J. BLACK, AS TO DEAF, DUMB, BLIND AND FEEBLE-MINDED CHILDREN IN INSTITUTIONS OUTSIDE THE STATE.

Hon. JOHN HUNN.

Governor of the State of Delaware.

Sir: In accordance with the Laws of Delaware, 1893, Chap. 838, I visited the wards of the State in the following institutions April and October 1892.

## COLUMBIA INSTITUTION FOR THE DEAF AND DUMB, KENDALL GREEN, WASHINGTON, D. C.

At the institution during the year were :

Ernest Foskey, admitted Sept. 1892.  
 Arthur Swarts, admitted Sept. 1893.  
 May Dougherty, admitted Sept. 1893.  
 Bertha Conway, admitted Sept. 1894.  
 Tina F. Jones, admitted Sept. 1894.  
 May O'Rourke, admitted Sept. 1897.  
 Louie Long, admitted Sept. 1900.  
 Joseph Bonski, admitted April 1901.  
 Gertrude Fagan, admitted Sept. 1901.  
 Raymond Webb, admitted Oct. 1901.  
 Florence Johnston, admitted November 1901.

Of these, Ernest Foskey and Joseph Bonski were discharged last June, and are not now at the institution. The others are all in attendance. There is also at the school, from Delaware, a little girl named Taylor. No warrant has as yet been issued for her and the State is not yet charged for her attendance. Dr. Gallandet says he was given to understand that a warrant would be sent soon, and so at the commencement of the session in September he took her in without warrant so she might not miss starting with the classes. I think this action was commendable on the part of the school authorities, and I would recommend that a warrant be issued at once, so that the State will pay for her schooling, or that the authorities at the Columbia Institution be informed that no warrant can be issued and the little one be returned to her home.

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## PENNSYLVANIA INSTITUTION FOR THE DEAF AND DUMB, MT. AIRY, PHILADELPHIA, PA.

Since the opening of the present term the following have been at this school :

Edward G. C. Fagan, New Castle County.  
 Marshall Heller, New Castle County.  
 Maggie Megee, Sussex County.  
 Edith M. Ball, New Castle County.

They are all well and doing nicely. The two girls are particularly bright.

## PENNSYLVANIA INSTITUTION FOR THE INSTRUCTION OF THE BLIND.

Natilla O. Otwell entered September 30, 1901, discharged December 6, 1901. This girl was found incapable of receiving instruction and was thus a hopeless case for improvement. Had she been taken in hand at a more tender age she might have learned something and been of use to herself and others and not a hindrance as now. This case is a sad object lesson to the people of Delaware to guard more carefully their defective and unfortunate citizens.

Florence Crossan, parents moved to Pennsylvania, she is no longer a charge to the State of Delaware.

Josephine Doman, New Castle County, age 9 years, is a kindergarten pupil and is bright for one in her condition, was ill with whooping cough and isolated when I last visited the institution.

## PENNSYLVANIA SCHOOL FOR THE FEEBLE-MINDED.

Elwyn, Delaware County, Pennsylvania.

Martin W. Barr, Chief Physician and Superintendent.

Dr. Barr is a Delaware man from Middletown, and has a world-wide reputation in his specialty.

Marjant Dougherty, corpulent, low grade. Non improvable.

Fanny Dougherty, low grade, goes to school, does some work.

Gilbert Fogg, juvenile insanity. Non improvable.

Ada Hastings, helpless idiot, cannot feed, wash or dress herself.

Henry Hunter, low grade, non-improvable child.

Mary Hunter, sister of Henry, low grade, improvable—in the industrial class at school.

Fred Jones, goes to school and is improving, low grade.

George W. Johnson, low grade and suffers from a mild grade of dementia.

Isaac Moystin, a mongolian type, low grade imbecile.

Elmer May, goes to school, a middle grade and is improving.

Helen Porter, in the nursery, epileptic, low grade, excitable imbecile, is not improving, but it is pleasing to see the kind custodial care this unfortunate little girl receives and how she responds to it.

John Warren, idio-imbecile and not improving, but may learn to walk in the grounds. It is well he is here and from the family history in Delaware it is easy to trace a cause for his malady.

George Weldon, suffering from spastic paraplegia, unable to walk. He has the intellect of a low grade imbecile, has grown stout and is very happy and contented, about 12 years of age.

Annie Weaver, a middle-grade child with defective speech, is progressing in school.

As I have said in former reports the State of Delaware is neither liberal nor just to these poor unfortunates.

Every deaf and dumb child, every blind child, every feeble-minded child in the State should be offered help from the State, provided the parents or guardians are unable to offer such help. Really few are able, as technical education of this character is expensive, and very properly for the protection of society and for the preservation of the race the State should take charge of these children and do all in its power to make them at least harmless to themselves and less a menace to others. At the present time the State is only caring for fourteen feeble minded and the law forbids more. Wherever I go within the bounds of the State I see children every day who should be under custodial care and yet are unable to get it. From them many of the defectives will come in the next generation and from them our jails and our almshouses will be filled, and our insane asylums too. I recommend that our laws be so amended that there be no limit to the number of deaf and dumb, blind and feeble-minded cared for by the State, but that by the present methods of admission any worthy case be taken in hand or committed to the proper institution. Under the present law there can be no danger of abuse of the privilege, the judges of the court will see to that. If you could see these cases as I see them, waiting to go, and de-



barred by the law, you I full well know would say the present law was both unjust and even cruel,

I beg you in your coming message to the Legislature to call the attention of that Honorable Body to this matter, and to even go much further, to see personally that the present law is so amended as to allow all to go without limit as to number. The cost will not be great, the good done will be incalculable, the effect will be far reaching.

Very respectfully, your obedient servant,

JOHN J. BLACK,

President Board of Trustees, Delaware State Hospital at  
Farnhurst, New Castle county, Delaware.

November 15th. 1902.

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## REPORT OF DELEGATES TO NATIONAL CONFERENCE ON TAXATION.

To the Honorable John Hunn, Governor of Delaware.

We have recently received, and transmit herewith, the official report of the proceedings of the National Conference on Taxation, held in Buffalo, New York, in May last, which we attended as delegates from this State.

The imperfect (and in many respects unjust) methods of State and local taxation prevailing in this country have been for a long time the subject of investigation by State legislatures, by State officials specially appointed for the purpose, and by civic bodies organized with the object of promoting the general welfare. Taxation, as an economic question, has engaged the earnest attention of teachers and students for years, and treatises on the subject without number have been published. A political campaign has rarely occurred in which the contesting parties have not deplored in pathetic terms the unjust burdens imposed upon the taxpayers, and promised, without reserve, such reform as would afford the people prompt and enduring relief. But notwithstanding all this, the various systems in operation to-day, under which revenue is raised from real and personal property

for the support of State and local government, are admittedly defective and work serious injury to property owners.

The conference held at Buffalo was called by the National Civic Federation in recognition of the very general dissatisfaction with prevailing methods and in order that the problems involved might be considered from the higher standpoints of principle and mutual co-operation. The governors of the several States and civic organizations were invited to send representatives. There was no concerted action of powerful political organizations to bring together a large assemblage at the conference, yet it was well attended, duly accredited delegates being present from twenty-two States, representing every section of the Union. Many of the delegates are prominent in State and national affairs, a fact that gives evidence of the rapidly crystallizing sentiment in favor of reform in taxation.

No attempt was made to devise a plan that could be recommended for adoption as an improvement over the tax systems now in operation, but the defects of these systems were so fully exposed and the principles of just taxation so clearly defined, that the way was open for the ultimate formulation of a plan of State and local taxation that must prove generally acceptable as a solution of this difficult and troublesome problem.

The methods of assessing property were discussed at great length. It appeared that in many States a persistent effort has been made to assess both the real and personal property of the citizens for what is known as the "general property tax." In these States close attention has been given to the listing of all classes of personality, the return by the owners to the assessors being enforced by the most inquisitorial proceedings prescribed by statutes imposing the severest penalties for failure or refusal to make the required return; but it was admitted, in most cases, that the law had failed in its operations.

During the deliberations of the conference, we submitted the propositions that, while no system of taxation could be considered as perfect that did not provide for the equalization of the assessment of real, or personal property, or both, where both classes are taxed, and that it should be the object in any system proposed to arrive, as nearly as possible, at a fair and just basis of assessment, the most important question was the tax levy and the expenses of government which determine the tax rate. The proposition was well received and commented upon as relating

directly to the most important part of the problem before the conference.

In respect to taxation for State purposes alone, it was the prevailing opinion that a right solution could not be hoped for except by the co-operation of the States and by the adoption of methods that could be applied alike in all States. The marvelous growth of the country and the vast development of its industries resulting in the establishment of close relationship between the different sections, have eliminated the once purely local feature of this branch of the subject, and, as set forth in the call for the conference, the problem "cannot be solved without considering the mutual relation of contiguous States and localities. An unequal tax on the farmer in one State may make it difficult for him to sell his products in the world markets. An unjust tax upon the manufacturer or business man may drive him out of the business; an unfair tax on the corporation may cause it to move to another State. Action by any one commonwealth evidently reacts upon its neighbor."

On the subject of local taxation the trend of opinion was toward a separation of the sources of revenue for the support of the county and municipal governments, so that what is termed "local taxation" would be based upon an entirely different class of property from that on which State tax is imposed.

The people of Delaware are now concerned more deeply perhaps than ever before about the matter of taxation, and in presenting this report we entertain the hope that it may lead to a general discussion that will have its influence in bringing about a revision of our tax laws. It may not be out of place to remark that the question cannot be fairly answered by the well-worn and out-of-date argument that a perfect system of taxation, under which the burdens of the government can be equalized, is impossible. We submit that it is both possible and practicable to establish in Delaware a system of taxation that will be just and equal, that will produce revenue for the support of the State from one class of property and revenue for the support of the several divisions of local government from another and entirely different class, and that will so regulate the valuation of all classes of property and the collection and disbursement of taxes as to insure an equalization of the expenses of the public service. As a matter of fact, no great effort in the right direction will be

required to so revise our laws as to provide a system in line with the best thought on the subject.

It is not within our province to say what this system should be in all its details. But we suggest that any system proposed whereby the State may exercise the sovereign power of collecting from the people part of their earnings to meet the public expense, must be such a system as will safeguard the people against injustice. In this view it is essential that the system should provide for a fair and equal assessment according to a uniform rate, of all the property subject to taxation, that the taxes levied should be only such amount as may be necessary to meet expenses of the government economically administered, and that a full public accounting should be made, at stated periods, so that the taxpayers may know at what cost the public business is being conducted.

The movement for tax reform so auspiciously inaugurated at Buffalo will be continued energetically. The conference effected a permanent organization for the promotion of interstate comity in taxation and of tax reform in general. An executive committee was appointed, which was authorized to take proper steps for the collection and dissemination of information in regard to State and local taxation, and for the attainment of the other objects of the conference. This committee will be enlarged so as to include members from every State in the Union and a thorough and permanent national association will be organized through the committee. We recommend that our State officials upon whom devolve the duty of administering the tax laws, and especially the Legislature at its next session, avail themselves of the opportunities offered for obtaining through this association the information necessary for a better understanding of the subject of taxation.

Respectfully submitted,

SAMUEL H. BAYNARD,  
WILLIAM LAWTON,  
JOHN S. ROSSELL,

Wilmington, Delaware, January 20, 1902.

## UNITED STATES SUPREME COURT.

THE STATE OF NEW JERSEY,	}	IN EQUITY.
Complainant,		No. 1
THE STATE OF DELAWARE,		ORIGINAL.
Defendant.		ANSWER.

The Answer of the State of Delaware, one of the States of the United States of America, the defendant, to the Bill of Complaint of the State of New Jersey, also one of the States of the United States of America, the complainant.

This defendant, now and at all times hereafter, saving to itself all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said Bill of Complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says :

## I.

That this defendant is the owner in severalty and in fee-simple of the whole bed of the Delaware River lying within the compass or circle of twelve miles about the town of New Castle in the State of Delaware, to wit, within the circumference of a circle of a radius of twelve miles described about the Court House in the said town of New Castle as a centre, and all islands in said River Delaware, within the compass of said circle, and the said river and soil thereof lying North of the Southernmost part of the said circle of twelve miles about the said town, together with all the lands, islands, soil, rivers, harbors, mines, minerals marshes, waters, fishings, huntings and fowlings, and all other royalties, privileges, profits, rents, services, franchises, duties, jurisdictions, liberties, privileges, commodities and hereditaments to the said premises, or any of them belonging or appertaining, with their and every of their appurtenances, and all the estates, rights, titles, interests, benefits, advantages, claims and demands whatsoever of, in, or to the said premises, and of every part and parcel thereof; and all government and all rights of government, all jurisdiction, whether legislative, judicial or executive, all fisheries and exclusive control and jurisdiction thereof in, on or over

the said portion of said river and the waters thereof, subject, in all the particulars aforesaid, only to the limitations, if any there be, of the Constitution and Laws of the United States of America. That save as hereinbefore appears, this defendant is advised that said Bill of Complaint raises no question of government, jurisdiction fishery, or control or jurisdiction thereof, right, title, interest, benefit, advantage, claim or demand between or by the parties to this cause; and this defendant denies that the complainant is the owner, in fee simple or otherwise, of any portion of the bed of the Delaware River within the compass of said circle of twelve miles about the said town of New Castle, so described as aforesaid, and hereinafter called the "twelve mile circle," or that within the limits aforesaid the complainant is the owner of the part of the bed of said river extending from the New Jersey shore thereof to the middle of said river, or that within the limits aforesaid the complainant has or is entitled to, in or on any part of the waters of said river, below low-water mark on the New Jersey shore thereof an equal interest and concurrent jurisdiction with the defendant, or that the complainant has any title to any of the rights claimed in its Bill of Complaint by the means in said Bill of Complaint stated.

This defendant admits that within and beyond the limits aforesaid the tides of the ocean ebb and flow.

And with respect to the title and jurisdiction alleged and claimed by and for the complainant, on its own behalf, in its said Bill of Complaint, this defendant, further answering, saith :

1. This defendant believes that Charles the Second, King of England, by letters patent bearing date the twelfth day of March 1664, to his brother James, Duke of York, his heirs and assigns, did give and grant the lands and premises, royalties, rights, powers, authorities, liberties, hereditaments and appurtenances in the section or sections of said Bill of Complaint denominated by the letter A, by said complainant set forth and described, but for greater certainty as to said letters patent and all of the provisions thereof it craves leave to refer to the said letters patent when produced in this cause.

But this defendant claims, and respectfully submits, that if it shall appear by evidence in this cause that said alleged patent ever had legal existence and validity, that then and in that case, by legal and just construction thereof it cannot and should not be so construed as to include, within the express description of the

lands and premises therein contained, or as to control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river.

2. This defendant admits that, subsequent to the year 1664, and in or about the year 16 , a portion of the territory included in the said description of the said alleged grant, set forth under section A in said Bill of Complaint, was conquered by the military power of the States of the United Provinces of the Netherlands, the seat of whose power in America was at New Amsterdam, and that afterwards, and in or about the said territory by the said conqueror was surrendered to the King of England. And this defendant believes that, in order to make good and affirm and establish the alleged grant aforesaid, or otherwise, the said King of England by his letter patent bearing date on or about the twenty-ninth day of June, 1674, did grant and convey unto the said Duke of York, all and every of the property and all and every of the rights, powers and privileges alleged to have been granted, conveyed, transferred and assured in and by the alleged patent first in said Bill of Complaint mentioned, using in the last one of the said alleged patents the same words which in said Bill of Complaint are alleged to have been used in the first of the said alleged patents, and no others, except those stating the date; but for greater certainty as to said letters patent and all of the provisions thereof it craves leave to refer to the said letters patent when produced in this cause. And this defendant further claims, and respectfully submits, that if it shall appear by evidence in this cause that said alleged confirmatory patent ever had legal existence and validity, that then and in that case, by legal and just construction thereof, it cannot and should not be so construed as to include, within the express description of the lands and premises therein contained, or to control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river.

3. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that the said James, Duke of York, etc., by lease and release bearing dates the twenty-third and twenty-fourth days of June, 1664, respectively, after reciting the grant so as aforesaid alleged to have been made to him by the aforesaid alleged letters patent, dated 12th March, 1664, for a valuable consideration, to Lord John Berkeley and

Sir George Carteret, their heirs and assigns forever, did grant and assign, sell, release and confirm, the lands and premises, royalties, rights, hereditaments and appurtenances in the section or sections of said Bill of Complaint denominated by the letter C, by said complainant set forth and described; or whether or not the said alleged lease and release were ever legally made or ever legally delivered by the said James, Duke of York, to the said Berkeley and Carteret; or whether or not said lease and release ever had any legal existence. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged lease and release ever had legal existence the validity, that then and in that case, by legal and just construction thereof, they cannot and should not be so construed as to include or control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further that the said James, Duke of York, did not then and thereby convey to the said Berkeley and Carteret a more extensive title or other lands than the title and lands alleged to be so derived to or vested in him by the title to him, the said Duke of York, as invoked by said complainant in its said Bill of Complaint.

4. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is a fact that the said Lord John Berkeley and Sir George Carteret, as alleged Lords Proprietors of the province of New Caserea or New Jersey, made or published the concessions and agreements, bearing date the tenth day of February in the year of our Lord one thousand six hundred and sixty-four, to and with all and every the adventurers and all such as shall settle or plant there, in the first two paragraphs of the section of said Bill of Complaint denominated by the letter D by said complainant set forth and described; or whether or not said alleged grants and concessions bear even date with the appointment and commission of Sir Philip Carteret, alleged to be the first Governor of New Jersey, who was appointed by the said alleged proprietors, Lord John Berkeley and Sir George Carteret, as in the third paragraph of the said section of said bill of complaint denominated by the said letter D by said complainant mentioned; or whether the said alleged Governor Carteret, by his alleged letter of instructions, bearing even date with his alleged commission, was authorized or directed by or for the said alleged proprietors and in their names



in manner, form or substance as by said complainant is set forth and mentioned in the third and fourth paragraphs of the section of said bill of complaint denominated by the said letter D; or whether or not the said alleged concessions and agreements, or the said alleged appointment and commission of Sir Philip Carteret as Governor aforesaid, or the said alleged letter of instructions to said alleged Governor, were ever legally made, executed, delivered, promulgated, issued, and received, respectively; or whether or not the said alleged concessions and agreements, appointment and commission, or letter of instructions ever had any legal existence. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged concessions and agreements, appointment and commission, or letter of instructions, or either or any of them ever had legal existence and validity, that then and in that case, by legal and just construction thereof, neither the said concessions and agreements, nor the said appointment and commission, nor the said letter of instructions, can or should be so construed as to include, control, or refer to any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further that the said alleged Lords Proprietors could and did not then and by either the said alleged concessions and agreements, or appointment and commission or letter of instructions confer to and upon any person a more extensive title, or other lands, or more extensive, more liberal, or other powers, authorities, pledges, guarantees, assurances, rights, jurisdictions, privileges, franchises or concessions, than those titles, lands, powers, authorities, pledges, guarantees, assurances, rights, jurisdictions, privileges, franchises, or concessions alleged to be so derived to or vested in them by the title to them the said Lords Proprietors as invoked by said complainant in its said Bill of Complaint.

5. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that James, Duke of York, etc., by indenture made the twenty-ninth day of July, 1674, to the said Sir George Carteret, his heirs and assigns, did grant, bargain, sell, release and confirm the lands and premises, royalties, rights, profits, commodities, hereditaments and appurtenances in the section of said Bill of Complaint denominated by the letter E by said complainant set forth and described; or whether or not the said alleged indenutre was ever

legally made or ever legally delivered by the said James, Duke of York, to the said Sir George Carteret; or whether or not said indenture ever had legal existence. But this defendant claims and respectfully submits that if it shall appear, by evidence in this cause, that said alleged indenture ever had legal existence and validity, that then and in that case, by legal and just construction thereof it cannot and should not be so construed as to include or control any part of the bed of said River Delaware within the compass of the said twelve mile circle, or any right of jurisdiction or fishery in said portion of said river; and further, that the said James, Duke of York, did not then and thereby convey to the said Sir George Carteret a more extensive title or other lands than the title and lands alleged to be so derived to or vested in him by the title to him the said Duke of York, as invoked by said complainant in its said Bill of Complaint.

6. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that Sir George Carteret of the first part, William Penn of the second part, Gawn Lawry of the third part, Nicholas Lucas of the fourth part, and Edward Billinge of the fifth part, entered into or made an indenture quintipartite, bearing date the first day of July, Anno Domini, 1676, reciting the aforesaid alleged letters patent from the King to the Duke of York, dated the twelfth of March, 1664, and the said alleged lease and release from the Duke of York to Berkeley and Carteret bearing date the twenty-third and twenty-fourth days of June, 1664, in and by which indenture quintipartite said Edward Billinge, and the said William Penn, Gawn Lawry, and Nicholas Lucas, by and with the consent, direction and appointment of the said Edward Billinge, testified by his being a party to the said indenture and by his sealing and executing the same, did bargain, sell, release, confirm and convey unto the said Sir George Carteret, his heirs and assigns forever, the easterly part of New Jersey, to have and hold in severalty; and whether or not, by the same indenture, the said Sir George Carteret did bargain, sell, release, confirm and convey unto the said William Penn, Gawn Lawry and Nicholas Lucas, to their heirs and assigns forever, the westerly part of New Jersey, to have and to hold to them, their heirs and assigns in severalty, according to a certain description of the division line between the said easterly and westerly part of New Jersey in the said alleged indenture and in the said Bill of Complaint described; and whether or not in and by

which alleged indenture, it is averred, that the said Sir George Carteret did convey, with the land on the westerly side of the said partition line, unto the said William Penn, Gawn Lawry and Nicholas Lucas all and every the isles, islands, rivers, mines, minerals, woods, fishings, hawkings, huntings and fowlings, and all other royalties, governments, powers, forts, franchises, harbors, profits, commodities and hereditaments whatsoever unto the said westerly part, share and portion of the said tract of land and premises, as in the section of said Bill of Complaint denominated by the letter F, by said complainant set forth and described; or whether or not the indenture of bargain and sale, dated the eighteenth of March, 1673, between the said John, Lord Berkeley, of the one part and John Fenwick of the other part, by which said Berkeley is said to have granted to Fenwick all the moiety or half part of him said Berkeley, of, in and to the said tract of land called New Ceserea of New Jersey, or the two other indentures, one being indenture of bargain and sale, dated the ninth of February, 1674, from the said John Fenwick and Edward Billinge of the one part, said William Penn, Gawn Lawry and Nicholas Lucas of the other part, and the other being an indenture tripartite of grant, release, or confirmation, bearing date the tenth day of February, 1674, between said John Fenwick of the first part, and Edward Billinge of the second part and the said William Penn, Gawn Lawry, and Nicholas Lucas of the third part, and the said several other alleged good and sufficient assurances in the law, duly executed, by which the said moiety or half part of said tract of land and all and every other the said several and respective premises so alleged to be conveyed unto, the said John Fenwick were said to have been conveyed unto, and at the date of the said indenture quintipartite were said to be vested in, the said William Penn, Gawn Lawry and Nicholas Lucas and their heirs, to the use of them and their heirs forever (in which nevertheless the said Edward Billinge claimed to have equitable interest) so as the said William Penn, Gawn Lawry and Nicholas Lucas are said to have then actually stood seised of and in one undivided moiety or half part of all and every the said premises so granted unto the said John Lord Berkeley and Sir George Carteret as aforesaid, as joint tenants between themselves, and did then, as it is alleged, hold the same to them and to their heirs as tenants in common with the said Sir George Carteret, who was then, as it is said, actually seised of the other undivided moiety or half part of all and every the same premises and did then, as it is alleged, hold the same to him

and his heirs as tenants in common with the said William Penn, Gawn Lawry and Nicholas Lucas, all of which indentures and other good and sufficient assurances in the law are, in said section of said Bill of Complaint, denominated by the said letter F, by said complainant mentioned and described as recited in the said indenture quintipartite,, were, or either of them was in fact, ever legally made or ever legally delivered in pursuance of their several tenors and intents; or whether or not, as, it is elleged, is further recited in said indenture quintipartite, the said Sir George Carteret, William Penn, Gawn Lawry and Nicholas Lucas had theretofore agreed to make partition of the said tract of land and of the said several and respective premises into two parts, as in the section of said Bill of Complaint denominated by said letter F, by said complainant is further set forth and averred; or whether or not the said indenture quintipartite was ever legally made or ever legally delivered by the said Sir George Carteret to the said William Penn, Gawn Lawry and Nicholas Lucas; or whether or not the said indenture quintipartite or the said several indentures and other good and sufficient assurances in the law in the said indenture quintipartite said to have been recited, or the alleged and recited agreement to make partition, between Sir George Carteret of the one part and William Penn, Gawn Lawry and Nicholas Lucas of the other part, or any of them, ever had any legal existence. But this defendant claims and respectfully submits, that if it shall appear by evidence in this cause that said alleged indenture quintipartite, or the said indentures and assurances therein recited, or the said agreement to make partition therein recited, ever had legal existence and validity, that then and in that case, by legal and just construction thereof, they or either of them cannot and should not be so construed as to include, refer to, or control any part of the bed of said River Delaware within the compass of the said twelve mile circle; nor any right of jurisdiction or fishery in said portion of said river; and further, that the said parties to the said indenture quintipartite, and to the said several indentures and other assurances in the law, and agreement for partition therein said to be recited, could not and did not then and thereby either convey or receive more extensive titles or other lands than the titles alleged to be so derived to or vested in the several grantors therein or parties thereto, as invoked by said complainant in its said Bill of Complaint.

7. This defendant doth not know and cannot set forth as

to its belief or otherwise, whether or not it is the fact that the said James, Duke of York, etc., by indenture made the sixth day of August, Anno Domini, 1680, wherein were certain recitals in said Bill of Complaint enumerated and set forth, and wherein Edward Billinge, William Penn, Gawn Lawry, Nicholas Lucas, John Eldridge and Edward Warner were parties of the other part, for a consideration in said indenture expressed, and for the better extinguishing of all such claims and demands as his said Royal Highness might anyways have had of or in the premises aforesaid, then called West New Jersey, or any part of them, and for the further and better settling, conveying, assuring and confirming of the same and of every part thereof, according to the purport and meaning of said presents, did grant, bargain, sell and confirm unto the said William Penn, Gawn Lawry, Nicholas Lucas, John Eldridge and Edward Warner, their heirs and assigns, the lands and premises, royalties, rights, franchises, privileges, and appurtenances, for the respective interests, estates, intents, uses and trusts, in the section or sections of said Bill of Complaint denominated by the letter G, by said complainant set forth and described; or whether or not the said Duke of York by said indenture, for the reasons therein said to be recited and set forth in the said section or sections of the said Bill of Complaint, or otherwise, did give, grant, assign and transfer unto the said Edward Billinge the powers, authorities, jurisdictions, governments and other matters and things whatsoever, which by the aforesaid respective letters patent from the King to him the said Duke, or either of them, are or were granted or intended to be granted to be exercised by the said Duke of York, his heirs, assigns, deputies, officers or agents, in, upon, or in relation unto the said premises thereby said to be confirmed or intended to be confirmed, and every of them, in case the same were then in the actual seizure of the said Duke of York, to be held, enjoyed, exercised and executed by him the said Edward Billinge; his heirs and assigns, and by his deputies, officers, agents and commissioners as fully and amply to all intents, constructions and purposes as his said Royal Highness, or his heirs, might or could hold, enjoy, use, exercise or execute the same by virtue of the said letters patent, as in the second paragraph of the section of said Bill of Complaint denominated by the letter G, by said complainant set forth and described; or whether or not the several patents and conveyances and the several declarations of trust, holdings in trust and trusts, the partitions, purposes and intents of the several parties to said conveyances said

to be recited in the said indenture of the sixth day of August, 1680, and set forth and enumerated by said complainant in the first paragraph of the said section of its said Bill of Complaint denominated by the said letter G, were ever legally made, delivered, entered into, undertaken, expressed or agreed to by the several parties thereto; or whether the said indenture of the sixth day of August, A. D. 1680, or the said patents, conveyances, declarations of trust, holdings in trust, trusts and partitions therein alleged to be recited, ever had any legal existence. But this defendant claims and respectfully submits that, if it shall appear, by evidence in this cause, that said alleged indenture, or the said patents, conveyances, declarations of trust, holdings in trust, trusts and partitions therein said to be recited, ever had legal existence and validity, then and in that case, by legal and just construction thereof, they or either of them cannot and should not be so construed as to include, refer to or control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further, that neither the said James, Duke of York, nor any of the granting parties in any of the said recited conveyances, declarations of trust, trusts or partitions, did then and thereby convey to the grantees in the said indenture of the sixth day of August, 1680, or in any of the said recited conveyances, declarations of trust, trusts or partitions, respectively, more extensive titles or other lands than the titles and lands alleged to be so derived to or vested in them, the said Duke and other said grantors respectively, by the title or titles to them respectively as invoked by said complainant in its said Bill of Complaint.

8. This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that concessions and agreements of the proprietors, freeholders and inhabitants of the province of West Jersey, bearing date the third of March, 1676, were agreed to and signed by the said Edward Billinge, Gawn Lawry, William Penn, Nicholas Lucas and others, the sixth chapter of which document, as it is alleged, grants and dedicates lands for highways, and streets, and cities, towns and villages, and for wharves, keys, harbors, and for public houses, and further provides that the inhabitants of the said province have free passage through or by any seas, bounds, creeks, rivers, rivulets, in the said province, through or by which they must necessarily pass, to come from the main ocean to any

part of the province aforesaid, and further, that all the inhabitants within the said province of West Jersey have the liberty of fishing in Delaware River, or on the sea coast, as by said complainant is set forth in the first paragraph of the section of said Bill of Complaint denominated by the letter H; or whether or not the said alleged concessions and agreements were ever legally made, or ever legally delivered by the said supposed proprietors to said freeholders and inhabitants; or whether or not the said concessions and agreements ever had any legal existence. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged concessions and agreements ever had legal existence and validity for any purpose, that then and in that case, by legal and just construction, such document cannot and should not be construed so as to include, control or refer to any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further, that the said supposed proprietors could not and did not then and thereby give or convey to or confer upon the said freeholders and inhabitants of West Jersey more extensive rights, titles, royalties or privileges or other lands than the rights, titles, royalties, privileges or lands alleged to be so derived to or vested in them by the title to them the said supposed proprietors as invoked by said complainant in its said Bill of Complaint; and further, that, as will more fully appear in this Answer, upon the setting-out of the title of this defendant to that portion of the said Delaware River and of the bed thereof, included within the compass of the said twelve mile circle, and upon the comparison thereof with the said pretended title of said complainant set forth in the said Bill of Complaint, subsequent to all of the patents, grants, indentures, conveyances, concessions, agreements, commissions, letters of instructions and partitions mentioned and described in said Bill of Complaint, in its sections denominated by the letters A, B, C, D, E, F, G and H, to wit on or about the twenty-second day of March, A. D. 1683, the said Charles the Second, King of England, by his letters patent bearing the date last aforesaid, granted to the said James, Duke of York, all of the said river and the soil and bed thereof included within the compass of the said twelve mile circle; that the said latter grant of the said King to the said Duke of York was about eighteen years subsequent to the first letters patent, and about eight years subsequent to the second letters patent; from the said King to the said Duke, cited and in-

voked by said complainant in its said Bill of Complaint as the source and fountain head of its said pretended title; that the said two letters patent, original and confirmatory, so cited and averred by said complainant, contain no express grant of that portion of the said River Delaware or of the bed thereof included within the compass of the said twelve mile circle, nor any words of implication that may be construed as an estoppel to prevent the due, operative, and legally effective grant of such portion of the said river and of the bed thereof to the said Duke of York by the letters patent of the said King, of March the twenty-second, 1683, even had the said King been only a private person; and that inasmuch as the said Charles the Second was King of England at the times of the granting of said two letters patent so cited and averred in said Bill of Complaint as and for the title of said complainant to the premises in dispute, and no estoppel binds the crown, no impediment, either in fact or law, appears wherefore the said letters patent of the twenty-second of March, 1683, were not legally and equitably effective to then pass the title to the Duke of York of the said premises in question. And this defendant further claims and respectfully submits that, even if it shall appear by evidence in this cause that said alleged concessions and agreements of the third day of March, 1676, mentioned in the section denominated by the letter H in said Bill of Complaint, ever had legal existence and validity for any purpose, it is averred in said Bill of Complaint, in the section thereof denominated by the said letter G, that the powers and authority to make said concessions and agreements of March the third, 1676, were exclusively granted to and vested in the said Edward Billinge, the said supposed cestui que trust of the larger part of said West New Jersey, and the specially and solely named grantee of the said Duke of York of said powers and authorities; that the said William Penn, Gawn Lawry and Nicholas Lucas are averred in the last above mentioned section of said Bill of Complaint to have been, not the beneficial owners of said West New Jersey, or of any part thereof, but trustees thereof only for the said John Eldridge, Edward Warner and Edward Billinge; and that the said William Penn and his co-trustees joined, if it be a fact that they did join, in the execution of the said concessions and agreements of the third day of March, 1676, as formal parties only, by virtue of their said trusteeship. And this defendant denies that whatever rights the said Duke of York, or the said William Penn may have acquired in or to the Delaware River from the King of England after the making of the concessions



and agreements last hereinbefore referred to, in equity were subject and subordinate to the rights alleged to be granted by the said concessions and agreements to the inhabitants and property holders of West New Jersey, in or by virtue of the said concessions and agreements. And this defendant further denies that the said William Penn was, or that all persons, associations or every State claiming by, through, or under him were, are or should be, estopped from asserting or maintaining that the rights acquired by the said Duke of York, or by said Penn, in or to the said part here in question in this cause of the Delaware River, from the King of England, subsequent to the year 1676, do and may destroy, lessen or impair all pretended rights to or in that portion of the Delaware River here in question in this cause and every part thereof, alleged in said Bill of Complaint to have been conferred upon the inhabitants of West New Jersey by means of the said concessions and agreements.

9. This defendant doth not know and cannot set forth, as to its belief or otherwise, whether or not it is the fact that the alleged then proprietors of East and West New Jersey by deed of surrender, bearing date the fifteenth day of April, 1702, and said to have been duly executed by the then alleged proprietors of each of said divisions, for themselves and heirs did surrender and yield up unto their then Sovereign Anne, Queen of England, all their right or pretended right and powers of government as to New Jersey, alleged to be granted by King Charles the Second to the Duke of York, and by the Duke of York to the said proprietors, or whether or not the said supposed surrender was accepted by the Queen in Council on the seventeenth day of April, 1702, and ordered to be enrolled in her Majesty's High Court of Chancery, as in the section of said Bill of Complaint, denominated by the letter I, by said complainant set forth and described; or whether or not said alleged surrender was ever legally made, or ever legally delivered by the said proprietors to the said Anne, Queen of England; or whether or not said alleged surrender or said alleged acceptance thereof ever had any legal existence or validity. But this defendant claims and respectfully submits that if it shall appear by evidence in this cause that said alleged deed of surrender and said alleged acceptance thereof ever had legal existence and validity, that then in that case, by just and legal construction thereof and of the said alleged evidences of the supposed title of the complainant to the premises in dispute in this cause, the said alleged

surrender or the said alleged acceptance thereof cannot and should not be so construed as to include or control any part of the bed of said River Delaware within the compass of the said twelve mile circle, nor any right of jurisdiction or fishery in said portion of said river; and further, that the said alleged then proprietors of East and West New Jersey could not then and thereby surrender to the said Anne, Queen of England, a more extensive title, or other or more extended rights or powers of government or over other territory than the title, and the rights and the powers of government and territory then actually vested in them.

10. This defendant admits that by the American Revolution, which took place by the Declaration of Independence, bearing date the fourth day of July, 1776, the State of New Jersey became and was, and from thenceforth hath been, subject to and under the Constitution of the United States since the adoption thereof, a free and independent State; and as such became entitled, subject as aforesaid, to have and to hold all such rights as free and independent States may have or hold, to do all acts and things which independent States may of right do; and by force of the said revolution and said independence, subject as aforesaid, the said State of New Jersey became invested not only with all and every power of government in and over the territory of said State, but also became invested with all the property, and rights of property, within and appertaining to said State, which immediately before said revolution were vested in the Crown of England; but this defendant denies that by virtue of any of the premises the said complainant became invested with any power of government in or over the tide waters adjacent to the territory of said State, so far as the said tide waters are included within the compass of the twelve mile circle aforesaid. This defendant denies that at the time the said revolution took place the bed of the River Delaware in its whole width and length, from the falls in said river at or near Trenton to the mouth of said river, that is, throughout the whole extent to which the tide ebbed and flowed in said river, belonged to or was vested in the Crown of England in trust for the uses and purposes of the subjects of the King of Great Britain, or that by means of the said revolution, the said independence of the State of New Jersey, and the treaty of peace between the King of Great Britain and the United States of America, concluded at Paris, September the third, 1783, that portion of the bed of the Delaware River, last herein-

before mentioned, situate between the States of New Jersey and Delaware, to the middle of the said river, became vested in fee simple in the State of New Jersey, or that the remaining portion thereof, by the same means and at the same time was vested in the State of Delaware, or that so the title to the bed of said river hath ever since continued and now is. But, on the contrary, this defendant avers and respectfully submits that at and immediately before the time the said revolution took place, so much of the bed of the said River Delaware as then was and now is included within the compass of the said twelve mile circle belonged to and was vested in the proprietors of the land and the said river and soil thereof included within the compass of said twelve mile circle, by a title derived from the Crown of England, and hereinafter fully set forth; that by means of the said revolution, the said independence of the State of Delaware, and the treaty of peace between the King of Great Britain and the United States of America, concluded at Paris as aforesaid, all that portion of the bed of the Delaware River, situate between the States of New Jersey and Delaware, included within the compass of the said twelve mile circle, became vested in fee simple in the State of Delaware: and that so the title to the said portion of the bed of said river, this defendant respectfully submits, hath ever since continued and now is. This defendant further denies that ever since the fourth of July, 1776, or at any time, hath the said complainant and this defendant each had, or been entitled to, an equal interest in the waters of said river between the State of New Jersey and the State of Delaware, or that each has had a right to exercise equal or concurrent jurisdiction in and over the same, or an equal right for its citizens and inhabitants to fish in said waters. But, on the contrary, this defendant avers and respectfully submits, that ever since the fourth of July, 1776, this defendant hath had and been entitled to a sole and exclusive interest in so much of the waters, between the State of New Jersey and the State of Delaware, of said river as are included within the compass of the said twelve mile circle, subject only to the common rights of navigation thereof, and hath had the right to sole and exclusive jurisdiction in and over the same and to the sole and exclusive right for its citizens, inhabitants and licensees to fish in said waters:

This defendant avers that it hath at all times been alleged on behalf of this defendant that Charles the Second, King of England, by due and authentic letters patent, bearing date

March 22, 1683, did grant to his brother, the Duke of York, "All that the town of New Castle, otherwise called Delaware, and fort therein, or thereunto belonging, situate, lying, and being between Maryland and New Jersey, in America; and all that tract of land lying within the compass of a circle of twelve miles about the said town, situate, lying, and being upon the River Delaware, and all islands in the said River Delaware; and the said river and soil thereof lying north of the southernmost part of said circle of twelve miles about the said town;" that said patent was duly and legally made and duly and legally delivered by the said King Charles the Second to the said Duke of York, and that the same has ever since the said making and delivery thereof continued to have legal existence; and that by legal and just construction thereof, said patent may and should be construed to include and control the part of the bed of said river lying northerly and easterly of the middle of said river, and all rights of jurisdiction and fishery in said river, so far and to such an extent as the said part of the bed of said river and the waters thereof are included within the compass of the said twelve mile circle.

11. This defendant denies that said complainant hath title or right to the bed of the River Delaware, within the compass of the said twelve mile circle, or jurisdiction in and over said portion of said river, by long peaceable and undisputed possession, or that said possession, use or enjoyment began with the earliest settlement of the State of New Jersey or hath continued ever since, without interruption or dispute, excepting only the interruption and dispute in said Bill of Complaint alleged.

But on the contrary this defendant avers that such jurisdiction was not exercised and seldom if ever asserted by the complainant, and that the history of the government of the State of New Jersey witnesses the practical acknowledgement of the jurisdiction of the defendant as claimed by it now and heretofore, until and except as it was denied by this suit.

This defendant doth not know and cannot set forth as to its belief or otherwise, whether or not it is the fact that during all the time from the said earliest settlement of the State of New Jersey to the time of the filing of the said Bill of Complaint, the citizens and residents of New Jersey, under the authority of said complainant, and with its leave and license, from time to time have, or to what extent, improved the easterly shore of said river opposite to the State of Delaware, from a point opposite

to the boundary line between Pennsylvania and Delaware, on the Delaware River, to a point on the easterly side of said river twelve miles below New Castle, as their wants and convenience have required, by erecting dykes and embankments or building wharves, docks, piers or other structures or arrangements; or whether or not the Southwesterly limits of the County of Salem, by usage or legislative enactment in the State of New Jersey, or elsewhere outside the State of Delaware, have been the main ship channel of the Delaware River. This defendant is informed and believes, and therefore avers, that the laws of said complainant, relative to fishing in the Delaware River, for over seventy years have not been recognized, obeyed or enforced on any part of said river which lies between the State of New Jersey and the State of Delaware, within the compass of the said ewelve mile circle; and that the citizens and inhabitants of the State of New Jersey for more than two hundred years, have not claimed, exercised or enjoyed, except as in said Bill of Complaint stated, without molestation or interruption, the right of fishing in all parts of said river, equally and in common with the citizens and inhabitants of the State of Delaware; and that during all that time the Courts of New Jersey have not exercised jurisdiction, in respect to wrongs committed on said river, within the compass of the said twelve mile circle, and complained of in the Courts of said complainant. And this defendant claims and respectfully submits that even if the citizens and residents of New Jersey, during the time, in the localities, and in the manner set forth in the said Bill of Complaint, have improved the easterly shore o said river, by erecting and building thereon, dykes, embankments, wharves, docks, piers or other structures or arrangements, the building and erecting, in manner aforesaid, of such structures or arrangements cannot and should not be held effectual in law or in equity in any event, to affect in any way or to any extent the title or right of this defendant to or its jurisdiction over, any portion of the soil or bed of the said river or of the waters thereof included within the compass of the said twelve mile circle, not actually and physically occupied by the said structures or arrangements; and that the State of New Jersey cannot, whether by such actual or physical occupation, if any such occupation there be, of any part o the original territory, jurisdiction, rights, privileges, franchises, powers, or estates, or any of them, of any and every nature and description or of any appendants or appurtenances to them or any of them appertaining, of the State of Delaware as they, or any of them, existed at

the date of the adoption of the Constitution of the United States, or otherwise howsoever, acquire any part or portion of such territory, jurisdictions, rights, privileges, franchises, powers or estates, or any of them, of any and every nature and description, or of any appendants or appurtenances to them or any of them appertaining, of the State of Delaware, unless and until it may and shall be shown that the Congress of the United States, and the several legislatures of the States of New Jersey and Delaware have expressly and formally consented thereto.

And this defendant further claims and respectfully submits that the said complainant, whether as a colony or State, cannot derive any title to, or any jurisdiction over, any of the premises in dispute in this cause, as against the defendant, whether as a colony or as a State, by prescription.

## II.

And this defendant, further answering, saith that the true title, jurisdiction, government and sovereignty of, over, in and to that portion of the River Delaware lying and being within the limits of the said twelve mile circle, as hereinbefore set forth and alleged, have been and now are vested in this defendant by the means hereinafter stated.

I. The title by discovery of the Atlantic Coast of North America, at least as far south as Virginia, is claimed and, as this defendant is informed and believes, generally admitted to have been acquired by England by force of the voyage, along said coast, of Sebastian Cabot in or about the years 1497-8. That part of the coast which now constitutes the State of Delaware was, as this defendant is informed and believes, visited in or about the year 1606 by Captain John Smith, an English Navigator, and in or about the year 1611 by Lord Delaware, the English Governor of Virginia; but neither of them landed, merely sailing into Delaware Bay and departing. After a similar visit to the bay, in or about the year 1609, Henry Hudson, then in the employment of a Dutch Company, and sailing under the flag of the Netherlands, went northward to the Bay of New York, and discovered and navigated the Hudson River, of which, in consequence of his report, in the following year (1610) the Dutch took possession, and established various trading posts, including one at the site of the City of New York, and one at the site of the City of Albany, which were respectively known under the Dutch

occupation as Fort Amsterdam (afterwards New Amsterdam) and Fort Orange.

2. And this defendant, further answering, saith that from and after the establishment of the Dutch settlements in New York on the Hudson River, then called the North River, as hereinbefore set forth, there were repeated and continuous efforts by the same people to establish settlements on the Delaware River, then called the South River, which they explored so far as the Schuylkill, and also to establish other settlements easterly from New York as far as the Connecticut River, both of which rivers and the lands contiguous thereto were settled and governed by and as part of the colony having its headquarters and central point of authority at and in the settlement on or near the City of New York, then designated as New Amsterdam. During the period of upwards of fifty years thereafter, all of said territory, including the territory composing the present State of Delaware, and the River Delaware, and the said twelve mile circle, was known as the New Netherlands, and was claimed and, except as herein stated, governed as and for a colony of the States General of the United Provinces of the Netherlands, or under the authority thereof. And this defendant is informed and believes that during the said period of Dutch supremacy, as early as the year 1622 or 1623, there were settlements by the Dutch from New Amsterdam on the easterly side of the River Delaware. In the year 1630, lands along the Delaware Bay and River, extending from Cape Henlopen to Bombay Hook, were acquired by Samuel Godyn on behalf of a Dutch Company, one of whom, De Vries, a navigator, in or about the year 1631, near what is known the town of Lewes, then called Hoernkill, established a colony, which, on his return in the following year, he found had been exterminated by the Indians. And this defendant further avers that a patent for the lands so acquired by the said Godyn was issued directly from the government of the States General of the United Netherlands, by the Director and Council of the Colonial government, whose seat was on the island of Manhattan, and other patents for lands in Delaware were from time to time issued by said Colonial Government, all of which always have been and still are recognized in the State of Delaware as the valid inception of the legal title to the lands to which they respectively relate. And this defendant craves leave to refer to the said patents and prays that the same when proved at the hearing of this cause may be taken as a part of this answer.

And this defendant, further answering, saith that in or about the year 1638 a Swedish expedition under Peter Minuit, formerly Governor of the New Netherlands under the Dutch Sovereignty, arrived in the Delaware River and commenced to establish settlements on the west side thereof and built a fort named Fort Christina at or near the site of the present City of Wilmington. The settlement of the country by the Swedes continued until about the year 1647; but immediately after the first arrival of Minuit, the Dutch authorities of the New Netherlands protested against the Swedish operations and did not cease, during all the years of their continuance, to assert the rights of government and of proprietary title of the United Provinces of the Netherlands to and in the Delaware River and the land now constituting the State of Delaware, and of and over which the said State claims ownership, jurisdiction and government in this suit. These protests not having received the desired attention, and it being considered that the "intention" of the Swedes was "to dispossess and unseat the (Dutch) company from the entire river," in or about the year 1651, as this defendant is informed and believes, the then Director at New Amsterdam, Stuyvesant, proceeded to the Delaware and personally disputed with Johan Printz, who after the departure of Minuit had been the head of the Swedish settlements known as New Sweden, as to the right of the Swedes to interfere in a country claimed by the Dutch as an appendage or appurtenance of the colony which had its seat of government at New Amsterdam. Thereupon, Director Stuyvesant built Fort Casimer at or near New Castle, which action led to hostilities with the Swedes, who, under Johan Rysingh, who had then succeeded Printz, took the said fort in or about the year 1654; and, the hostilities continuing, on or about August thirty-first, 1655, Fort Casimer was retaken by the Dutch, to whom also a few days after Fort Christina also surrendered. As the result of these operations, the Swedish settlements formally acknowledged the sovereignty of the Dutch as established at New Amsterdam, and formal articles of the terms of the surrender were executed under date of September eleventh, 1655; as to Fort Casimer, and September 25-15 of the same year, as to Fort Christina. Provision was made therein for the protection of Swedes who chose to remain and for the return of those who wished to go back to Europe. All of which will appear from the documents referred to and a multitude of others relating to the government of the Delaware country and River by the Dutch Colonial Government of the Netherlands, to which, when cited at



the hearing of this cause, this defendant craves leave to refer and prays that they may be taken as part of this answer.

And this defendant further avers that the said land and river of Delaware became thereupon known by the general designation of the South River of the New Netherlands, and continued to be further settled by active immigration promoted and assisted by the Government of the United Provinces of the Netherlands and the City of Amsterdam, and further that such government continued undisturbed and unchallenged from any quarter until the conquest of the New Netherlands by the English forces under James, Duke of York, hereinafter mentioned and set forth.

3. Charles the Second, King of England, in assertion of the English title by discovery and partial occupation of the territories therein described, granted his letters patent to his brother, James, the Duke of York, bearing date the twelfth of March, 1664, which letters patent are those alleged, mentioned and described in the said section or sections of said Bill of Complaint denominated by the letter A; and this defendant hereby refers to the said letters patent as a whole and makes the same a part of this, its answer. That pursuant to the powers and authority in said letters patent contained the said Duke of York did duly constitute and appoint, by his commission duly issued, dated on or about the second day of April, 1664, Colonel Richard Nichols to be his deputy governor within the lands, islands and places in said letters patent mentioned and granted, to perform and execute all and every the powers which were by the said letters patent granted to the said Duke; as by reference to the said commission, when produced in this cause, will more fully appear, and which this defendant prays may be taken as a part of this, its answer.

That thereafter, on or about the twenty-fifth day of the month of April, 1664, the said Charles the Second issued his commission to the said Colonel Richard Nichols, and Sir Robert Carre, George Cartwright and Samuel Maverick, to visit certain of the Colonies of England in America and determine complaints, accompanied by two letters of instructions, by one of which the said commissioners were directed to reduce to subjection and obedience to the English Crown the Dutch of Long Island and elsewhere within the Colonies and territories claimed by the King. And this defendant refers to the said commission

and letters of instructions and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

4. After the date of said letters patent, and in or about the month of September in said year 1664, the portion of said territory described in said letters patent in the occupancy and actual government of the Dutch, dominated by, and surrounding, their then seat of government at New Amsterdam, otherwise and later called New York, was, under the commission aforesaid, to said Nichols and others, conquered by the military power of the King of England, said Charles the Second. That at the date of the said conquest, the said Bay and River Delaware and the territories lying upon the west side thereof, were and constituted a dependancy of the Dutch Government having its seat of Government at said New Amsterdam; which said Government, for many years as aforesaid, had had and exercised, and then did have and exercise, all the rights and powers of a proprietor in, of and over the soil and waters of the said river Delaware and said territories adjacent thereto, and all jurisdiction, whether legislative, judicial or executive, and all government and rights of government in, upon and over the said River Delaware, the soil and waters thereof and said territories adjacent thereto. That in or about the month of October in said year, 1664, the said Bay and River Delaware and said territories adjacent thereto, including the premises here in dispute, so dependant upon, subject and owned by the Dutch Government at New York, were, as such a dependency, also conquered by the military power of the said King of England, and the inhabitants thereof submitted without resistance to the authority of said King, and took oaths of allegiance to him and his Governor. That by the treaty of Breda, made on or about the thirty-first day of July, 1667, between the English and Dutch, all the territories conquered by the English as aforesaid, including the premises here in dispute, were confirmed to the English. That from the year 1664 until in the year 1673, the Bay and River Delaware and the said territories lying adjacent to and west thereof, including the premises here in dispute, constituted a dependancy of, and were governed in all particulars by the Government of the Duke of York at New York, and the said Duke of York and his said government during said period had and exercised all government and rights of government, all jurisdiction, whether legislative, judicial or executive, over said bay, river and territory, as such a dependancy as aforesaid, and over all of the inhabitants thereof,

and all and every of the rights of a proprietor of, in and over the soil and waters of said river and territory, including the premises here in dispute.

5. That in or about the month of July 1673, the territory the seat of government of which was at New York, was reconquered by the military power of the States-General and the Prince of Orange, whereupon, without the direct exercise of military force, the Delaware dependancy, as above described, including the premises here in dispute, as the direct consequence of the conquest of the seat of said Government at New York, also fell into the hands of and was occupied as the territory of the States of the United Provinces of the Netherlands; and the inhabitants of said dependancy, in the same year, in or about the month of September, declared their submission under obedience to the honorable lords States-General of New Netherlands. That upon said reconquest of New York and its said dependancy, and for the space of about seven months thereafter, the governors and government of the Dutch at New York had and exercised all government and rights of government, all jurisdictions, whether legislative, judicial or executive, and all and every of the rights of a proprietor, in and over the said River Delaware and said territory adjacent thereto, as a dependancy of the said Government at New York, and in and over the soil and waters of said river and territory, including the premises here in dispute.

6. By the Treaty of Peace, signed at Westminster, in or about the month of February, 1674, the territory of which the seat of government was at New York as aforesaid, including the said dependancy of the Bay and River Delaware and said territories adjacent thereto, were restored to their former lord or proprietor; and by virtue of which treaty, the said River Delaware and the lands adjacent thereto upon the west, were restored as a dependancy to the said government of the said Duke of York, who as lord proprietor thereof, thereafter governed the same and exercised jurisdiction in, and the rights of a proprietor over, the same in manner and form as he had theretofore done before the said reconquest of the same by the said States General.

7. That thereupon, in order to make good and affirm and establish the aforesaid grant covered by the said letters patent of the said date of the twelfth of March, 1664, the said Charles the Second, King of England, by his letters patent, bearing date on or about the twenty-ninth day of June, 1674, did grant and

convey unto the said Duke of York, all and every of the property and all and every of the rights, powers and privileges, granted conveyed, transferred and assured in and by the said patent first made as aforesaid, using in the last one of the said patents the same words which are used in the first of the said patents and no others, except those stating the date; to which last mentioned letters patent this defendant refers, as a whole, and makes the same a part of this, its answer.

8. That in the year 1680, William Penn petitioned King Charles the Second to grant him letters patent for a tract of land in America, lying north of Maryland, on the east bounded with the Delaware River, on the west limited as Maryland, and northward to extend as far as plantable. That said petition was referred by the said King to the Lords of the Committee of said King's Most Honorable Privy Council for the affairs of Trade and the Plantations, who considered the same from about the month of June 1680 until about the month of March 1681. That among other persons consulted by said Lords of said Committee, as to said grant, was His Royal Highness the Duke of York, in consideration of his recognized possession of and title to the lands and premises involved in said petition and the proposed grant thereunder. That the southerly boundary of the proposed grant was fixed and determined by the said Lords of said Committee, and by Lord Chief Justice North, upon their reference of the same to him, only upon the consent and approval of the said Duke of York, who was by them conceded to have held and possessed ever since the conquest of New York by Colonel Nichols, as an appendix and part of the government of New York, all that coloney or plantation known by the name of Delaware Colony, or more particularly, New Castle Colony. And this defendant craves leave to refer to all and every of the minutes, acts and proceedings of the said Lords of the Committee of said King's Most Honorable Privy Council for the affairs of Trade and the Plantations, all correspondence with, and in behalf of said Lords of said Committee, and all acts, proceedings and correspondence by, with and in behalf of His Royal Highness, the said Duke, and of all other persons, relative to the said petition and the consequent Royal Grant of the territory and Province of Pennsylvania, and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

9. That King Charles the Second, by letters patent under the great seal of England, bearing date the fourth day of March,

1681, and published by royal proclamation on the second day of April, 1681, granted unto William Penn, his heirs and assigns, upon his petition aforesaid, all that tract or part of land in America, with all the islands therein contained, as the same is bounded on the east by Delaware River, from twelve miles distance, northward of New Castle Town, unto the three and fortieth degree of northern latitude if the said river doth extend so far northward; but if the said river shall not extend so far northward, then by the said river so far as it doth extend, and from the head of the said river the eastern bounds are to be determined by a meridian line, to be drawn from the head of the said river unto the said three and fortieth degree, the said lands to extend westwards, five degrees in longitude, to be computed from the said eastern bounds, and the said lands to be bounded on the north, by the beginning of the three and fortieth degree of northern latitude, and on the south, by a circle drawn at twelve miles distance from New Castle northwards and westwards unto the beginning of the fortieth degree of northern latitude, and then by a straight line westwards, to the limit of longitude above mentioned. That by the same charter, the territory of Pennsylvania was erected into a province, and appropriate powers of government thereof were conferred upon William Penn and his heirs. And this defendant prays leave to refer to said letters patent and charter, and that the same may be taken as a part of this, its answer.

10. That James, Duke of York, made and executed an indenture, dated the twenty-first day of August, 1682, to the said William Penn, wherein is recited that, His Royal Highness being willing and desirous that the tract or part of land called Pennsylvania should be granted and assured unto the said William Penn and his heirs, and for that purpose having signified and declared his assent thereto to the Right Honorable the Lords of the Committee of Plantations, his said Majesty by his letters patent under the great seal of England, bearing date the fourth day of March in the third and thirtieth year of his reign, for the considerations therein mentioned, did grant unto the said William Penn and his heirs, all that tract or part of land in America, with the islands therein contained and thereunto belonging, as the same was bounded and described in and by the said Letters Patent and therein called Pennsylvania, together with the several royalties, franchises, jurisdictions and privileges therein contained, and that his Royal Highness, for the consideration there

in mentioned, was willing and pleased to confirm and make any further assurance of the said tract of land and premises unto the said William Penn and his heirs; and thereupon, by said indenture, said Duke remised, released and forever quit claimed unto William Penn his heirs and assigns, all the estate, right, title, interest, rents, services, duties, payments, property, claim and demand whatsoever, of his Royal Highness, of, into or out of the said tract of land and all and singular other the lands, islands, tenements, hereditaments and other things comprised in the said recited letters patent and within the bounds and limits therein mentioned, to have and to hold the said tract of land, rents, services, hereditaments and premises unto the said William Penn, his heirs and assigns forever. And this defendant hereby refers to the said indenture and prays that the same may be taken and considered, when in evidence in this cause, as a part of this, its answer.

11. By deed signed and sealed but not witnessed, bearing date the twenty-first day of August, 1682, James, Duke of York, demised, granted, bargained and sold unto William Penn all that the town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the River Delaware in America, and all islands in the said River Delaware and the said river and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town, together with all rents, services, royalties, franchises and duties: and all the estate, interests and powers whatsoever of his said Royal Highness in or to the same, to have and to hold all the same granted, or intended to be granted, town, circle, islands, to William Penn, his executors, administrators and assigns, for ten thousand years from the day before the date, without impeachment of waste, at a yearly rent of five shillings. And this defendant hereby refers to the said deed of lease and prays that the same, when in evidence in this cause, may be taken as part of this, its answer.

12. By a deed sealed and delivered in the presence of witnesses, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, demised, granted, bargained and sold unto William Penn, upon due consideration, all that town of New Castle and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the River Delaware, and all islands in the same river, and the

said river and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town, to have and to hold to the said Wiliam Penn, his executors and administrators and assigns, for ten thousand years, at the yearly rent of five shillings. And this defendant refers to the said deed of lease and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

13. By a deed sealed and delivered in the presence of witnesses, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, upon due consideration, bargained, sold, let and to farm let unto the said William Penn all that tract of land upon Delaware River and Bay, beginning twelve miles south from the town of New Castle, and extending south to the Horerkilns, otherwise called Lopen, together with free and undisturbed use and passage into and out of all harbors, bays, waters, rivers, isles and inlets belonging to or leading to the same, together with the soils, fields, woods, underwoods, mountains, hills, fennes, isles, lakes, rivers, rivulets, bays and inlets situate in or belonging unto the limits and bounds aforesaid, with all the rights of the Duke to the same, to have and to hold for the space of ten thousand years; in which deed the said William Penn covenanted inter alia to yield one-half the profits of the office of Registry, &c., to the said Duke, who also reserved a right of distress for his rents. And this defendant refers to the said deed of lease and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

14. By a deed of feoffment, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, for due consideration therein mentioned, did bargain, sell, enfeof and confirm unto the said William Penn, his heirs and assigns forever, all that town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, situate, lying and being upon the River Delaware, in America, and all islands in the said River Delaware and the said river and soil thereof, lying north of the southernmost part of the said circle of twelve miles about the said town, together with all rents, services, royalties, franchises, duties, jurisdictions, liberties and privileges thereunto belonging; and all the estate, right, title, interest, powers, property, claim and demand whatsoever, of his said Royal Highness, of, in or to the same, or any part or parcel thereof; saving always and reserving to his Royal Highness, his agents and servants, free use of

all ports, ways and passages into, through and out of the bargained premises, and every part and parcel thereof; to have and to hold the said town and circle of twelve miles of land about the same, islands, and all other the before mentioned or intended to be hereby bargained premises, with their appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him the said William Penn, his heirs and assigns, forever, yielding and paying therefor yearly and every year unto his said Royal Highness, his heirs and assigns, the sum of five shillings of lawful money of England, at the feast of St. Michael the Archangel, only.

And in and by said indenture his said Royal Highness, for himself, his heirs and assigns, did covenant and grant to and with the said William Penn, his heirs and assigns, that his said Royal Highness, his heirs and assigns, would at any time or times thereafter, during the space of seven years next ensuing the date thereof, upon the request, and at the costs and charges in the law of the said William Penn, his heirs and assigns, do, make and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances in the law whatsoever, for the further conveying and assuring the said town and circle of twelve miles of land about the same, and islands, and all other premises, with the appurtenances, unto the said William Penn, his heirs and assigns, forever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, shall be reasonably devised, advised or required.

And his said Royal Highness further thereby made, constituted and appointed John Moll of New Castle aforesaid, esquire, and Ephraim Harman, of New Castle aforesaid, gentleman, jointly and either of them severally, his true and lawful attorneys, and by said presents did give and grant unto the said John Moll and Ephraim Harman, his said Attorneys, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises thereinbefore mentioned, or intended to be thereby aliened, enfeofed and confirmed, and into every or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to enter and receive; and after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel



thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful attorney or attorneys, sufficiently authorized to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to the true intent and meaning of said presents. And his said Royal Highness did further thereby allow of, ratify and confirm whatsoever the said John Moll and Ephraim Harman, his said attorneys, should lawfully do or cause to be done, in and about the premises, by virtue of said presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his said Royal Highness had done the same in his own person or had been present at the doing thereof.

And this defendant craves leave to refer to the whole of said last recited indenture of feoffment, when produced in evidence or proved, at the hearing of this cause, and prays that the same, when so produced or proved, may be taken as part of this, its answer.

15. By further deed or indenture of feoffment, bearing date the twenty-fourth day of August, 1682, the said James, Duke of York, for the due consideration therein mentioned, did bargain, sell, enfeoff, and confirm unto the said William Penn, his heirs and assigns forever, all that tract of land upon Delaware River and Bay, beginning twelve miles south from the town of New Castle, otherwise called Delaware, and extending south to the Whorekills, otherwise called Cape Henlopen, together with free and undisturbed use and passage into and out of all harbors, bays, waters, rivers, isles, and inlets, belonging to or leading to the same; together with the soil, fields, woods, underwoods, mountains, hills, fens, isles, lakes, rivers, rivulets, bays, and inlets, situate in or belonging unto the limits and bounds aforesaid; together with all sorts of minerals; and all the estate, interest, royalties, franchises, powers, privileges and immunities whatsoever, of his said Royal Highness therein, or in or into any part or parcel thereof; saving always and reserving to his said Royal Highness, his agents and servants, free use of all ports, ways and passages into, through and out of the said bargained premises, and every part and parcel thereof; to have and to hold the said tract of land, and all and singular other the premises, with the appurtenances, unto the said William Penn, his heirs and assigns, to the only use and behoof of him, the said William Penn, his heirs and assigns forever, to be holden of his said Royal Highness and his heirs, as of their castle at New York, in free

and common soccage, yielding and paying therefor yearly and every year, to his said Royal Highness, his heirs and assigns, one rose, at the feast of St. Michael the Archangel yearly, if demanded.

And in and by said indenture the said William Penn covenanted for himself, his heirs and assigns, within the space of one year next ensuing the date of said presents, to set up an office, or offices of Registry, wherein he should keep account of the rents and other profits arising out of said bargained premises, and annually to pay to his said Royal Highness one full moiety of all and all manner of rents, issues and profits, as well extraordinary as ordinary, as shall be made or raised upon, or by reason of the premises or any part thereof. And in said deed, his said Royal Highness reserved a right of distress for any unpaid arrears of said moiety of said profits.

And his said Royal Highness for himself, his heirs and assigns, did further covenant and grant to and with the said William Penn, his heirs and assigns, by said presents, that his said Royal Highness his heirs and assigns, would at any time or times thereafter, during the space of seven years next ensuing the date thereof, upon the request, and at the costs and charges in the law of the said William Penn, his heirs and assigns, do, make, and execute, or cause or procure to be made, done and executed, all and every such further act and acts, conveyances and assurances, in the law whatsoever, for the further conveying and assuring the said tract of land, and all and singular other the premises, with the appurtenances, under the said William Penn, his heirs and assigns, forever, as by the counsel learned in the law of the said William Penn, his heirs or assigns, should be reasonably devised, advised or required.

And his said Royal Highness further thereby made, constituted and appointed John Moll of New Castle aforesaid, esquire, and Ephraim Harman of New Castle aforesaid, gentleman, jointly, and either of them severally, his true and lawful attorneys, and thereby did give and grant unto the said John Moll and Ephraim Harman, his said attorneys, or either of them, full power and authority for him, and in his name and stead, into all and singular the premises thereinbefore mentioned, or intended to be thereby aliened, enfeoffed and confirmed, and into every, or any part or parcel thereof, in the name of the whole, to enter, and quiet and peaceable possession and seisin thereof, or of any part

or parcel thereof, in the name of the whole, to take and receive; and after peaceable possession thereof had and taken as aforesaid, to deliver quiet and peaceable possession and seisin thereof, or of any part or parcel thereof, in the name of the whole, to the said William Penn, his heirs or assigns, or to his or their lawful attorney or attorneys, sufficiently authorized to receive and take the same, and him or them to leave in the quiet and peaceable possession thereof, according to the true intent and meaning of said presents. And his said Royal Highness did thereby allow of, ratify and confirm, whatsoever the said John Moll and Ephraim Harman, his said attorneys should lawfully do, or cause to be done, in and about the premises, by virtue of said presents, to be as good and effectual in the law, to all intents and purposes whatsoever, as if his Royal Highness had done the same in his own person, or had been present at the doing thereof. .

And this defendant hereby refers to the said indenture of feoffment and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

16. That on or about the twenty-eighth day of October, 1682, the said William Penn, either in his proper person or by his attorney, did demand, and the said John Moll and Ephraim Harman, or one of them, being the said Duke's attorneys for such purpose, duly constituted as aforesaid, did with great form and solemnity, deliver and leave the said William Penn in the quiet and peaceable possession and seisin of the premises contained in both the said respective indentures of feoffment, pursuant to the power and authority given by the said respective indentures of feoffment, by delivery to the said William Penn, of the fort at New Castle, and of turf and twig, and of water and soil of the River Delaware; memorandums of the delivery of seisin were duly prepared and attested by several witnesses, which memorandums, or records thereof, remain to this day. And this defendant hereby refers to the records and memorandums of the said liveries of seisin, and prays that they may when produced in this cause, be taken as parts of this, its answer.

17. That on or about the said twenty-eighth day of October, 1682, the inhabitants of the town of New Castle upon Delaware River, having heard the indenture read, made between his Royal Highness, James, Duke of York, &c., and said William Penn, wherein said Duke transferred his right and title to New

Castle, and twelve mile circle about the same, with all powers and jurisdictions, and services thereunto belonging, unto the said William Penn, and having seen by the said Duke's appointed attorneys, John Moll and Ephraim Harman, both of New Castle, possession given and by their governor, the said William Penn, possession taken, whereby they were made subjects, under the King, to the said William Penn, did in the presence of God, solemnly promise to yield to him, the said William Penn, all just obedience and to live quietly and peaceably under his government. That of the said oath of allegiance and submission to the said William Penn, a memorandum was made and signed by said inhabitants of the town of New Castle, or by representatives thereof, which said memorandum, or a due record thereof, remains to this day. And this defendant hereby refers to the said memorandum of said oath of allegiance and submission, or to the record thereof, and prays that the same when produced in this cause, may be taken as a part of this, its answer.

18. That shortly after the delivery of such possession and seisin of said territory and River Delaware, included within said twelve mile circle, to the said William Penn, as aforesaid, and sometime in the month of November, 1682, the said Duke of York's Commander-in-Chief and Council established at New York, issued a proclamation, declaration, or order, addressed or directed to the several justices of the peace, magistrates, and other officers at New Castle, St. Jones, Deale, alias Whore Kill, at Delaware, or within any of the bounds and limits mentioned in the said recited indentures of feoffment to the said William Penn. Said order or proclamation recites that his Royal Highness has been graciously pleased by indenture under his hand and seal, bearing date the twenty-fourth day of August, then last past, for the consideration therein mentioned, to bargain, sell, enfeof, and confirm unto William Penn, Esquire, his heirs and assigns forever, all that town of New Castle, otherwise called Delaware, and all that tract of land lying within the compass or circle of twelve miles about the same, with all islands, and the river and the soil thereof lying north of the southermost part of the said circle, and all rents and services, royalties, franchises, duties, jurisdiction, privileges and liberties thereunto belonging, and by another indenture of the same date, for the consideration therein likewise mentioned, had also bargained, sold, enfeofed and confirmed into the said William Penn, Esquire, his heirs and assigns forever, all that tract of land upon Delaware River

and Bay, beginning twelve miles south from the town of New Castle, otherwise called Delaware, and extending south to the Whore Kills, otherwise called Cape in Lopen, with all isles, rivers, rivulets, bays and inlets, royalties, franchises, powers, privileges, and immunities whatsoever, and in and by the said indentures, appointed and authorized John Moll, esquire, and Ephraim Harman, gentleman, to deliver to him, the said William Penn, free and actual possession of the premises, as by the said indentures, there produced and shown to said Commander-in-Chief and Council, and by them well approved of and entered in the public records of said province, did and may more at large appear; and said proclamation further recited that the said Commander-in-Chief and Council being thereby fully satisfied of the said William Penn's right to the possession and enjoyment of the premises; whereupon the said order or proclamation proceeded, that the said Commander-in-Chief and Council theretofore thought fit and necessary to signify and declare the foregoing to the persons to whom said proclamation was addressed, to prevent any doubt or trouble that might arise or accrue, and to give to them their thanks for their good services done in their several offices and stations during the time they remained under his Royal Highness' Government; which proclamation concluded as follows: "expecting no further account than that you readily submit and yield all due obedience and conformity to the powers granted to the said William Penn in and by the said indentures in the performance and enjoyment of which we wish you all happiness." And this defendant refers to the said order or proclamation or the due record thereof, and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

19. That the Duke of York having, by each of his said indentures of feoffment of the twenty-fourth of August, 1682, covenanted with the said William Penn to make and procure further assurance of the premises contained within the said recited indentures of feoffment as aforesaid, he, the said Duke of York, did in pursuance and performance of his said covenants, very shortly after the date of the said feoffments, make his application to said King, Charles the Second, for a more particular and express grant under the great seal of England, of the said lands and waters contained in the said feoffments, and since called the three lower counties, and did procure and obtain the same.

Pursuant to the said application of the said Dupke of York, the said King, Charles the Second, by his letters patent, under the great seal of England, bearing date at Westminster on or about the twenty-second day of March, which was in the thirty-fifth year of his reign, Anno Domini 1683, (O. S. 1682), which date was not quite seven calendar months after the date of the said Duke's said feoffments, did give and grant unto said James, Duke of York, his heirs and assigns, all that, the town of New Castle, otherwise called Delaware, and fort therein or thereunto belonging, situate, lying and being between Maryland and New Jersey in America; and all that tract of land lying within the compass or circle of twelve miles about the said town, situate, lying and being upon the River Delaware, and all the islands in the said River Delaware, and the said river and soil thereof lying north of the southernmost part of the said circle of twelve miles about the said town; and all that tract of land upon Delaware River and Bay, beginning twelve miles south from the said town of New Castle, otherwise called Delaware, and extending south to Cape Lopen; together with all the lands, islands, soils, rivers, harbors, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings and fowlings, and all other royalties, privileges, profits, commodities and hereditaments, to the said town, fort, tracts of land, islands and premises, or to any or either of them belonging or appertaining, with their and every of their appurtenances, situate, lying and being in America, and all of the said King's estate, right, title and interest, benefit, advantage, claim and demand whatsoever, of, in or to the said town, fort, lands, or premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof, together with the yearly and other rents, revenues and profits of the premises, and of every part and parcel thereof; to have and to hold the said town of New Castle, otherwise called Delaware, and fort, all and singular the said lands and premises with their and every of their appurtenances, thereby given and granted, or thereinbefore mentioned to be given and granted, unto the said James, Duke of York, his heirs and assigns forever; to be holden of the said King, his heirs and successors, as of his manor of East Greenwich, in his County of Kent, in free and common soccage, and not in capite or by knight service; yielding and rendering, and the said James, Duke of York, for himself, his heirs and assigns, did thereby covenant and promise to yield and render unto the said King, his heirs and successors, of and for the same, yearly, and every year, four beaver skins, when the same should

be demanded, or within ninety days after such demand made.

And of the King's special grace, certain knowledge, and mere motion, for him, his heirs and successors, the said King did thereby give and grant unto the said James, Duke of York, his heirs, deputies, agents, commissioners and assigns, full and absolute power and authority to correct, punish, pardon, govern and rule, all such the subjects of said King, his heirs and successors, or any other person or persons as should from time to time adventure themselves into any of the ports and places aforesaid, or that should or did at any time thereafter inhabit the same, according to such laws, orders, ordinances, directions and instructions, as by the said Duke of York, or his assigns, should be established; and in defect thereof, in cases of necessity, according to the good discretion of his deputies, commissioners, officers, or assigns respectively, as well in all cases and matters capital and criminal as civil, both marine and others, so always as the said statutes, ordinances and proceedings be not contrary, but (as near as may be) agreeable to the laws, statutes and government of the said King's realm of England; and saving and reserving to said King, his heirs and successors, the receiving, hearing and determining of the appeal and appeals of all, or any person or persons of, in, or belonging to the town, fort, lands and premises aforesaid, or touching any judgment or sentence to be there made or given.

And by said letters patent the said King further granted that it should and might be lawful to and for the said Duke of York, his heirs and assigns, from time to time, to nominate, make, constitute, ordain and confirm such laws as aforesaid, by such name or names, style or styles, as to him or they should seem good; and likewise to revoke, discharge, change and alter, as well as all and singular governors, officers and ministers, which should thereafter be by him, or them, thought fit and needful to be made or used within that aforesaid town, fort, lands and premises; and also to make, ordain and establish all manner of laws, orders, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government of the said town, fort, lands and premises, so always as the same be not contrary to the laws and statutes of said King's realm of England, but (as near as may be) agreeable thereunto, and the same at all times thereafter to put in execution, or abrogate, revoke or change, not only within the precincts of the said town, fort, lands and premises, but also upon

the seas, in going and coming to and from the same, as he, the said Duke of York, or his heirs and assigns, in their good discretion, shall think fittest for the good of the adventurers and inhabitants. And the said King did hereby further grant, ordain and declare that such governors, deputies, officers and ministers, as from time to time shall be authorized and appointed in manner and form aforesaid, shall and may have full power and authority within the said town, fort, lands and premises, to use and exercise martial law in case of rebellion, insurrection and mutiny, in as large and ample manner as the said King's Lieutenants, in his counties within his realm of England, had or ought have, by force of their commission of Lieutenancy, or any law or statute of his said realm.

And the King by said letters patent did further for himself, his heirs and successors, grant unto the said Duke of York, his heirs or assigns, in his or their discretions, from time to time, to admit such and so many person and persons to trade and traffic unto and within the said town, fort, lands and premises, and into every and any part and parcel thereof, and to have, possess and enjoy any lands and hereditaments in the parts and places aforesaid, as they shall think fit, according to the laws, orders, constitutions, and ordinances, by the said Duke of York, his heirs, deputies, commissioners and assigns, from time to time, to be made and established by virtue of, and according to, the true intent and meaning of said presents, and under such conditions, reservations and agreements, as the said Duke of York, his heirs and assigns, should set down, order, direct and appoint, and not otherwise, as aforesaid.

And the said King, did further of his especial grace, certain knowledge, and mere motion, for himself, his heirs, and successors, give and grant unto the said Duke of York, his heirs and assigns, by said presents, that it should and might be lawful to and for him, them, or any of them, at all and every time and times thereafter, out of any of the said King's realms or dominions whatsoever, to take, load, carry and transport, in and into their voyages for and towards the plantation of the said town, fort, lands and premises, all such and so many of the said King's loving subjects, or any other strangers being not prohibited, or not restrained that would become the said King's loving subjects, and live under his allegiance, and should willingly accompany them on the said voyage, together with all such clothing, implements, furniture, or other things, usually transported,



and not prohibited, as should be necessary for the inhabitants of the said town, fort, lands and premises, and for their use and defense thereof, and managing and carrying on the trade with the people there, and in passing and returning to and fro; yielding and paying unto the said King, his heirs and successors, the customs and duties therefore due and payable, according to the laws and customs of the said King's realm.

And the said King by said letters patent did also for himself, his heirs and successors, grant to the said Duke of York, his heirs and assigns, and to all and every such Governor and Governors, Deputy or Deputies, or their officers or ministers, as by the said Duke, his heirs or assigns, should be appointed, to have power and authority of government, and command in and over the inhabitants of the said town, fort, lands and premises, that they and every one of them should, and lawfully might, from time to time, and at all times forever thereafter, for their several defences and safety, encounter, repulse and expel and resist by force of arms, as well by sea as by land, and by all ways and means whatsoever, all such person and persons as, without the special license of the said Duke, his heirs or assigns, should attempt to settle and inhabit within the several precincts and limits of the said town, fort, lands and premises, and also all and every such person or persons whatsoever, as should enterprise and attempt at any time thereafter, the destruction, invasion, detriment or annoyance, to the parts, places, town, fort, lands and premises aforesaid or any part thereof.

And said King did, by his said letters patent, declare his will and pleasure to be, and did thereby declare and grant, that said letters patent, or the enrollments thereof, should be good and effectual in law, to all intents and purposes whatsoever, notwithstanding the not well or true reciting or mentioning of the premises, or any part thereof, or of any former or other letters patent or grants whatsoever, made or granted of the premises, or of any part thereof, by the said King, or any of his progenitors, unto any person or persons whatsoever, bodies politic or corporate, or any other law or other restraint, uncertainty or imperfection whatsoever to the contrary in any wise notwithstanding, although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts or grants by him, or by any of his progenitors, theretofore made to the said Duke of York, in said presents was not made, or any statute, act, ordinance, provision, proclamation or restriction thereto-

fore had, made, enacted or provided, or any other matter, cause or thing whatsoever, to the contrary thereof in any wise notwithstanding.

As by reference to said letters patent will more fully and at large appear. To which letters patent this defendant hereby refers and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

That immediately after the said last mentioned letters patent had passed the great seal, the said Duke of York, who was no other than a trustee for the said William Penn therein, and had obtained them in pursuance of his said covenant for further assurance, did deliver over the same original last mentioned letters patent under the great seal, to the said William Penn, into the custody and possession of whom, his heirs and assigns, the same did thereby pass and ever after remain.

20. And this defendant further avers that, upon the making of the feoffments from the Duke of York to the said William Penn, and of the said royal letters patent to the Duke of York, for the benefit of the said William Penn as aforesaid, the said William Penn straightway entered into full seisin, possession and exercise of the lands, territories, rivers, waters, the royalties, government and rights of government, and jurisdiction, whether legislative, judicial or executive, conferred by the said feoffments and said letters patent; and particularly entered upon the possession and full exercise of all of the titles, powers, royalties, privileges, franchises, jurisdictions, governments and rights of government conferred by said two last mentioned feoffments and said letters patent, within, upon and over the territory, lands, soils, waters, and property included within the compass of said twelve mile circle, and had and exercised, within said last mentioned bounds, all and every the rights of a proprietor, under the terms of all of his muniments of title aforesaid. And further that in the improvement and settlement of said last mentioned territories, the said William Penn and his heirs expended large sums of money. That the said William Penn, and his heirs, continued in the possession, enjoyment and exercise of all the powers and privileges, rights and titles, jurisdiction and government of the said territories, lands and premises, with the full knowledge of, and with the full recognition of his governmental and proprietary rights therein by the Crown of England, and without its let or hindrance, from the time of the taking posses-

sion and exercise of the same as aforesaid, until the time of the American Revolution, excepting that, for a short period during the reign of Queen Anne of England, he was removed from the government of his said provinces, but shortly thereafter was most fully and completely restored thereto. All of which by reference to very numerous grants by William Penn and his heirs to sundry persons, and from numerous legislative, judicial and executive acts, laws, records, documents, provincial charters and acts of provincial settlement, will more fully and at large appear, to all of which this defendant prays leave to refer and to make the same, when produced in this cause, a part of this, its answer.

21. That on or about the month of December, 1682, the said William Penn under his hand and broad seal, as proprietor and governor of the Province of Pennsylvania, and of the said Three Lower Counties, issued and published an Act of Union for annexing and uniting of the counties of New Castle, Jones's, and Whorekills, alias New Dale, to the Province of Pennsylvania. The said Act of Union, after sundry recitals of the title of the said William Penn to the said Province of Pennsylvania and said Three Lower Counties, as by reference thereunto will fully appear, enacted that the County of New Castle, Jones's and Whorekills, alias New Dale, should be annexed, and by the authority of the said proprietor and governor, by and with the advice and consent of the deputies of the freemen of said province, and counties aforesaid in assembly made, were thereby annexed unto the Province of Pennsylvania, as of the proper territory thereof; and that the people therein should be governed by the same laws, and enjoy the same privileges in all respects, as the inhabitants of Pennsylvania did or should enjoy from time to time therein, anything in said law, or any other law, act or thing, in said province, to the contrary thereof in any wise notwithstanding. And this defendant hereby refers to the said Act of Union and prays that the same when produced in this cause, may be taken as a part of this, its answer.

22. That the union of the said Three Lower Counties to the Province of Pennsylvania continued in full force, both legislative and otherwise, until about the year 1701; in which said year, the said William Penn granted and promulgated a charter of privileges to the inhabitants of the said Province of Pennsylvania and said Three Lower Counties, called the territories thereof, whereby he granted full permission under said charter or privileges for the said province and the said territories, to

have and maintain several legislatures. That subsequent to about the year 1702, no further joint legislative assemblies of representatives from the Three Lower Counties and from the said Province of Pennsylvania were ever held. And this defendant hereby refers to the said charter of privileges, to the acts and proceedings of the legislative bodies of the Three Lower Counties, and of the said Province of Pennsylvania, so far as relating to the said legislative disunion between the Three Lower Counties and the said Province of Pennsylvania, and prays that the same may, when produced in this cause, be taken as a part of this, its answer.

23. That from the year 1682 down to the year 1776, the said William Penn and his heirs, under various wills, deeds of settlement, and descents, continually had, held, possessed, retained, and exercised the rights of proprietor and proprietors of the territory, lands, waters, and premises, included within the compass of the said twelve mile circle, under the powers, titles, and authorities granted to the original proprietor, and so held and exercised by him as aforesaid, and as modified by various charters of privileges granted by said proprietors to the Province of Pennsylvania, and the said Three Lower Counties. And this defendant prays leave to refer to the said wills, deeds of settlement, and descents, or to the due records thereof, and to the several charters of privileges, for further particulars in this behalf; and that the same may, when produced in this cause, be taken as parts of this, its answer.

24. That at the date of the American Revolution, which took place by the Declaration of Independence, bearing date the Fourth day of July, 1776, the territorial limits of the State of Delaware extended to and included, inter alia, all those lands and that portion of the Delaware River, its waters and the soil and bed thereof to low water mark on the New Jersey shore, included within the compass of said twelve mile circle; and such its limits and boundaries had continuously been and remained down to the date of said Revolution from about the year 1682. That by said American Revolution, the State of Delaware became and was, and from thenceforth has been, a free and independent State, and as such became entitled to have and to hold all such rights as free and independent States may have or hold, to do all acts and things which independent States may of right do; and by force of the said Revolution and said Independence the said State of Delaware became invested with all and every power of

government in and over the territory of said State and the tide waters adjacent thereto, and particularly to the full extent of the limits and boundaries of said State as they existed at the time of said American Revolution as aforesaid, and also became invested, not only with all the property and rights of property, royalties, powers, and franchises, governmental powers and authority and jurisdictions within and appertaining to said State, which immediately before said Revolution were vested in the then and former proprietor or proprietors of its territory within the limits and bounds aforesaid, but also with all the property, rights of property, privileges, franchises, powers, governmental power and jurisdictions, if any thereof yet then remained in the Crown of England, in manner and form as they were so vested in said Crown; that by means of said Revolution, the said independence of the State of Delaware, and the Treaty of Peace between the King of Great Britain and the United States of America, concluded at Paris, September third, 1783, all that portion of the bed, soil and waters of the Delaware River last hereinbefore mentioned, to low water mark on the New Jersey shore and included within the compass of said twelve mile circle, became vested in fee simple in the State of Delaware; and so the title to the bed of said portion of said river, this defendant respectfully submits, hath ever since continued and now is.

25. That to and in the said bed and soil of said portion of the Delaware River and to jurisdiction in and over said river, so as aforesaid claimed, this defendant hath title and right by long and peaceable possession, use and enjoyment, which use, possession and enjoyment began with the earliest determination of the said boundaries of said State as hereinbefore set forth and hath ever since continued, without interruption or dispute. That in, over and with reference to the portion of said Delaware River and the soil and the bed thereof, as a part of the recognized territory of said State of Delaware, the said State hath from time to time continuously passed and enforced legislative acts, its courts have continuously, both before and after the American Revolution, exercised jurisdiction and issued and enforced processes, writs, orders, judgments and decrees, and the courts of the United States within the district of said State, have enforced their processes, orders and writs. That with reference to the rights of fishing and every regulation and control thereof in said river, within the limits of said twelve mile circle, the State of Delaware hath never relinquished or abandoned the proprietary rights

which it hath always possessed, had and defended, from the inception of its title to the bed and soil and waters of said river, within the limits of said twelve mile circle, in the year 1682, to the present day, but on the contrary, this defendant saith that the said proprietary rights, and title to said fisheries and fishings in said portion of said river, and the regulation and control thereof, this defendant hath continuously from the said year 1682 to the present day claimed, exercised and defended.

That in the exercise, by this defendant, of proprietary right, jurisdiction and sovereignty, in and over the said twelve mile circle, its legislature did, on May 27th, 1813, pass an act entitled "An Act Ceding to the United States of America the Jurisdiction which this State has over the Pea Patch, on certain conditions therein mentioned" (being Digest of Delaware Laws of 1829, page 673), in and by which the State of Delaware ceded to the United States of America, for the purpose of erecting forts, batteries and fortifications thereon for the protection of the River Delaware and the adjacent country, a certain island in the River Delaware and within the twelve mile circle; which was thereupon, in pursuance of said cession, occupied by the Government of the United States of America, and fortifications were thereupon built thereon, and have ever since been maintained. That after said cession, and prior to the year 1847, the title of the United States of America under said cession, was questioned by James Humphrey who claimed through sundry mean conveyances, under grants from the State of New Jersey or its proprietary; and that for the purpose of determining the right, title, sovereignty and jurisdiction of the State of Delaware in and over the said island, at the time of said cession, as aforesaid, to the United States of America, an arbitration of and concerning the same was had, heard and determined by and before the Honorable John Sergeant of Pennsylvania, who was designated as an arbitrator for the express purpose of determining the said right, title, jurisdiction and sovereignty, under and pursuant to the authority of an Act of the Congress of the United States, approved August 8th, 1846, under which the said arbitrator was appointed, and, when so appointed, was constituted a special tribunal for determining the same. That the question of the right, title, jurisdiction and sovereignty of the State of Delaware of, in, to and over the River Delaware and the soil thereof, within the twelve mile circle, was the very question involved in said litigation and determined by the said special tri-