

commence and prosecute or defend any suit or action in any of said Courts on the part of the State, which the General Assembly or the Governor, acting according to law, shall direct to be commenced, prosecuted or defended." And by the same section, the Governor is prohibited from employing additional counsel in any case, unless authorized by the General Assembly. It is well known that proceedings by *scire facias* at common law, to enforce the forfeiture of a charter, can, in Maryland, only be instituted by the express direction of the General Assembly.

Your Committee are aware that the general corporation Act of 1868, provides for a new and peculiar statutory proceeding against corporations at the instance of the Governor for abuse of their charter privileges, that they are of opinion that the provisions of that statute regulating the judgment to be pronounced in such cases, to wit: the 179th and 181st sections, which direct the Courts after ascertaining a legal cause of forfeiture, to consider whether the public interests require a forfeiture to be desired or not, are in violation of the eighth Article of the Declaration of Rights, which declares: "that the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other."

Now, if any class of questions can be said to belong to the political departments of government, and not to the Judicial department, it is that class of questions which involve an inquiry into the public interest.

Deeply impressed with the necessity of adhering to the fundamental principles of our political system, your Committee would be unwilling at any time to imperil the recognized distinctions between judicial and political functions. But, particularly unfortunate would it be to make the experiment in a case surrounded by such large pecuniary interests, and calculated to awaken so many passions, as would be a contest between the State and the Baltimore and Ohio Railroad corporation before a Court over the question whether public policy demanded a vacation of its charter. Considerations of this nature controlled your Committee and the House of Delegates itself in proposing the common law remedy of *scire facias*, which proposition, the Senate, in the exercise of its judgment, has declined to sanction.

Efficient as your Committee believe that remedy would have proved for the enforcement of the present demands of the State, and still more efficient as a means through which control might have been obtained over the charter of the Company for the purpose of securing the rights of the State against future encroachment, and the welfare of the citizens